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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Coalition Clean Baltic (CCB) Request for internal review under Title IV of the Aarhus Regulation in relation to COUNCIL REGULATION (EU) 2023/2638 of 20 November 2023 fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters

Delegations will find attached a note on the above-mentioned subject, as received from Coalition Clean Baltic (CCB).

17 JANUARY 2024

REQUEST FOR INTERNAL REVIEW UNDER TITLE IV OF THE AARHUS REGULATION

Of Council Regulation (EU) 2023/2638 of 20 November 2023 fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunitiesin other waters[1] ("**the Contested Act**")

SUBMITTED BY

Coalition Clean Baltic (CCB), with its offices at Östra Ågatan 53, SE-753 22 Uppsala (Sweden), statutorily represented by [redacted] established at the same address, with email address [redacted] represented by [redacted], Attorney-at-Law (*Rechtsanwalt*), member of the bar of [redacted], established in Brussels, with email address [redacted]

To

The Council of the European Union, Agriculture and Fisheries Council ("AGRIFISH")

According to Article 10 of Regulation 1367/2006[2] and Commission Decision (EU) 2023/748of 11 April 2023.[3]

[1] OJ L, 2023/2638, 22.11.2023, p. 1–17.

[2] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision- making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264 of 25.9.2006, p. 13.) as amended by Regulation (EU) 2021/1767 (OJ L 356 of 8.10.2021, p. 1) (the "**Aarhus Regulation**").

[3] Commission Decision (EU) 2023/748 of 11 April 2023 laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council as regards requests for the internal review of administrative acts or omissions (OJ L 99 of 12.4.2023, p. 23 – "**CD (EU) 2023/748**").

Request for Internal Review under Title IV of the Aarhus Regulation[4]

A. INTRODUCTION

I. General Background

(1) The present Request for Internal Review (the "**Request**" or "**Request for Internal Review**") maintains that the Council of the European Union ("**Council**") set, in the Contested Act that fixes fishing opportunities in the Baltic Sea for 2024, the Total Allowable Catches ("**TACs**") for the two herring stocks[5] listed under items **a.** and **b.** below, as well as the TAC for sprat listed under item **c.** below in violation of a whole array of environmental rules:

a. **Bothnian herring** (herring (*Clupea harengus*) in subdivisions ("**SD**") 30 and 31 (Gulf of Bothnia) pursuant to Articles 1(1)(e) and (f) of the Baltic Sea MAP Regulation[6] (HER/30/31, ICES advice code her.27.3031)) – see Article 4 and Table 1 in the Annex of the Contested Act; and

b. **Central Baltic herring** (herring (*Clupea harengus*) in SD 25-29 and 32, excluding subdivision 28.1, the Gulf of Riga (central Baltic Sea), pursuant to Article 1(1)(c) of the Baltic MAP (HER/3D-R-30, ICES advice code her.27.25-2932, excl. her.27.28.1)) – see Article 4 and Table 3 in the Annex of the Contested Act;

c. **Sprat** (sprat (*Sprattus sprattus*) in SD 22-32 (Baltic Sea), pursuant to Article 1(1)(h) of the Baltic MAP (SPR/3BCD-C, ICES advice code spr.27.22-32)) – see Article 4 and Table 10 in the Annex of the Contested Act.

(2) The Coalition Clean Baltic ("**CCB**") therefore requests these TACs to be brought in line with environmental rules that are explicitly referred to and enshrined also in EU fisheries rules. This includes to foresee appropriate restitutive or salvatory measures for the two herring stocks mentioned above for the future (including for the impact of the sprat fishery on the Central Baltic herring stock), because fishing, once occurred, cannot be undone.

(3) Overfishing, *i.e.* catching fish faster than stocks can replenish, is a major threat to marine ecosystems. It is not only one of the most significant drivers of marine biodiversity loss, but it also threatens the means of millions of people relying on fish to sustain their livelihoods.

(4) In general, fisheries exert the most sizeable external pressures on fish stocks, by far outsizing any other threat, such as climate change, hunting, pollution, dams.[7] "*Overfishing has been connected with declined fish stocks and a worsened age and size structure of several fish stocks in the Baltic Sea as well as adjacent seas.*"[8]

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4 Unless indicated otherwise, references to page numbers refer to printed page numbers, not to the "digital" page numbers of electronic files.

5 For purposes of this Request, these two stocks will, jointly, be referred to as the "**Two Herring Stocks**".

6 Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (OJ L 191 of 15.7.2016, p. 1), as amended (the "**Baltic MAP**").

7 See Helsinki Commission – HELCOM, *State of the Baltic Sea 2023. Third HELCOM holistic assessment 2016-2021* (2023), available at: <https://helcom.fi/post_type_publ/holas3_sobs> (last visited on 6.1.2024), Figure 4.1 (p. 65).

8 HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), p. 89.

"[O]*verfishing is connected with detrimental effects on the marine environment and on longer-term prosperity.*"[9]

(5) Back in the 1980s, the Member States of the then European Economic Community started to realise that the problem of overfishing had to be addressed and thus adopted, in 1983, a first iteration of the Common Fisheries Policy (CFP). This policy has been reformed several times over the years, but none of these reforms was successful in tackling overfishing and ensuring the sustainability of all fish stocks in EU waters. This situation motivated the adoption of a new CFP in 2013.

(6) The Common Fisheries Basic Regulation ("**CFP Basic Regulation**")[10] is the core of the 2013 reform. It defines the rules and objectives of the Common Fisheries Policy ("**CFP**"). The CFP Basic Regulation is a ground-breaking development in that it sets clear and mandatory objectives to progressively restore and maintain populations of fish stocks above sustainable levels. It also requires the Council to follow a precautionary approach to fisheries management based on best available science. Finally, it acknowledges that change needed to be incremental, so it fixed a target deadline of 2015 and a final and binding deadline of 2020 to exploit all fish stocks at sustainable levels.

(7) Every year, the Council determines the amount of fish that EU vessels are allowed to catch. It does so by adopting TACs for most of the commercially important species fished in the EU. When adopting these TACs, the Council acts in its AGRIFISH configuration. The adopted figures are then included in annual regulations, such as the Contested Act. Although this negotiation is commonly a political affair, the Council needs to respect the requirements of the CFP Basic Regulation and other relevant environmental rules.

(8) Despite the CFP Basic Regulation, overfishing in the EU has largely continued since 2013. A recent report by the Scientific, Technical and Economic Committee for Fisheries (STECF),[11] an official advisory body to the European Commission (the "**Commission**"), confirms that as of 2021 – the most recent year for which this information is available – 50% of assessed fish stocks in the Baltic Sea were still subject to overfishing.[12] This is an increase, *i.e.* a reversal of progress compared to the data for 2018 shown in the same report (37.5% of assessed stocks were then subject to overfishing[13]). It means that in 2021, the EU was still far away from achieving the sustainability objectives of the CFP Basic Regulation. The STECF concluded in the same report that "*several stocks remain overfished and/or outside safe biological limits*".[14]

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9 *Ibid.*

10 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354/22 of 28.12.2013.

11 Scientific, Technical and Economic Committee for Fisheries (STECF) – Monitoring the performance of the Common Fisheries Policy (STECF-Adhoc-23-01). EUR 28359 EN, Publications Office of the European Union, Luxembourg, 2023, ISBN 978-92-68-02340-2, doi:10.2760/361698, JRC133325. <https://stecf.jrc.ec.europa.eu/reports/cfp-monitoring/-/asset_publisher/oz5O/document/id/58227533?inheritRedirect=false&redirect=https%3A%2F%2Fstecf.jrc.ec.europa.eu%2Freports%2Fcfp-monitoring%3Fp_p_id%3D101_INSTANCE_oz5O%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D1%26p_p_col_count%3D2> (last visited on 5.1.2024).

12 *Ibid.*, Tables 5 and 6, p. 32: four Baltic stocks outside safe biological limits (NEAI3) versus four Baltic stocks inside safe biological limits (NEAI4).

13 *Ibid.*

14 *Ibid.*, p. 9.

(9) HELCOM states that "[o]*ut of fifteen commercial stocks* [in the Baltic Sea] *that could be fully evaluated, only four showed good status on average during 2016-2021*".[15]

(10) As this request will show, the Council enables this overfishing situation, because it consistently disregards essential requirements of the CFP Basic Regulation and exceeds the bounds of its discretion set by the Regulation's rules when adopting the annual TAC Regulations, such as by fixing fishing opportunities above levels that would ensure achievement of the binding sustainability target. Since 2001, there has not been a single year in which the Council did not impose TACs exceeding scientific advice on a substantial proportion of fish stocks in the Baltic Sea.[16]

(11) Reading through the relevant legal framework presented below, one may get the impression that the EU rules governing the Common Fisheries Policy seen without and within the context of the EU environmental rules should be sufficient to prevent the authorization of excessive TAC-setting (overfishing) that the Council engaged in when setting the fishing opportunities for the Two Herring Stocks and the sprat stock in the Contested Act. They would have been (and this Request would have been obsolete) had the Council not violated its obligation to follow the rule of law, as will be set out in further detail below. Having to observe such illegal behaviour by the Council as EU institution is deeply concerning.

(12) This year, with regards to the Two Herring Stocks, the Council even disregarded the Commission's proposal to close the targeted fisheries for those Two Herring Stocks, although it would have been commanded under EU environmental, including fisheries, law. The Council also allows a large sprat fishery to continue (taking place mainly in the central Baltic Sea), although the sprat fishery comes with unavoidable and significant (by-)catch of central Baltic herring (not technically a bycatch in this mixed fishery), and known misreporting of central Baltic herring (in order to avoid having to count herring landings in the sprat fishery towards the quota for central Baltic herring). The Council did not take any further remedial measures to contain the amount of herring caught in the mixed fishery (which, as will be shown below, is likely to exceed the – albeit in any event already excessive and illegal – amount of the TACs for the Two Herring Stocks). It decided to ignore the safeguards and limits stated in the EU Regulations in force as well as the poor state of the Baltic Sea, the food web dynamics, and clear warnings that genetically distinct sub-populations also of herring, including of the Two Herring Stocks, are at risk. There is no viable justification for this detrimental TAC-setting.

(13) In doing all of this, the Council violates environmental rules also by not considering the consequences of its excessive TAC setting for other fish stocks and protected animal species. On the one hand, EU law requires Member States to protect certain habitats and fauna species (mammals, fish as well as birds) and on the other hand, the very same EU, through the Council's setting of fishing quota, destroys or at least seriously jeopardises the feeding basis for the same protected species living in these habitats. For instance, protected species like the harbour porpoise, seals, salmon, as well as several species of protected Sea birds rely on herring, including the Two Herring Stocks, as staple food and, e.g. salmon, as main and important source of vitamin B12.

(14) It is for these reasons that the Council contravened EU environmental law in adopting the Contested Act. The present Request should be understood by the Council as a chance to revise its position and to correct the violation of environmental rules, to the benefit of the fish stocks in question, as well as the

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15 HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), p. 85.

16 Ibid., p. 90.

numerous protected species under the EU Habitats and Bird Directives that depend on them as staple food and important source of vitamin B1 (thiamine), and, finally, the relevant ecosystems overall. To the extent that this Request might in some instances also refer to information that might not yet have been before the Council when it adopted the Contested Act, this should nevertheless be understood as an invitation to reconsider its position on the Contested Act as adopted in light also of such information.

(15) Before setting out the underlying legal framework, the admissibility and the grounds of this Request for Internal Review, the CCB sets out its procedural and scientific background.

II. Procedural Background

(16) The TACs in the Contested Act came about through the following steps:

a. On 31 May 2023, The International Council for the Exploration of the Sea (ICES) provided its scientific advice for fish stocks in the Baltic Sea specifying the **maximum catch levels not to be exceeded for each stock in 2024**;[17]

b. On 28 August 2023, the European Commission adopted its proposal for a Council Regulation fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters[18] following ICES advice.

c. On 19 October 2023, the Council published a consolidated version of the Commission's proposal,[19] forwarded to the delegations.

d. On 20 October 2023, the Commission gave the Council updates on its proposal.[20]

e. On 24 October 2023, the Council agreed on a compromise by the Presidency on the abovementioned proposal.[21]

(17) The Contested Act was formally adopted, in – aside minor changes – the same form as it had been circulated on 24 October,[22] on 20 November 2023 and published in the Official Journal of the European Union on 22 November 2023. The final TACs

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17 Available at <https://www.ices.dk/advice/Pages/Latest-Advice.aspx> (last visited on 4.01.2024).

18 Council of the European Union, Interinstitutional File: 2023/0301(NLE), *Commission Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters*", COM(2023) 492 final, Brussels, 28.8.2023.

19 Council of the European Union, Interinstitutional File: 2023/0301(NLE), Document ST 14024 2023 REV 1, *Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters*, Brussels, 19.10.2023.

20 Council of the European Union, Interinstitutional File: 2023/0301(NLE), Document ST 14524 2023 INIT, *Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters – Commission services non-paper*, Brussels, 20.10.2023.

21 Council of the European Union, Interinstitutional File: 2023/0301(NLE), Doc. ST 14499 2023 REV 1, *Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters – Political agreement*, Brussels, 24.10.2023.

22 See point **(16)e.** above.

applicable to Union fishing vessels in areas where TACs exist by species and by area are set out in the Annex of the Contested Act, as stated in its Article 4.

III. **Scientific Background**

(18) There are a number of scientific terms used in this Request and its Annexes that are useful to define below (see also **Annex 1** for additional definitions compiled by ICES).

- Maximum Sustainable Yield (MSY): "the highest theoretical equilibrium yield that can be continuously taken on average from a stock under existing average environmental conditions without significantly affecting the reproduction process";[23]
- Spawning stock biomass (SSB): total weight of all sexually mature fish in a given stock;
- F: instantaneous rate of fishing mortality;
- F_{MSY}: fishing mortality consistent with achieving MSY;
- B_{MSY}: spawning stock biomass that results from fishing at F_{MSY} for a long time;
- B_{lim}: the spawning stock biomass reference point provided for in the best available scientific advice below which there may be reduced reproductive capacity;
- MSY $B_{trigger}$: the spawning stock biomass reference point provided for in the best available scientific advice below which specific and appropriate management action is to be taken to ensure that exploitation rates in combination with natural variations rebuild stocks above levels capable of producing MSY in the long term.
- Range of F_{MSY}: a range of values provided in the best available scientific advice where all levels of fishing mortality within that range result in MSY in the long term with a given fishing pattern and under current average environmental conditions without significantly affecting the reproduction process for the stock in question. It is derived to deliver no more than a 5 % reduction in long-term yield compared to the MSY. It is capped so that the probability of the stock falling below the limit spawning stock biomass reference point (B_{lim}) is no more than 5 %;
- MSY F lower: lowest value within the range of F_{MSY};
- MSY F upper: highest value within the range of F_{MSY};
- Mixed fisheries: fisheries in which more than one species is present and where different species are likely to be caught in the same fishing operation;
- By-catch: a species of fish that is caught in a mixed fishery when another species is the target catch;[24]

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[23] Article 4(7) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354 of 28.12.2013, p. 22 – the "**CFP Basic Regulation**").

[24] See on this also point (19) below.

- ICES: International Council for the Exploration of the Sea, an intergovernmental marine science organisation;

- ICES scientific advice: generic wording applicable to all scientific advice produced by ICES;

- ICES headline advice: for stock specific advice, the ICES headline advice is the advice found at the top of the first page of the advice and indicates the amount of recommended catches which should not be exceeded in order to reach the MSY;

- ICES scenarios: in the case of mixed fisheries, scenarios prepared by ICES which indicate how many tonnes of a by-catch species will likely end up being caught if TACs for the target species of that fishery are set at certain levels;

- Multiannual plans ("**MAPs**"): these legal instruments provide detailed stock management plans for particular stocks in defined geographic areas.[25] They contain timeframes to achieve quantifiable targets to avoid and reduce unwanted catches and to minimise the impact of fisheries on the marine environment. They also allow the use of ranges of F_{MSY} for certain stocks.

(19) As regards the definition of by-catch set out above (fish caught in a mixed fishery that is not a target species), it needs to be distinguished from situations of unwanted catches and emerging choke situations once quotas are exhausted. This is a different situation, in which there is not legally a *"by-catch stock"* in the way referred to by the Court of Justice in *Friends of the Irish Environment*.[26]

B. LEGAL FRAMEWORK

I. The Contested Act

(20) The Contested Act[27] fixes amongst others fishing opportunities (TACs) for certain fish stocks and groups of fish stocks in the Baltic Sea for 2024.

(21) Acting on the basis of the Treaty on the Functioning of the European Union ("**TFEU**") and of the CFP Basic Regulation, the Council is empowered to adopt annual measures on the fixing and allocation of fishing opportunities. This is done through a Council Regulation adopted pursuant to Article 43(3) TFEU. According to Article 16(4) of the CFP Basic Regulation, fishing opportunities shall be fixed in accordance with the objectives set out in Article 2(2) of that Regulation, and must, in accordance with Article 3(c) of the same Regulation, be established in accordance with the best available scientific advice.

(22) Recitals 9-19 of the Contested Act describe the Council's understanding of the status of the various fish stocks for which fishing opportunities are set for the Baltic Sea and outline its intended management measures for those stocks.

(23) Recital 20 of the Contested Act reads as follows:

> *"As regards sprat, ICES estimates that while the biomass is above $B_{trigger}$, there has been no strong recruitment since 2014. Moreover, ICES estimates that recruitment in 2021 and 2022 was historically low. Furthermore, the sprat fisheries are often mixed fisheries where sprat is fished for together with herring.*

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25 See Articles 7(1)(a), 9 and 10 of the CFP Basic Regulation.

26 Case C-330/22 *Friends of the Irish Environment v Minster for Agriculture, Food and the Marine, Ireland, Attorney General* EU:C:2024:19, paragraph 72.

27 Council Regulation (EU) 2023/2638 of 20 November 2023 – see on p. 1 above.

It is therefore appropriate, pursuant to Regulation (EU) 2016/1139, to fix the fishing opportunities for sprat in the corresponding lower F_{MSY} range" (emphasis added).

(24) Pursuant to Article 4 of the Contested Act, the TACs, quotas and measures functionally linked thereto, where appropriate, are set out in the Annex of the Contested Act. Tables 1, 3 and 10 of the Annex to the Contested Act set the Contested TACs that are subject of this Request for Internal Review.[28]

(25) Article 8 of the Contested Act foresees temporary closures "*to protect herring spawning in subdivisions 25-27, 28.2, 29 and 32*". The closures prohibit fishing for "*pelagic species using pelagic trawl*" in periods of one month, respectively, depending on subdivision, during the two months of April and May 2024.

II. Other relevant rules

1. Primary EU Legislation

(26) Article 4(3) of the Treaty on European Union ("**TEU**") provides as follows:

> *"Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*
>
> *The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.*
>
> *The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives."*

(27) Article 13(2) TEU requires that "*[e]ach institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation*" (emphasis added).

(28) Article 3(1)(d) TFEU gives the EU exclusive competence in *"the conservation of marine biological resources under the common fisheries policy"*. Article 4(2)(d) provides for shared competence between Union and Member States in *"agriculture and fisheries, excluding the conservation of marine biological resources"*.

(29) In accordance with Article 11 TFEU, "*environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development*". Similarly, Articles 37 and 51 of the Charter of Fundamental Rights of the European Union require the Union's institutions to respect the principles of "*protection and improvement of the quality of the environment*" and "*sustainable development*".

(30) According to Article 38 TFEU, "*the Union shall define and implement a common agriculture and fisheries policy*".

(31) Article 43(2) TFEU requires the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to establish the provisions necessary for the pursuit of the objectives of the CFP.

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[28] See points (1)a, (1)b and (1)c above, as well as (137) and (140) below.

(32) Article 43(3) TFEU provides that the Council shall, on a proposal from the Commission, adopt measures on the fixing and allocation of fishing opportunities. Article 43(3) is the legal basis of the Contested Act.

(33) Article 191(1) TFEU requires that Union policy on the environment "*shall contribute to pursuit of* (...) *preserving, protecting and improving the quality of the environment,* (...) *prudent and rational utilisation of natural resources.*" Pursuant to Article 191(2) TFEU,

> "*Union policy on the environment shall aim at a high level of protection* (...). *It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay* (...)" (emphasis added).

(34) Article 216(2) TFEU provides that

> "[a]*greements concluded by the Union are binding upon the institutions of the Union and on its Member States.*"

2. **International Agreements with non-EU Countries:**

a) **United Nations Convention on the Law of the Sea**

(35) Article 61 of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982 ("**UNCLOS**"), entitled "*Conservation of the living resources*", sets out the general principles regarding the conservation of marine living resources. The United Nations Convention on the Law of the Sea ("**UNCLOS**")[29] has entered into force on 16 November 1994.[30] The European Union is a party to the UNCLOS,[31] as mentioned in Recital 17 of the Marine Strategy Framework Directive ("**MSFD**").[32]

b) **UN Fish Stock Agreement 1995**

(36) The general principles of the UNCLOS referred to above are applied to the conservation and management of straddling or highly migratory fish stocks under the United Nations Fish Stock Agreement ("**UNFSA**"),[33] in particular by its Article 5.

(37) Article 2 UNFSA defines the objective of the agreement, which is "*to ensure the longterm conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.*"

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29 United Nations Convention on the Law of the Sea (OJ L 73 of 16.3.1994, p. 20).

30 See Article 308(1) UNCLOS and UN website documenting the deposition of ratification instruments relating to the UNCLOS and related Agreements (last visited on 21.12.2023).

31 Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179 of 23.6.1998, p. 1.).

32 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy ("**Marine Strategy Framework Directive**" or "**MSFD**" – OJ L 164, 25.6.2008, p. 19), as amended. The MSFD will be outlined in the section "Secondary Legislation" below.

33 Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (OJ L 189 of 3.7.1998, p. 17). The UNFSA entered into force on 11 December 2001. See Article 40(1) UNFSA and the UN website documenting the deposition of ratification instruments relating to the UNCLOS and related Agreements. The European Union is a contracting party to the UNFSA (OJ L 189 of 3.7.1998, p.14), as also mentioned in Recital 5 of the CFP Basic Regulation.

(38) Part II of the UNFSA is titled "*Conservation and management of straddling fish stocks and highly migratory fish stocks*". Its Article 5 establishes general principles. It requires amongst others measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks, management and conservation measures to be based on best available scientific evidence, to apply the precautionary approach set out in Article 6, to take into account the interests of artisanal and subsistence fishers, collect and share complete and accurate data on fishing activities and promote scientific R&D in support of fishery conservation and management.[34] Its Article 5(d) and (e) read as follows:

> *"In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:*
>
> (...)
>
> *(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;*
>
> *(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;*

(39) Pursuant to Article 5(c), Article 6 UN Fish Stock Agreement establishes the application of the precautionary principle.

c) **Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 ("Helsinki Convention")**

(40) The 1992 Helsinki Convention[35] has entered into force on 17 January 2000.[36] The European Union is a party to the Helsinki Convention,[37] as also stressed in Recital 19 of the Marine Strategy Framework Directive.[38]

(41) Article 15 of the Helsinki Convention is titled "*Nature conservation and biodiversity*". It provides as follows:

> *"The Contracting Parties shall individually and jointly take all appropriate measures with respect to the Baltic Sea Area and its coastal ecosystems influenced by the Baltic Sea to conserve natural habitats and biological diversity and to protect ecological processes. Such measures shall also be taken in order to ensure the sustainable use of natural resources within the Baltic Sea Area. To*

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34 Article 5(a)-(c), as well as (f)-(k) UNFSA.

35 Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 (OJ L 73 of 16.3.1994, p.20–45).

36 The European Community signed the Convention on 24 September 1992 and deposited the instrument of ratification on 20 September 1994. According to Article 36 (1) Helsinki Convention, the entry into force of the Convention is "*two months after the deposit of the instruments of ratification or approval by all signatory States bordering the Baltic Sea and by the European Economic Community.*" Under Article 36(2), for States having ratified before the deposit of the last instrument required for the entry into force of the Convention, the entry into force will be still the date of the entry into force of the Convention, 17 January 2000, two months after the last deposit of ratification instruments by the Russian Federation on 17 November 1999.

37 Council decision of 21 February 1994 on the accession of the Community to the Convention on the Protection of the Marine Environment of the Baltic Sea Area 1974 (Helsinki Convention) (OJ L 73 of 16.3.1994, p. 1).

38 See fn. 49 below.

this end, the Contracting Parties shall aim at adopting subsequent instruments containing appropriate guidelines and criteria."

3. **Secondary Legislation**

a) **The CFP Basic Regulation**[39]

(42) The CFP Basic Regulation sets rules for conserving and managing fish stocks.

(43) Article 1(a) of the CFP Basic Regulation states that the CFP shall cover *"the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources."*

(44) Article 2 of the CFP Basic Regulation defines binding objectives for the policy. It states *inter alia* that *"the CFP shall*:

- *"ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies."* [40]
- *"apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield".*[41]

(45) To this end, *"in order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks*" (emphasis added).[42] **There is therefore a positive and binding obligation to achieve the MSY exploitation rate for all stocks by 2020 at the latest** (the **"MSY Deadline**" or "**MSY Obligation**"). This MSY Obligation is considered as the "*overarching policy obligation*" in EU fisheries.[43]

(46) Article 16(4) of the CFP Basic Regulation states that fishing opportunities must be fixed in accordance with the objectives established in Article 2(2) of that Regulation, *i.e.* in particular the MSY Obligation.

(47) The CFP shall be guided by the principles of good governance laid down in Article 3 of the CFP Basic Regulation. This includes *"the establishment of measures in accordance with the best available scientific advice"*[44] as well as *"a long-term perspective".*[45]

(48) For the purpose of achieving the objectives of the CFP, Article 6(1) states that *"the Union shall adopt conservation measures as set out in Article 7*", which *"shall be adopted taking into account available scientific advice* (...)."[46] Those conservation

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39 See fn. 10 above.
40 Article 2(1) of the CFP Basic Regulation.
41 Article 2(2) of the CFP Basic Regulation.
42 Article 2(2) of the CFP Basic Regulation.
43 Opinion of AG Ćapeta in Case C-330/22 *Friends of the Irish Environment v Council* EU:C:2023:487, paragraph 60 (emphasis added), as well as, the CJEU's judgment in this case (EU:C:2024:19 – fn. 26 above), paragraphs 59-65.
44 Article 3(c) of the CFP Basic Regulation.
45 Article 3(d) of the CFP Basic Regulation.
46 Article 6(2) of the CFP Basic Regulation.

measures include, inter alia, the adoption of MAPs and "*measures on the fixing and allocation of fishing opportunities*".[47]

(49) Finally, Article 15 of the CFP Basic Regulation lays down the details of the landing obligation, according to which "*all catches of species which are subject to catch limits* (...) *caught during fishing activities in Union waters or by Union fishing vessels outside Union waters in waters not subject to third countries' sovereignty or jurisdiction, in the fisheries and geographical areas listed below shall be brought and retained on board the fishing vessels, recorded, landed and counted against the quotas where applicable* (...)". The ultimate objective of this obligation is to eliminate discards by encouraging fishers to fish more selectively and to avoid unwanted catches.[48]

b) **The Marine Strategy Framework Directive**

(i) **Recitals**

(50) Recitals 2 f. of the Marine Strategy Framework Directive (**"MSFD"**)[49] read as follows:

> *"(2) It is evident that pressure on natural marine resources and the demand for marine ecological services are often too high and that the Community needs to reduce its impact on marine waters regardless of where their effects occur. "*
>
> *"(3) The marine environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and providing diverse and dynamic oceans and seas which are clean, healthy and productive. In that respect, this Directive should, inter alia, promote the integration of environmental considerations into all relevant policy areas and deliver the environmental pillar of the future maritime policy for the European Union."*

(51) Recital 6 of the MSFD expressly refers to the Habitats Directive[50] and to the predecessor of the Birds Directive[51] in saying that

> "[t]*he establishment of marine protected areas, including areas already designated or to be designated under* [the mentioned Directives] *and under international or regional agreements to which the European Community or Member States concerned are Parties, is an important contribution to the achievement of good environmental status under this Directive.*"

(52) The importance of coherent measures to protect the marine environment is further stressed by the additional reference to the Habitats and Birds Directives in Recital 18 of the MSFD.

(53) The MSFD's Recital 8 stresses that

> *"By applying an ecosystem-based approach to the management of human activities while enabling a sustainable use of marine goods and services, priority should be given to achieving or maintaining good environmental status in the*

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47 Article 7(1)(e) of the CFP Basic Regulation.

48 Article 15 of the CFP Basic Regulation; European Commission, "*Synthesis of the landing obligation measures and discard rates*", Final Report, June 2021, p. 7.

49 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L 164 of 25.6.2008, p. 19.

50 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206 of 22.7.1992, p. 7 – **"Habitats Directive"**), as amended.

51 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version – OJ L 20, 26.1.2010, p. 7 – **"Birds Directive"**), as amended.

Community's marine environment, to continuing its protection and preservation, and to preventing subsequent deterioration."

(54) Recital 9 of the MSFD reads as follows:

"In order to achieve those objectives, a transparent and coherent legislative framework is required. This framework should contribute to coherence between different policies and foster the integration of environmental concerns into other policies, such as the Common Fisheries Policy, the Common Agricultural Policy and other relevant Community policies. The legislative framework should provide an overall framework for action and enable the action taken to be coordinated, consistent and properly integrated with action under other Community legislation and international agreements."

(55) The MSFD's Recital 10 acknowledges "[t]*he diverse conditions, problems and needs of the various marine regions or subregions making up the marine environment in the Community* (...)". It states that this diversity should "*be taken into account* (...) *especially during the preparation, planning and execution of measures to achieve good environmental status in the Community's marine environment* (...)."

(56) The MSFD's Recital 19 stresses the importance in this context of the EU's adherence to the Helsinki Convention.

(57) Recital 21 of the MSFD stresses the cruciality "*for the achievement of the objectives of this Directive to ensure the integration of conservation objectives, management measures and monitoring and assessment activities set up for spatial protection measures such as special areas of conservation, special protection areas or marine protected areas*" (emphasis added).

(58) Pursuant to Recital 27 of the MSFD,

"measures which are designed to achieve or maintain good environmental status in the waters concerned (...) should be devised on the basis of the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay."

(59) Recital 30 of the MSFD considers that Member States which do, in a special case,[52] not reach environmental targets

"should substantiate why it considers that such a special particular case has arisen and identify the area concerned, and should take appropriate ad-hoc measures with the aim of continuing to pursue the environmental targets, preventing further deterioration in the status of the marine waters affected and mitigating the adverse impact within the marine region or subregion concerned."

(60) In such a case, Recital 32 of the MSFD states that

"the Commission should assess whether any modifications or alterations made to the marine environment as a consequence do not permanently preclude or compromise the achievement of good environmental status in the marine region or subregion concerned or across marine waters of other Member States."

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[52] This refers, pursuant to Recital 30 of the MSFD, to the special case of not reaching environmental targets due to "*action or inaction for which the Member State concerned is not responsible, or because of natural causes of force majeure, or because of actions which that Member State has itself taken for reasons of overriding public interest which outweigh the negative impact on the environment, or because natural conditions do not allow timely improvement in the status of marine waters*".

(61) Recital 31 of the MSFD describes what should be done in case a Member State is unable to reach environmental targets because national measures are insufficient or because the issue "*is linked to another Community policy or to an international agreement.*" In such a case,

> "*arrangements should be made to inform the Commission of this within the framework of notification of programmes of measures and, where Community action is needed, to make appropriate recommendations to the Commission and the Council.*"

(62) Recital 39 of the MSFD makes express reference to the predecessor regulation of the CFP Basic Regulation, stating that "[m]*easures regulating fisheries management can be taken in the context of the* [CFP] (...) *based on scientific advice with a view to supporting the achievement of the objectives addressed by this Directive, including the full closure to fisheries of certain areas, to enable the integrity, structure and functioning of ecosystems to be maintained or restored and, where appropriate, in order to safeguard, inter alia, spawning, nursery and feeding grounds*" (emphasis added). Moreover, Recital 40 states that "[t]*he Common Fisheries Policy* (...) *should take into account the environmental impacts of fishing and the objectives of this Directive*" (emphasis added).

(63) Recital 44 of the MSFD states as follows:

> "*Programmes of measures and subsequent action by Member States should be based on an ecosystem-based approach to the management of human activities and on the principles referred to in Article 174 of the Treaty, in particular the precautionary principle.*"

(64) Recital 45 of the MSFD reads as follows:

> "*This Directive respects the fundamental rights, and observes the principles, recognised by the Charter of Fundamental Rights of the European Union*(...), *in particular Article 37 thereof which seeks to promote the integration into the policies of the Union of a high level of environmental protection and the improvement of environmental quality in accordance with the principle of sustainable development*" (emphasis added).

(ii) **Operative Provisions**

(65) The MSFD foresees, pursuant to its Article 1(1), "*a framework within which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest*" (emphasis added).

(66) For that purpose, the MSFD's Article 1(2)(a) requires the development and implementation of marine strategies in order to "*protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where they have been adversely affected*" (emphasis added).

(67) Pursuant to Article 1(3) of the MSFD,

> "*Marine strategies shall apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations*" (emphasis added).

(68) Pursuant to its Article 1(4), the MSFD "*shall contribute to coherence between, and aim to ensure the integration of environmental concerns into, the different policies, agreements and legislative measures which have an impact on the marine environment.*"

(69) Pursuant to its Articles 2(1), 3(1) and 4(1)(a), the Baltic Sea is a marine region that is subject to the relevant Member States' obligations under the Marine Strategy Framework Directive.

(70) Article 3(5) defines the term "*good environmental status*" and states that it shall be "*determined* (...) *on the basis of the qualitative descriptors in Annex I.*" It further states that "[a]*daptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status*".

(71) Pursuant to Recital 11 of the Baltic MAP that is summarised in the following section, the qualitative descriptors 1, 3, 4 and 6 of Annex I of the MSFD are relevant for fisheries management. Those provide as follows:

> "*(1) Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.*"
>
> "*(3) Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.*"
>
> "*(4) All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.*"
>
> "*(6) Sea-floor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.*".

c) **The Baltic MAP**

(i) **Recitals**

(72) Recitals 1 ff. of the Baltic MAP[53] read as follows:

> *"(1) The United Nations Convention of 10 December 1982 on the Law of the Sea (3), to which the Union is a contracting party, provides for conservation obligations, including the maintaining or restoring of populations of harvested species at levels which can produce the maximum sustainable yield (MSY)."*
>
> *"(2) At the World Summit on Sustainable Development at Johannesburg in 2002, the Union and its Member States committed themselves to act against the continued decline of many fish stocks. Therefore, it is necessary to adapt the exploitation rates of cod, herring and sprat in the Baltic Sea so as to ensure that the exploitation of those stocks restores and maintains them above levels that can produce MSY."*
>
> *"(3) The common fisheries policy (CFP) is to contribute to the protection of the marine environment, to the sustainable management of all commercially exploited species, and in particular to the achievement of good environmental*

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[53] Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 – see fn. 5 above.

status by 2020, as set out in Article 1(1) of Directive 2008/56/EC of the European Parliament and of the Council (4)."

"(4) Regulation (EU) No 1380/2013 of the European Parliament and of the Council (5) establishes the rules of the CFP in line with the international obligations of the Union. The objectives of the CFP are, inter alia, to ensure that fishing and aquaculture are environmentally sustainable in the long term, to apply the precautionary approach to fisheries management, and to implement the ecosystem-based approach to fisheries management."

"(5) Scientific advice from the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) has indicated that the exploitation of some of the stocks of cod, sprat and herring are in excess of that required to achieve MSY."

(73) The Baltic MAP's Recital 7 stresses that

"The multiannual plan established by this Regulation ('the plan') should, in accordance with Articles 9 and 10 of Regulation (EU) No 1380/2013, be based on scientific, technical and economic advice and contain objectives, quantifiable targets with clear time frames, conservation reference points and safeguards."

(74) Recital 9 of the Baltic MAP reads as follows:

"The objective of the plan should be to contribute to the achievement of the objectives of the CFP, especially reaching and maintaining MSY for the stocks concerned."

(75) Recital 11 of the Baltic MAP has already been referred to in point (71) above.

(76) Recital 12 of the Baltic MAP states that

"Article 16(4) of Regulation (EU) No 1380/2013 requires that fishing opportunities be fixed in accordance with the targets set out in the multiannual plans."

(77) Recital 13 of the Baltic MAP considers it "*appropriate to establish the target fishing mortality (F) that corresponds to the objective of reaching and maintaining MSY as ranges of values which are consistent with achieving maximum sustainable yield (F_{MSY}).*" It describes F_{MSY} ranges calculated by ICES as

"derived to deliver no more than a 5 % reduction in long-term yield compared to MSY. The upper limit of the range is capped, so that the probability of the stock falling below the limit spawning stock biomass reference point (B_{lim}) is no more than 5 %. That upper limit also conforms to the so-called ICES advice rule, which indicates that when the spawning stock biomass is below the minimum spawning stock biomass reference point (MSY $B_{trigger}$), F is to be reduced to a value that does not exceed an upper limit equal to the FMSY point value multiplied by the spawning stock biomass in the TAC year, divided by MSY $B_{trigger}$."

(78) Recital 14 of the Baltic MAP states that

"[f]*or the purposes of fixing fishing opportunities, there should be an upper threshold for F_{MSY} ranges in normal use and, provided that the stock concerned is considered to be in a good state (above MSY $B_{trigger}$), an upper limit for certain cases. It should only be possible to fix fishing opportunities to the upper limit if, on the basis of scientific advice or evidence, it is necessary for the achievement of the objectives laid down in this Regulation in mixed fisheries or necessary to avoid harm to a stock caused by intra- or inter-species stock dynamics, or in order to limit the year-to-year variations in fishing opportunities. For the purpose of applying the upper limit, it is necessary to recall the objectives set out in*

Regulation (EU) No 1380/2013 that the MSY exploitation rate is to be achieved in any event by 2020" (emphasis added).

(79) Recitals 15 ff. of the Baltic MAP read as follows:

> *"(15) For stocks for which they are available, and for the purpose of the application of safeguard measures, it is necessary to establish conservation reference points expressed as MSY $B_{trigger}$ and B_{lim}. Appropriate safeguard measures should be envisaged in case the stock size falls below such critical spawning stock biomass levels."*
>
> *"(16) Safeguard measures should include the reduction of fishing opportunities and specific conservation measures when scientific advice indicates that a stock is under threat. Those measures should be supplemented by all other appropriate measures."*
>
> *"(17) For stocks for which the reference points are not available, the precautionary approach should apply."*

(ii) **Operative provisions**

(80) The Baltic MAP[54] sets out long-term management measures (or a multiannual plan) for the exploitation of a large number of fish stocks in the Baltic Sea. Its Article 3(1) states that

> "[t]*he plan shall contribute to the achievement of the objectives of the common fisheries policy (CFP) listed in Article 2 of Regulation (EU) No 1380/2013, in particular by applying the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce MSY."*

(81) The target stocks covered by the Baltic MAP are listed in a comprehensive manner in Article 1(1). TACs for target stocks covered under Article 1(1) are subject to a special regime. Indeed, even if the MSY objective of Article 2 of the CFP Basic Regulation applies to them, there is also some flexibility foreseen as to how these TACs should be set. Article 4(1) of the Baltic MAP provides that

> *"the target fishing mortality, in line with the ranges of FMSY defined in Article 2, shall be achieved as soon as possible, and on a progressive, incremental basis by 2020 for the stocks listed in Article 1(1), and shall be maintained thereafter within the ranges of F_{MSY}, in accordance with this Article*".

(82) Articles 4(3) to 4(5) provide for the use of F_{MSY} ranges to set these TACs. Article 4(3) requires the Council, in accordance with Article 16(4) of the CFP Basic Regulation to set TACs "*within the lower range of F_{MSY} available at that time for that stock*". Article 4(4) expressly states that "[n]*otwithstanding paragraphs 1 and 3, fishing opportunities may be fixed at levels that are lower than the ranges of F_{MSY}.*" Article 4(5) requires a stock to be "*above MSY $B_{trigger}$*" in order for the Council to be allowed to fix TACs "*in accordance with the upper range of F_{MSY}*".

(83) Article 4(6) prescribes that "*fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5 % probability of the spawning stock biomass falling below B_{lim}.*"

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[54] Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 – see fn. 6 above.

(84) Additional safeguards are required by Article 5 to deal with cases when the abundance of target stocks is below MSY $B_{trigger}$ or B_{lim}. In particular,

a. Under Article 5(1), "[w]*hen scientific advice indicates that for a given year the spawning biomass of any of the stocks referred to in Article 1(1) is below the MSY* $B_{trigger}$*, all appropriate remedial measures shall be adopted to ensure rapid return of the stock concerned to levels above those capable of producing MSY. In particular, notwithstanding Article 4(3), fishing opportunities shall be set at levels consistent with a fishing mortality that is reduced below the upper range of* F_{MSY}*, taking into account the decrease in biomass.*"

b. Under Article 5(2), "[w]*hen scientific advice indicates that the spawning stock biomass of any of the stocks referred to in Article 1(1) is below the* B_{lim}*, further remedial measures shall be taken to ensure rapid return of the stock concerned to levels above the level capable of producing MSY. In particular, those remedial measures may include, notwithstanding Article 4(3), suspending the targeted fishery for the stock and the adequate reduction of fishing opportunities.*"

c. Under Article 5(3), "[r]*emedial measures referred to in this Article may include:*

(a) emergency measures in accordance with Articles 12 and 13 of Regulation (EU) No 1380/2013;

(b) measures pursuant to Articles 7 and 8 of this Regulation."

d. Under Article 5(4), "[t]*he choice of measures referred to in this Article shall be made in accordance with the nature, seriousness, duration and repetition of the situation where the spawning stock biomass is below the levels referred to in Article 4a.*"

(85) Article 7 of the Baltic MAP empowers the Commission "*to adopt delegated acts in accordance with Article 16 of* [the Baltic MAP] (...) *and Article 18 of* [the CFP Basic Regulation] (...) *regarding* (...)" a number of measures, such as exemptions from the application of the landing obligation for certain species in certain circumstances, *de minimis* exemptions to facilitate the implementation of the landing obligation, in accordance with point (c) of the CFP Basic Regulation, specific provisions for documentation of catches to monitor compliance with the landing obligation, and the fixing of minimum conservation reference sizes.

(86) Article 8 of the Baltic MAP empowers the Commission "*to adopt delegated acts in accordance with Article 16 of* [the Baltic MAP] (...) *and Article 18 of* [the CFP Basic Regulation] (...)" regarding certain technical measures, such as specifications of characteristics of fishing gears and rules governing their use, including regarding modifications or additional devices to the fishing gears, limitations or prohibitions on the use of certain fishing gears and on fishing activities, and the fixing of minimum conservation reference sizes for any of the stocks under the Baltic MAP.

d) **Regulation (EU) 2020/1781 of the European Parliament and of the Council of 25 November 2020 amending the Baltic MAP**

(87) Regulation (EU) 2020/1781 of the European Parliament and of the Council of 25 November 2020 amends the Baltic MAP with regards to fishing capacity reduction in the Baltic Sea and the permanent cessation of fishing activities for fleets fishing

for Eastern and Western Baltic cod and Western Baltic herring.[55] Its recital 5 summarises the approach of the Baltic MAP to remedial measures to recover a stock under threat. It reads as follows:

> *"The Baltic Multiannual Plan requires that, when scientific advice indicates that a stock is under threat, remedial measures are to be taken, including the reduction of fishing opportunities and specific conservation measures, and that those measures are to be supplemented by all other appropriate measures. Remedial measures may include suspending the targeted fishery for the stock and the adequate reduction of fishing opportunities. The choice of measures is to be made in accordance with the nature, seriousness, duration and repetition of the situation"* (emphasis added).

e) **The EU Nature Directives**

(88) Both of the EU Nature Directives set out below require Member States to establish protected areas and to protect species within the EU.

> *"(...)* [they] *are an essential tool to reach the legally binding environmental objectives included in Article 191 TFEU, including the objective of preserving protecting and improving the quality of the environment. The Directives are also important legal instruments to reach the goals of the EU Environment Action Programme*[56]*(...) and more in particular of its first priority objective namely to protect conserve and enhance the union's natural capital. The action programme requires increased efforts for the implementation of the EU Biodiversity Strategy (...).*[57] *(...)"*[58]

(i) **Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora**

(89) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("**Habitats Directive**")[59] requires Member States to take measures to conserve threatened habitats and species of wild fauna and flora. Its Article 3 is titled "*Conservation of natural habitats and habitats of species*" and the first subparagraph of its paragraph 1 provides as follows:

> *"A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range."*

(90) Article 6(1) and (2) of the Habitats Directive reads as follows:

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55 Regulation (EU) 2020/1781 of the European Parliament and of the Council of 25 November 2020 amending Regulation (EU) 2016/1139 as regards fishing capacity reduction in the Baltic Sea, and Regulation (EU) No 508/2014 as regards permanent cessation of fishing activities for fleets fishing for Eastern Baltic cod, Western Baltic cod and Western Baltic herring (OJ L 400 of 30.11.2020, p. 1).

56 By now, this refers to Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030, OJ L 114 of 12.4.2022, p. 22.

57 By now, this refers to the new EU Biodiversity Strategy for 2030 (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU Biodiversity Strategy for 2030. Bringing nature back into our lives, COM(2020) 380 final, Brussels, 20.5.2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0380> (last visited on 3.1.2024)).

58 An Cliquet, *EU Nature Conservation Law: Fit for Purpose*, in: Marjan Peeters and Mariolina Eliantonio (eds.), *Research Handbook on EU Environmental Law*, 2020, p. 265 (267). The EU Biodiversity Strategy mentioned at the end of the quote is referred to in point (104) below.

59 OJ L 206 of 22.7.1992, p. 7.

"1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive."

(ii) **Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version)**

(91) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("**Birds Directive**")[60] relates, pursuant to its Article 1,

"to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation."

(92) Pursuant to its Article 2,

"Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level."

(93) Its non-deterioration clause in Article 13 provides as follows:

"Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of the species of birds referred to in Article 1."

f) **The 8th EU Environment Action Programme**

(94) Reference is made to the 8th EU Environment Action Programme.[61] (...)

4. **Non-legislative acts**

a) **Commission Decision (EU) 2017/848 of 17 May 2017**

(95) Reference is made to Commission Decision (EU) 2017/848 of 17 May 2017 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment, and repealing Decision 2010/477/EU.[62] It lays down important implementation details regarding the MSFD[63] (Directive 2008/56/EC).[64]

(96) Recital 3 states that

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60 OJ L 20 of 26.1.2010, p. 7.
61 See fn. 56 above.
62 OJ L 125 of 18.5.2017, p. 43.
63 Decision (EU) 2017/848 expressly refers to the MSFD (see its introductory paragraphs).
64 The MSFD is summarised in points (50) – (71) above.

"(3) In 2012, on the basis of the initial assessment of their marine waters made pursuant to Article 8(1) of Directive 2008/56/EC, Member States reported on the environmental status of their marine waters and notified to the Commission their determination of good environmental status and their environmental targets (...). The Commission's assessment (...) of those Member State reports, undertaken in accordance with Article 12 of Directive 2008/56/EC, highlighted that more efforts were urgently needed if Member States are to reach good environmental status by 2020. The results showed the necessity to significantly improve the quality and coherence of the determination of good environmental status by the Member States. (...)" (emphasis added).

(97) Recitals 6 f. recognise that

"(6) In order to facilitate future updates of the initial assessment of Member States' marine waters and their determination of good environmental status, and to ensure greater coherence in implementation of Directive 2008/56/EC across the Union, it is necessary to clarify, revise or introduce criteria, methodological standards, specifications and standardised methods to be used by Member States, compared to the elements currently set out in Decision 2010/477/EU. As a result, the number of criteria that Member States need to monitor and assess should be reduced, applying a risk-based approach to those which are retained in order to allow Member States to focus their efforts on the main anthropogenic pressures affecting their waters. Finally, the criteria and their use should be further specified, including providing for threshold values or the setting thereof, thereby allowing for the extent to which good environmental status is achieved to be measured across the Union's marine waters" (emphasis added).

"(7) In accordance with the commitment taken by the Commission when adopting its communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'Better regulation for better results — An EU agenda' (...), this Decision should ***ensure coherence*** *with other Union legislation. To ensure greater consistency and comparability at Union level of Member States' determinations of good environmental status and avoid unnecessary overlaps, it is appropriate to take into account relevant existing standards and methods for monitoring and assessment laid down in Union legislation, (...).* (emphasis added).

(98) Amongst the EU legislation referred to at the end of Recital 7 feature also the Nature Directives, *i.e.* the Habitats and the Bird Directives that have been presented above.[65]

(99) Recital 11 reads as follows:

"(11) In order to establish a clear link between the determination of a set of characteristics for good environmental status and the assessment of progress towards its achievement, it is appropriate to organise the criteria and methodological standards on the basis of the qualitative descriptors laid down in Annex I to Directive 2008/56/EC, taking into account the indicative lists of ecosystem elements, anthropogenic pressures and human activities laid down in Annex III to that Directive. Some of those criteria and methodological standards relate in particular to the assessment of environmental status or of predominant pressures and impacts under points (a) or (b) of Article 8(1) of Directive 2008/56/EC, respectively."

(100) Pursuant to Recitals 13 f.,

"(13) Threshold values should reflect, where appropriate, the quality level that reflects the significance of an adverse effect for a criterion and should be set in

[65] See Section B.II.3.d) above. Points (89) and (90) for the Habitats Directive. Points (91) and (92) for the Birds Directive.

relation to a reference condition. Threshold values should be consistent with Union legislation and set at appropriate geographic scales to reflect the different biotic and abiotic characteristics of the regions, subregions and subdivisions. This means that even if the process to establish threshold values takes place at Union level, this may result in the setting of different threshold values, which are specific to a region, subregion or subdivision. Threshold values should also be set on the basis of the precautionary principle, reflecting the potential risks to the marine environment. The setting of threshold values should accommodate the dynamic nature of marine ecosystems and their elements, which can change in space and time through hydrological and climatic variation, predator-prey relationships and other environmental factors. Threshold values should also reflect the fact that marine ecosystems may recover, if deteriorated, to a state that reflects prevailing physiographic, geographic, climatic and biological conditions, rather than return to a specific state of the past."

"(14) In accordance with Article 1(3) of Directive 2008/56/EC, the collective pressure of human activities needs to be kept within levels compatible with the achievement of good environmental status, ensuring that the capacity of marine ecosystems to respond to human-induced changes is not compromised. (...)*"*

(101) Article 1 lays down the subject matter of the Decision

"(a) criteria and methodological standards to be used by Member States when determining a set of characteristics for good environmental status in accordance with Article 9(1) of Directive 2008/56/EC, on the basis of Annexes I and III and by reference to the initial assessment made pursuant to Article 8(1) of that Directive, to assess the extent to which good environmental status is being achieved, in accordance with Article 9(3) of that Directive;

(b) specifications and standardised methods for monitoring and assessment, to be used by Member States when establishing coordinated monitoring programmes under Article 11 of Directive 2008/56/EC, in accordance with Article 11(4) of that Directive;

(c) a timeline for the establishment of threshold values, lists of criteria elements and methodological standards through Union, regional or subregional cooperation;

(d) a notification requirement for criteria elements, threshold values and methodological standards."

(102) Article 4 regarding the setting of threshold values through Union, regional or subregional cooperation stresses that

"1. Where Member States are required under this Decision to establish threshold values through Union, regional or subregional cooperation, those values shall:

(a) be part of the set of characteristics used by Member States in their determination of good environmental status;

(b) be consistent with Union legislation;

c) where appropriate, distinguish the quality level that reflects the significance of an adverse effect for a criterion and be set in relation to a reference condition;

(d) be set at appropriate geographic scales of assessment to reflect the different biotic and abiotic characteristics of the regions, subregions and subdivisions;

(e) be set on the basis of the precautionary principle, reflecting the potential risks to the marine environment;

(f) be consistent across different criteria when they relate to the same ecosystem element;

(g) make use of best available science;

(h) be based on long time-series data, where available, to help determine the most appropriate value;

(i) reflect natural ecosystem dynamics, including predator-prey relationships and hydrological and climatic variation, also acknowledging that the ecosystem or parts thereof may recover, if deteriorated, to a state that reflects prevailing physiographic, geographic, climatic and biological conditions, rather than return to a specific state of the past;

(j) be consistent, where practical and appropriate, with relevant values set under regional institutional cooperation structures, including those agreed in the Regional Sea Conventions" (emphasis added).

(103) The Annex to the Decision lays down criteria and methodological standards for good environmental status of marine waters, relevant to the qualitative descriptors in Annex I to Directive 2008/56/EC, and to the indicative lists set out in Annex III to that Directive, and specifications and standardised methods for monitoring and assessment. The Annex is structured in two parts:

"Part I considers the descriptors (1) linked to the relevant anthropogenic pressures: biological pressures (Descriptors 2 and 3), physical pressures (Descriptors 6 and 7) and substances, litter and energy (Descriptors 5, 8, 9, 10 and 11), as listed in Annex III to Directive 2008/56/EC."

"Part II considers the descriptors linked to the relevant ecosystem elements: species groups of birds, mammals, reptiles, fish and cephalopods (Descriptor 1), pelagic habitats (Descriptor 1), benthic habitats (Descriptors 1 and 6) and ecosystems, including food webs (Descriptors 1 and 4), as listed in Annex III to Directive 2008/56/EC (1)."

b) **The EU Biodiversity Strategy for 2030**

(104) Reference is made to the EU Biodiversity Strategy for 2030.[66]

(105) The Council has endorsed the objectives of the EU Biodiversity Strategy for 2030 on 23 October 2020, stressing

"1. (...) the need to ensure mutual supportiveness with all initiatives under the European Green Deal and with the EU and its Member States' objectives related to, among others, food security, health, climate change and sustainable use of terrestrial and marine natural resources, especially sustainable agriculture and food systems, sustainable fisheries and sustainable management of forests; (...)

3. STATES that the implementation of the Strategy requires a collective effort by the Commission, the Member States and society as a whole; and CALLS ON them to start the implementation measures rapidly and ambitiously (...); (...)

4. RECOGNISES that while legal frameworks, strategies and action plans at EU and national levels are in place to protect biodiversity and nature and to restore degraded habitats and species populations, we need to step up the protection and restoration of nature in order to put biodiversity on the path to recovery by 2030 and to address the direct and indirect drivers of biodiversity and nature loss effectively; (...)

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[66] See fn. 57 above.

11. RECOGNISES the urgent need to step up efforts to ensure the effective management of all protected areas, to define clear conservation objectives and measures, and to monitor and strengthen them appropriately, taking into account the effects of climate change; (...)

13. ACKNOWLEDGES that preventing further decline of the current state of biodiversity and nature will be essential, but not sufficient to bring nature back into our lives; (...)

14. REITERATES its request to urgently mainstream EU biodiversity policy objectives into all other relevant EU and national policy fields, including all sectors that may have a significant impact on biodiversity; CALLS ON the Commission to integrate these objectives in future legislative proposals and on Member States to mainstream such objectives in the implementation of EU and national policies; (...)

17. In order to minimise genetic erosion and safeguard genetic diversity, STRESSES the need (...) *to protect and maintain the genetic diversity of wild species, including through in situ and ex situ conservation measures;* (...)

20. RECOGNISES the need to urgently advance action on the protection and conservation of marine and coastal ecosystems and biodiversity, including by addressing major threats, such as the adverse effects of climate change, marine pollution in all its forms, including underwater noise, as well as over-exploitation of marine resources and the introduction of invasive alien species; (...)

45. HIGHLIGHTS the importance of achieving a good environmental status of marine ecosystems; (...) *REAFFIRMS that the EU will continue to apply zero tolerance towards illegal, unreported and unregulated fishing, promote sustainable fisheries combatting overfishing and by-catch of threatened and other species*" (emphasis added).[67]

C. **ADMISSIBILITY OF THE REQUEST FOR INTERNAL REVIEW**

(106) Article 10 of the Aarhus Regulation, as amended, entitles any non-governmental organisation that meets the criteria set out in Article 11 of that same regulation to make a request for internal review to the Union institution or body that adopted an administrative act, as defined in Article 2(1)(g) of the Aarhus Regulation, on the grounds that such an act contravenes environmental law.

(107) The present Request fulfils the requirements of this provision because the Coalition Clean Baltic ("**CBB**") meets the criteria set out in Article 11 of the Aarhus Regulation and the Contested Act constitutes an administrative act in the sense of Article 2(1)(g) of the Aarhus Regulation.

I. **The CCB meets the criteria of the Aarhus Regulation's Article 11**

1. **The CCB itself qualifies as independent not-for-profit environmental NGO meeting the requirements of Article 11(1) of the Aarhus Regulation**

(108) The CCB meets, out of its own, the criteria of Article 11(1) of the Aarhus Regulation. This will be set out in further detail below. Article 11(1) and 11(1a) offering

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[67] See the Annex to Council of the European Union, *Conclusions on Biodiversity – the need for urgent action – Approval*, Brussels, 16 October 2020 {OR. En} 11829/20, LIMITE ENV 594 ENER 338, CLIMA 232, ECOFIN 932, AGRI 321, DEVGEN 136, FORETS 30, SUSTDEV 136, MARE 24, RELEX 760, PECHE 317, WTO 258, SAN 358, ONU 51, RECH 363, FAO 22, titled *Biodiversity – the need for urgent action – Draft Council Conclusions*, available at <https://data.consilium.europa.eu/doc/document/ST-11829-2020-INIT/en/pdf> {last visited on 3.1.2023}. That the Council adopted these draft conclusions follows from the Council's Press Release 693/20 of 23.10.2020, "*Council adopts conclusions on the EU biodiversity strategy for 2030*".

alternative ways to launch a request for internal review, there is, hence, no need to establish that it also meets the criteria of Article 11(1a) of the Aarhus Regulation.

(109) The CCB submits the documents required by Article 2(5)(a)-(c) of Commission Decision (EU) 2023/748 laying down rules for the application of the Aarhus Regulation ("**CD (EU) 2023/748**"),[68] in particular:

a. Constitution of the Coalition Clean Baltic as enacted on 16 May 1992 and revised on 11 June 1995, 26 May 2002, 25 May 2008, 22 April 2018, 5 June 2020 and 14 June 2023 (version docu-signed by the Chairperson of the CCB's General Meeting and the Secretary of the General Meeting – **Annex 2**).

b. CCB's Annual Activity Reports of 2021 and 2022 (**Annexes 3.1** and **3.2**,[69] respectively), to meet the requirement of Article 2(5)(b) in connection with Article 2(2) of CD (EU) 2023/748.[70]

c. (since Sweden qualifies as a country "*where the fulfilment of such procedures is a prerequisite for a non-governmental organisation to obtain legal personality*", the CCB's Certificate of Registry (as "*copy of the legal registration with the national authorities*" under Article 2(5)(c) of CD (EU) 2023/748) (**Annex 4**).

(110) This is the CCB's first Request for Internal Review, which is why no documentation in the meaning of Article 2(5)(d) of CD (EU) 2023/748 can be submitted.

(111) The documents referred to in point (109) above demonstrate that the CCB meets all criteria under Article 11(1) of the Aarhus Regulation.

a. As to Article 11(1)(a),

i. the CCB's Registration Certificate (**Annex 4**, p. 1) proves that the CCB is incorporated in the form of an international non-profit organisation ("*ideella föreningar*"). This is confirmed also by Article 4(2) of the CCB's Constitution (**Annex 2**, p. 1), which sets the goal of promoting, "*on a not-for-profit basis, the protection and restoration of the environment and natural resources of the Baltic Sea region*" (emphasis added);

ii. the CCB is independent, as shown by Article 8 of its Constitution, which requires also the CCB's Members and Observers to be "*non-profit, non-governmental Organisations (associations and private charitable foundations), which are (...) independent from political parties*"; moreover, the CCB's Summary Annual Report 2022 (**Annex 3.2**)[71]

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[68] See fn. 3 above.

[69] Due to the data size of these two annual activity reports (26.5 MB each), those reports are not attached to the cover email submitting this Request, but instead offered for download under the following links: **Annex 3.1** (CCB's 2021 Summary Annual Report) <https://www.ccb.se/publication/ccb-summary-annual-report-2021> and **Annex 3.2** (CCB's 2022 Summary Annual Report) <https://www.ccb.se/publication/ccb-summary-annual-report-2022>.

[70] The CCB is aware that Commission Decision 2023/748 requires, in its Article 2(1) in connection with its Article 2(5)(b) the submission, by CCB, of its annual activity reports of the last two years. Whereas the CCB is in a position to submit its annual activity report for the year 2022, it is, given the timing requirements of the current Request, with a submission deadline on 17 January 2024, not yet in a position to submit its annual activity report for the year 2023, which is still in the process of being prepared/finalised. Therefore, and in light of Article 2(5) of CD (EU) 2023/748, the CCB submits for the time being instead its annual activity report for the year 2021, to offer the available, most recent such activity reports for two consecutive years. Also, the CCB will be happy to volunteer its annual activity report for the year 2023 as soon as it is available, to enable the Council to add it to the file in this case.

[71] See fn. 69.

states (at p. 30): "*CCB is a politically independent, non-profit association* (...)".

b. Article 2 of the CCB's Constitution (**Annex 2**) demonstrates that its primary stated objective is "*promoting environmental protection in the context of environmental law*" pursuant to Article 11(1)(b) of the Aarhus Regulation, namely "*to protect the environment and natural resources of the Baltic Sea for present and future generations*" as per Article 4 No. 2 of the CCB's Constitution. Moreover, Article 4 No. 1 enshrines the objective "*to conserve the unique nature of the Baltic Sea and its coastal zones for future generations*". Article 4 No. 3 enshrines the goal "*to minimize actual and potential environmental impacts of human activities and promotion of sustainable development in the Baltic Sea catchment area.*" Article 4 No. 4 aims at seeking "*opportunities for new and constructive approaches to sustainable development, particularly focusing on empowering people to become part of the solution.*" These objectives stated in the CCB's Constitution demonstrate the CCB's primary focus on environmental protection in the context of environmental law. Article 5 further specifies the activities by which CBB implements these objectives in practice, which includes advocacy through demands and proposals to decision-makers, including within the European Union (Article 5 No. 1).

c. The CCB's activity reports (**Annexes 3.1 and 3.2**) provide evidence that the CCB is actively pursuing the objectives mentioned above. As these reports show, all of the CCB's activities are directly aimed at environmental protection.

d. The CCB's Certificate of Registry (**Annex 4**) demonstrates that the CCB has existed for more than two years, as required by Article 11(1)(c) of the Aarhus Regulation, namely since 15 June 1990 (which is therein indicated as "*Registreringstidpunkt*").

e. As to Article 11(1)(d) of the Aarhus Regulation, the present request seeks to ensure that the Contested Act sets TACs according to the precautionary and ecosystem-based approaches, based on the best available scientific advice, at a level that ensures compliance with the MSY objective that had to be achieved at the latest by 2020 for all stocks, as well as in compliance with the applicable multiannual plan. Moreover, it seeks to ensure that the Council's TAC setting does not violate other Council obligations, such as the obligation to and without violation of other environmental rules such as the EU Birds and Habitats Directive. These objectives are fully in line with the purposes laid down in the CCB's Constitution described above, as setting fishing opportunities at a sustainable level directly and indirectly contributes to protecting the environment and natural resources as well as the integrity of food chains.

2. **Also the CCB's member organisations qualify as independent not-for-profit environmental NGO meeting the requirements of Article 11(1) of the Aarhus Regulation**

(112) Only for the sake of completeness, the CCB would like to point out that all of its member organisations themselves[72] meet the requirements of Article 11(1) lit. (a)-

[72] The CCB unites Member and Observer organisations, as well as partners and individual experts in all countries of the Baltic Sea Region (Belarus, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia, Sweden and the Ukraine). The organisations usually represent the largest and most important environmental NGOs in these countries and together have almost 1,500,000 individual

(d) of the Aarhus Regulation. Namely, they qualify as independent non-profit-making legal persons with the primary stated objective of promoting environmental protection in the context of environmental law, have existed for more than two ears and are actively pursuing the mentioned environmental objective, and the subject matter of the present Request is covered by the mentioned environmental objectives of those member organisations. Therefore, based on an analogous approach to the EU Courts' practice regarding standing under Article 263(4) TFEU, namely that an "*association entrusted with defending the collective interests of its members may be admissible* (...) *where the undertakings that it represents or some of those undertakings themselves have standing to bring proceedings*", the CCB qualifies to bring a Request for Internal Review also on behalf of (or as intermediary of) one or more of its members.[73]

II. The CCB's representation

(113) As set out on p. 1 above, the CCB is legally represented by its Executive Secretary. This follows from Article 54 No. 2 of the CCB's Constitution (**Annex 2**), pursuant to which the Executive Secretary is, on her or his own, "*authorized to sign documents for the Association*".

(114) The CCB's representation by its external counsel mentioned on p. 1 above is documented by way of the power of attorney (**Annex 5**), which has been signed by CCB's Executive Secretary mentioned in the previous point. The admission of the external counsel to a bar association of an EU Member State is documented in **Annex 6**.

III. The Contested Act is an administrative act pursuant to Article 2(1)(g) of the Aarhus Regulation

(115) Article 2(1)(g) of the Aarhus Regulation, as amended, considers as "*administrative act*" "*any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1)* [of the Aarhus Regulation]."

(116) The Contested Act meets these requirements for the following reasons:

1. The Contested Act is a non-legislative act adopted by a Union institution

(117) In accordance with Article 289(3) of the TFEU, "*[l]egal acts adopted by legislative procedure shall constitute legislative acts*". The Contested Act was not adopted by such a legislative procedure. Rather, it is a regulation of a non-legislative nature.

(118) The fact that the Contested Act is a regulation of a non-legislative nature is evident based on several factors:

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members. The CCB's member organisations are the following: *BUND Bund für Umwelt und Naturschutz Deutschland*/"Friends of the Earth Germany", *Danmarks Naturfredningsforening*/ "Danish Society for Nature Conservation", Environmentalists without borders Baltic Sea Region, *Vides aizsardzības klubs, VAK*/Environmental Protection Club of Latvia, VAK, Eesti Roheline Liikumine/ Estonian Green Movement – Friends of the Earth, *Eesti Veeühing*/Estonian Water Association, *Suomen luonnonsuojeluliitto*/Finnish Association for Nature Conservation, Latvijas Zaļā kustība/ Latvian Green Movement, Lietuvos gamtos fondas/ Lithuanian Fund for Nature, Ekomeppa/ Lviv City Public Organization "Ecoterra" Ukraine, NABU – Naturschutzbund Deutschland/Nature And Biodiversity Conservation Union Germany, Polski Klub Ekologiczny/ Polish Ecological Club, SOFIA den antroposofiska rörelsens biståndsorgan Sverige/ SOFIA Association Sweden, Naturskyddsföreningen Sverige/ Swedish Society for Nature Conservation, The Western Centre of the Ukrainian Branch of the World Laboratory, Zero Waste Lviv Ukraine.

[73] GCEU, Case T-276/13 *Growth Energy and Renewable Fuels Association* EU:T:2016:340, paragraph 45.

a. First, it was adopted on the basis of Article 43(3) of the TFEU as a Council Regulation aiming at fixing and allocating fishing opportunities. By contrast to Article 43(2) of the TFEU relating to the adoption of the CFP by ordinary legislative procedure, Article 43(3) of the TFEU does not specify that Council regulations fixing and allocating fishing opportunities are adopted pursuant to a legislative procedure. On the contrary, the Court of Justice ("**CJEU**"), in Grand Chamber, stated that measures on the fixing and allocating of fishing opportunities "*are not subject to the ordinary legislative procedure*".[74] Moreover, the General Court of the European Union ("**GCEU**") ruled in an action for annulment under Article 263 TFEU that "*the contested provisions are not legislative in nature since, like the contested regulation in which they are contained* [the Council regulation fixing fishing opportunities for 2018], *they are based on Article 43(3) TFEU and were adopted by the Council on a proposal from the Commission, without the involvement of the European Parliament, in accordance with a procedure which is not a legislative procedure*"[75] (emphasis added).

b. Second, the CJEU settled that Council Regulations adopted on the basis of Article 43(3) of the TFEU are "*implementing measures*" of a "*primarily technical nature*" that do not entail policy choices reserved to the EU legislature by Article 43(2) of the TFEU.[76]

c. Finally, as also expressed by Advocate General Wahl in Joined Cases C-124/13 and C-125/13: "*None of the parties* [(the Council, the European Parliament and the Commission)] *deny that the drafters of the Treaty prescribed the ordinary legislative procedure under Article 43(2) TFEU for the more general category of measures, namely those necessary for the pursuit of the objectives of the CFP, whereas they reserved a non-legislative procedure under Article 43(3) TFEU for a certain type of regulatory measure (which, however, like the regular setting of TACs, may at the same time be necessary for the pursuit of the objectives of the CFP).*"[77]

(119) The Contested Act cannot, therefore, be regarded as a legislative act.

2. **The Contested Act is legally binding and has external effects**

(120) As explained above, the Contested Act is a Council Regulation intended to implement legislative provisions adopted on the basis of Article 43(2) TFEU, as settled by the case law mentioned above. In accordance with Article 288 TFEU, regulations adopted by the EU institutions have general application, are binding in their entirety and are directly applicable in all Member States. The binding nature of Council regulations fixing and allocating fishing opportunities derives from Article 43(3) TFEU vesting the Council with the powers to adopt such regulations for the implementation of Article 16(4) of the CFP Basic Regulation. These provisions confirm that the Contested Act is both legally binding and has external effects.

(121) Furthermore, the GCEU held that Council Regulations fixing and allocating fishing opportunities for 2016 and 2018, respectively, were regulatory acts in the sense of

[74] CJEU, Joined Cases C-103/12 and C-165/12 *Parliament and Commission v. Council ("Venezuela" judgement)* ECLI:EU:C:2014:2400, para. 49.

[75] GCEU, Case T-251/18 *International Forum for Sustainable Underwater Activities (IFSUA) v. Council of the European Union* ECLI:EU:T:2020:89, para. 36.

[76] CJEU, *Venezuela" judgment* (fn. 74 above), paras. 50 and 79; Joined Cases C-124/13 and C-125/13 *Parliament and Commission v. Council* ECLI:EU:C:2015:790, paras. 48-50, 59 and 78; Case C-113/14 *Germany v. Parliament and Council* ECLI:EU:C:2016:635, paras. 55 and 60.

[77] Advocate General Wahl's Opinion in Joined Cases C-124/13 and C-125/13 *Parliament and Commission v. Council* ECLI:EU:C:2015:337, para. 61 (emphasis added).

Article 263(4) TFEU because they were acts of general application with external legal effects.[78] The same reasoning applies *mutatis mutandis* to the Contested Act.

(122) There is nothing in the way the Contested Act is phrased that supports a finding to the contrary. Rather, the Contested Act states itself that it "*shall be binding in its entirety and directly applicable in all Member States*". Moreover, its Article 4 is phrased in a mandatory manner stating that the TACs, quotas and, where appropriate, measures functionally linked thereto "*are set out*" in the Annex to the Contested Act, the Annex identifies the stocks "*subject to*" precautionary or analytical TACs (Article 5(3) of the Contested Act).

(123) Unlike in a challenge based on Article 263(4) of the TFEU, an applicant in an internal review request under Article 10 of the Aarhus Regulation is not obliged to demonstrate that the contested act "*does not entail implementing measures*". This requirement featured in the Commission Proposal of 2020 to amend the Aarhus Regulation, but was removed at the insistence of the European Parliament and the Council in the legislative process.[79] Accordingly, the fact that the Contested Act is legally binding and has general effects is in itself sufficient for it to be the subject of an internal review request.

3. The Contested Act contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1) of the Aarhus Regulation

(124) As set out further below, this Request challenges the Council's decision to fix TACs for certain fish stocks contrary to the best available scientific advice and beyond the mandatory MSY objective that had to be attained for all stocks at the latest by 2020.

(125) The Contested Act has the potential to contravene acts which qualify as environmental law under Article 2(1)(f) of the Aarhus Regulation. Pursuant to this provision, "*environmental law*" means "*Community legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Community policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems.*" Pursuant to the GCEU, this concept "*must be interpreted, in principle, very broadly*", i.e. "*not limited to matters relating to the protection of natural environment in the strict sense*".[80] The GCEU has confirmed that the Aarhus Regulation must be interpreted, as far as possible in the light of Article 9(3) of the Aarhus Convention.[81] This provision makes express reference to the broad notion of "*law related to the environment*".

(126) Furthermore, the Contested Act also serves the implementation of the CFP Basic Regulation, which qualifies as environmental law in the sense of Article 2(1)(f) of the Aarhus Regulation. As such, it must comply with specific provisions in the CFP Basic Regulation, such as for instance Article 2(2) establishing the objective to ensure sustainable fisheries management, achieving the MSY exploitation rate for all stocks by 2020 at the latest, as well as Articles 15 (landing obligation) and 16 (fishing

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78 Case T-153/16 *Asociación de armadores de cerco de Galicia (Acerga) v. Council of the European Union* EU:T:2017:73, paragraph 25; Case T-251/18 *International Forum for Sustainable Underwater Activities (IFSUA) v. Council of the European Union* EU:T:2020:89, paragraphs 35-36.

79 Compare Article 1(1) of the Commission Proposal to amend the Aarhus Regulation (COM/2020/642 final) with the finally adopted text of Article 1(1) Regulation 2021/1767.

80 Case T-33/16 *TestBioTech v Commission* EU:T:2018:135, paragraphs 44-46.

81 Case T-9/19 *ClientEarth v EIB* EU:T:2021:42, paragraph 125; see also paragraph 107.

opportunities). Accordingly, the challenged provisions of the Contested Act have the potential to contravene the CFP Basic Regulation, and thus environmental law.

(127) Indeed, the objective of preserving, protecting and improving the quality of the environment, and ensuring a prudent and rational use of natural resources features amongst the core objectives of the CFP Basic Regulation. This can be seen from for instance from the following provisions of the CFP Basic Regulation:

a. its Article 1(1)(a) states that the CFP's scope covers "*the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources*",

b. its Article 2(2) 1st subparagraph requires the CFP to "*apply the precautionary approach to fisheries management, and* (...) [to] *aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield,*"

c. its Article 2(2) 2nd subparagraph requires the MSY exploitation rate to be achieved at the latest by 2020 for all stocks;

d. its Article 2(3) requires the implementation of the "*ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and* (...) *that aquaculture and fisheries activities avoid the degradation of the marine environment*";[82] and

e. its Article 7(1)(d) requires conservation measures to be adopted to preserve ecosystems and minimize the impact of fishing on them.

(128) That the achievement of the CFP's environmental objectives is closely linked to the appropriate fixing and allocation of fishing opportunities by the Council is also reflected in the CFP Basic Regulation's Recitals. That Recital 10 requires the exploitation of marine biological resources based on the precautionary approach, referring to Article 191(2) 1st subparagraph TFEU, explicitly recognises that the CFP must directly contribute to the pursuit of EU environmental policy in the meaning of Article 2(1)(f) of the Aarhus Regulation. Further evidence can be found in Recital 11, with its statements that the CFP should contribute to the protection of the marine environment, the sustainable management of all commercially exploited species and to the achievement of good environmental status by 2020, with reference to Article 1(1) of the MSFD.

(129) All of the above considerations point in one direction: provisions of EU law that aim at conserving and managing natural and biological resources such as marine fish stocks, regardless of the procedure pursuant to which they are adopted, serve the protect the environment in the meaning of Article 2(1)(f) of the Aarhus Regulation. It is thus beyond doubt that the Contested Act has the potential to contravene provisions which pursue the objectives of EU policy to protect the environment and therefore constitute environmental law for the purposes of Article 2(1)(f) of the Aarhus Regulation. In consequence, the contested provisions of the Contested Act have the potential to contravene environmental law; hence, the Request at hand is admissible.

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[82] Article 4(9) of the CFP Basic Regulation contains a detailed definition of the ecosystem-based approach to fisheries management. Further specifications are provided by Recitals 13 and 26 of the CFP Basic Regulation.

D. THE GROUNDS OF THE REQUEST FOR INTERNAL REVIEW

(130) The CCB respectfully submits that the Contested Act violates several legal norms pertaining to the body of EU environmental law in the meaning of Article 2(1) point (f) of the Aarhus Regulation, as referred to in the first subparagraph of Article 10(1) of that same Regulation. In particular, the Council lacked the competence to adopt the Contested Act in the first place. It also committed several manifest errors of assessment, exceeded the limits of its discretion and misused its powers when adopting the Contested Act. All of these violations result in an infringement of the Treaties and rules of law relating to their application and should trigger the Council to review its decision to adopt the Contested Act.

I. Standards of review

(131) Pursuant to Article 10(1), first subparagraph of the Aarhus Regulation, the standard of review is "*environmental law within the meaning of point (f) of Article 2(1)*" of the Aarhus Regulation. Article 2(1) point (f) refers to

> "*Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems*".

(132) Article 9(3) of the Aarhus Regulation refers to "acts (...) by public authorities which contravene provisions of (...) [a Party's] national law relating to the environment."

(133) The mentioned provisions include rules of environmental law that deal with the distribution of competences regarding the environment and defining the relevant powers. This is neither put in question by the mentioned (and quoted) Articles 10 of the Aarhus Regulation or by Article 9(3) of the Aarhus Convention, and even expressly confirmed by Recitals 7 and 15 of Regulation (EU) 2021/1767 (amending the Aarhus Regulation).[83] They state that

> "*Article 9(3) of the Aarhus Convention provides that (...) each Party is to ensure that members of the public, where they meet the criteria laid down in its national law, have access to judicial or other review procedures to challenge the substantive and procedural legality of any decision, act or omission which contravenes provisions of its national law relating to the environment. The administrative review procedure provided for in Regulation (EC) No 1367/2006 complements the overall Union system of judicial review that enables members of the public to have administrative acts reviewed through direct judicial challenges at Union level (...)*" (Recital 7 – emphasis added);
>
> "[t]*he scope of review proceedings under Regulation (EC) No 1367/2006 should cover both the substantive and procedural legality of the act challenged. (...)*" (Recital 15 – emphasis added).

(134) The CJEU has confirmed that the following types of violations of environmental rules that are raised with this Request for Internal Review, lack of competence and manifest errors, are two distinct pleas and points of law, the first concerning "*the extent of the discretion conferred by the enabling act*", while the second concerns "*the question of compliance with the limits of the power conferred by the enabling*

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[83] Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 356 of 8.10.2021, p. 1).

act".[84] The CJEU further held that "*compliance with those two requirements is subject to different standards*".[85] Specifically, while in "*the exercise of the powers conferred on them the EU authorities have broad discretion in particular where they are called on to undertake complex assessments and evaluations, it must first be determined whether they are indeed acting within the limits of the powers given to them*". This reasoning applies to a Council Regulation adopted to implement legislative acts, such as the Contested Act.

(135) As set out in further detail below, the CCB submits that the Contested Act disregards essential elements of the enabling act, here the CFP Basic Regulation, and thus exceeds the limits of the powers conferred upon the Council (see Section **D.II** below).

(136) Moreover, the Contested Act infringes the Treaties and rules of law relating to their application, resulting from a manifest error of assessment and exceedance of the limits of the Council's discretion, as well as a misuse of its powers (see Section **D.II** below). In this Section, the CCB submits that the Contested Act infringes several provisions of the CFP Basic Regulation that it must implement and is manifestly inappropriate considering the environmental objectives of these provisions. Furthermore, the CCB submits that by adopting the Contested Act, the Council also violated the principle of sincere cooperation with Member States under Article 4(3) TEU by jeopardising the achievement of conservation objectives in connection with other rules of environmental law such as the MSFD, the Nature Directives, the UNFSA and the Helsinki Convention.

II. The TACs that the Council should consider reviewing

(137) The grounds and pleas below concern the following TACs that the Council set by Article 4 in connection with Tables 1, 3 and 10 in the Annex of the Contested Act (the "**Contested TACs**" – see also the graphic overview in the table below), concerning the following stocks:

a. **Bothnian herring** (herring (*Clupea harengus*) in SD 30 and 31 (Gulf of Bothnia) pursuant to Articles 1(e) and (f) of the Baltic MAP (HER/30/31));

b. **Central herring** (herring (*Clupea harengus*) in SD 25-29 and 32, excluding SD 28.1, the Gulf of Riga, (central Baltic Sea), pursuant to Article 1(c) of the Baltic MAP (HER/3D-R-30)); and

c. **Sprat** (sprat (*Sprattus sprattus*) in SD 22-32 (Baltic Sea), pursuant to Article 1(1)(h) of the Baltic MAP (SPR/3BCD-C)).

(138) The references to the relevant letters above show that all these stocks are target stocks under Article 1(1) of the Baltic MAP to which the rules for by-catch stocks in the meaning of Article 1(2) of the Baltic MAP do not apply. The following table provides a brief overview over key aspects of these stocks and the TACs the Council set in the Contested Act.

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[84] Case C-44/16 P *Dyson v Commission* EU:C:2017:357, paragraph 52.

[85] *Ibid.*, paragraph 53.

Overview TACs subject to this Request for Internal Review							
Species	**SD**	**TAC code(s)**	**ICES advice code(s)**	**Baltic Sea MAP Article**	**Stock / exploitation status**	**Agreed TAC in t**	**Ref. in Contested Act**
Herring (*Clupea harengus*)	25, 26, 27, 28.2, 29 and 32 (Central Baltic herring)	HER/3D-R30	her.27.25-2932, excl. her.27.28.1	1(c)	Spawning-stock size < MSY $B_{trigger}$, B_{pa} and B_{lim}	40,368	Article 4 and Annex I, Table 3
Herring (*Clupea harengus*)	30-31 (Gulf of Bothnia herring)	HER/30/31	her.27.3031	1(e)	Spawning-stock size < MSY $B_{trigger}$, B_{pa} and B_{lim}	55,000	Article 4 and Annex I, Table 1
Sprat (*Sprattus sprattus*)	22-32	SPR/3BCD-C	spr.27.22-32	1(h)	Spawning-stock size > MSY $B_{trigger}$, B_{pa} and B_{lim}	201,000	Article 4 and Annex I, Table 10

(139) Key statements by ICES regarding the Two Herring Stocks are as follows:

a. ICES reported the fishing pressure on the **Central herring** stock to be "*below* F_{MSY}" and the spawning-stock size to be "*below MSY* $B_{trigger}$, B_{pa} *and* B_{lim}";[86] it also stated that "[t]*he EU MAP states, "Fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5% probability of the spawning stock biomass falling below* B_{lim}*". Even a zero catch in 2024 will not bring the stock above* B_{lim} *in 2025 with 95% probability.*"

b. ICES reported the fishing pressure on the **Bothnian herring** stock to be "*below* F_{MSY}" and the spawning-stock size to be "*below MSY* $B_{trigger}$ *and between* B_{pa} *and* B_{lim}";[87] it also stated that "[t]*he EU MAP states that 'Fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5% probability of the spawning stock biomass falling below* B_{lim}*'. Even a zero catch in 2024 will not ensure that the probability of SSB falling below* B_{lim} *in 2025 will be reduced to less than 5%.*"

(140) Nevertheless, with regard to both stocks, the Council set a TAC exceeding 0, namely of 40,368 t for the Central Baltic herring and of 55,000 t for Bothnia herring (Article 4 read together with Tables 3 and 1, respectively, in the Annex of the Contested Act – the TACs for the Two Herring Stocks will also be referred to as the "**Two Herring TACs**", whereas "**Contested TACs**" shall also refer to the above sprat TAC). As will be set out in detail below, the setting of these Two Herring TACs violates a whole array of rules under EU environmental legislation, in part such that are specific to fisheries, but also such that pertain to the body of EU environmental law more in general.

(141) While the Baltic sprat stock itself is within safe biological limits, the Council still set a too high TAC. This is because it did not sufficiently take account of the fact – although referring to it in Recital 20 of the Contested Act – that Baltic sprat is caught in a mixed fishery with the Central Baltic herring stock, and that it is literally impossible to fish large amounts of sprat without also "by-catching" substantial amounts of herring. The Council disregarded that there is a considerable record of misreporting landings in this mixed fishery (*i.e.* sprat landings are recorded as

[86] ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 13 June 2023, "*Herring (Clupea harengus) in subdivisions 25–29 and 32, excluding the Gulf of Riga (central Baltic Sea). Replacing advice provided in May 2023*" ("**ICES Advice Central Baltic Herring**"), (**Annex 7**), p. 1.

[87] ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 31 May 2023, "*Herring (Clupea harengus) in subdivisions 30 and 31 (Gulf of Bothnia)*" ("**ICES Advice Bothnian herring**") (**Annex 8**), p. 1.

herring or, and this is more likely to occur under the 2024 Baltic quota regime, herring landings are recorded as sprat, just as numbers fit the quota situation in the year in question),[88] so that additional remedial measures under Article 5 of the Baltic MAP would have been called for in this situation. Seen from this angle, as will be further explained below, the sizable sprat TAC violates the ecosystem-based approach, because the large sprat quota will allow the fishing industry to re-declare thousands of tons of herring landings into sprat landings, allowing in fact even much higher herring landings than legally possible under the (in any event illegal) targeted Central Baltic herring TAC.

III. First ground: The Council infringed the Treaties and rules of law relating to their application, and misused its powers conferred by those rules

(142) The CCB submits that the Council infringed the Treaties and rules of law relating to their application, including several provisions of the CFP Basic Regulation, as well as of the Baltic MAP, and also misused its powers. This ground will be based on two pleas, each of which being equivalent to an infringement of the Treaties and rules of law relating to their application, as follows:

a. First plea: the Council committed manifest errors of assessment and exceeded the bounds of its discretion by setting the TACs for the Two Herring Stocks and, in part also the Baltic sprat stock, in violation of fisheries and environmental rules laid down in the CFP Basic Regulation and in the Baltic MAP, as well as in violation of the Council's obligation to sincere cooperation under Article 4(3) TEU;

b. Second plea: the Council misused its powers under Article 16(4) of the CFP Basic Regulation by using them to set TACs based on other objectives than those recognised in the relevant provisions of the CFP Basic Regulation and the Baltic MAP.

(143) The CJEU has held that

> *"paragraphs 2 and 3 of Article 43 TFEU pursue different aims and each have a specific field of application, which means that they may be used separately as a basis for adopting particular measures under the CFP, provided that the Council, when it adopts measures on the basis of Article 43(3) TFEU, acts within the limits of its powers and, where relevant, within the legal framework already established by the EU legislature under Article 43(2) TFEU".*[89]

(144) The fisheries-related legal framework under Article 43(2) TFEU within which the Council must act in this case[90] includes the CFP Basic Regulation and the Baltic MAP. Article 1 of the latter Regulation lists all three stocks the TACs of which the present Request contests in its Article 1, which defines its area of application. All the Contested TACs relate to targeted fisheries, as stated in the Annex to the Contested Act, which, pursuant to Article 4 of the Contested Act, sets out the Contested TACs. The Council itself recognised the applicability of the Baltic MAP in Recitals 4 f. of the Contested Act, including by stating, in Recital 5, after having recalled the 2020 MSY deadline, which also features in Article 4(1) of the Baltic MAP, that "[t]*he catch limits applicable in 2024 to the relevant stocks in the Baltic Sea should therefore be*

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88 This will be set out in more detail below, see Section D.III.4.b)(iii) (Points (213) ff.) below.

89 *Friends of the Irish Environment* (fn. 26 above – EU:C:2024:19), paragraph 58; see also Case C-124/13 *Parliament and Commission v Council* EU:C:2015:790, paragraph 58.

90 See also the Opinion of AG Ćapeta in *Friends of the Irish Environment* (fn. 43 above – EU:C:2023:387), paragraph 20.

established in line with the rules and objectives of the multiannual plan established by (...) [the Baltic MAP]".

(145) Given the clear obligation in Article 2(2) of the CFP Basic Regulation and here also Article 3(1) of the Baltic MAP, when adopting the Contested Act, the Council should have assessed the level at which TACs need to be set to achieve the overarching MSY objective for all target stocks.[91] The CCB submits that the adoption of the Contested TACs is a manifest error of assessment by the Council and a manifest exceedance of the Council's margin of discretion, which resulted in violations of both the Baltic MAP, in particular of its Articles 4(6) and 5(1), (2) and (4) and Article 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP.[92] Moreover, the Council violated also both the ecosystem-based approach to fisheries management and the precautionary principle. All these violations boil down to the Council having failed to close the targeted fisheries for the Two Herring Stocks, as well as to take all appropriate remedial measures as well as further remedial measures for the Central Baltic herring stock, while at the same time not taking appropriate management measures for the Central Baltic herring stock considering the impact on that stock of the high sprat TAC set in the Contested Act. This negative impact is due to the impossibility of fishing sprat without also catching herring in the mixed sprat/Central Baltic herring fishery.

1. **First plea under the first ground: the Council committed manifest errors of assessment and exceeded the bounds of its discretion by setting the TACs for the Two Herring Stocks and, in part also the Baltic sprat stock, in violation of fisheries and environmental rules laid down in the CFP Basic Regulation and in the Baltic MAP, as well as in violation of the Council's obligation to sincere cooperation under Article 4(3) TEU**

(146) This first plea will be discussed in the following limbs:

a. First limb: direct violation of the fishing mortality target set in Article 4(6) of the Baltic MAP;

b. Second limb: violation of the obligation to restore stocks above levels which can produce the MSY in violation of the MSY obligation under Articles 16(4) and 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP;

c. Third limb: violation of the obligation to apply a precautionary approach to fisheries management;

d. Fourth limb: violation of the obligation to implement an ecosystem-based approach to fisheries management;

e. Fifth limb: violation of the Council's obligations to not disregard in its TAC-setting that remedial measures were called for under Article 5(1) and (2), as well as (4) of the Baltic MAP (Fourth Limb below).

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91 The overarching MSY objective applies, in principle, also to by-catch stocks, albeit with less rigidity in mixed fisheries with the risk of premature closure of target stocks that are in safe biological limits. *Cf. Friends of the Irish Environment* (fn. 26 above), paragraphs 75-80.

92 In the sense of Case C-611/17 *Italy v Council* ECLI:EU:C:2019:332, paragraph 57.

a) **First limb: direct violation of the target set in Article 4(6) of the Baltic MAP (EU) 2016/1139**

(i) **General Considerations on the structure of Article 4 of the Baltic MAP**

(147) The legislative design of Article 4 of the Baltic MAP is to foresee a few measures to achieve fishing at MSY level, for which Article 4(1) commands the same deadline as Article 2(2) of the CFP Basic Regulation for MSY to be achieved at the latest, namely 2020. Article 4(3) requires the Council to set TACs within the lower available F_{MSY} range (whereas it can of course, pursuant to Article 4(4), also set TACs lower than the F_{MSY} ranges), unless the stock in question is above MSY $B_{trigger}$ as stated in Article 4(5), when a TAC within the upper rage F_{MSY} is allowed. However, all the above provisions are overridden by Article 4(6), which foresees a binding requirement of fixing TACs "*in such a way to ensure that there is less than a 5 % probability of the spawning stock biomass falling below B_{lim}.*" What might be optional otherwise pursuant to Article 4(4), to set TACs at lower levels than the F_{MSY} ranges, becomes mandatory once the requirements of Article 4(6) are met. Depending on the SSB situation, this may also require the entire closure of a fishery.

(148) Based on the available ICES advice, whereas the Two Herring Stocks do not meet the requirements of Article 4(5), they meet those of Article 4(6) of the Baltic MAP, as will be set out in the following section.

(ii) **The violation of Article 4(6) of the Baltic MAP**

(149) Pursuant to Article 4(6) of the Baltic MAP, "*Fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5 % probability of the spawning stock biomass falling below B_{lim}*". ICES even cited this very language and added that "[e]*ven a zero catch in 2024 will not bring the stock above B_{lim} in 2025 with 95% probability*" (with regard to the Central herring stock)[93] and "[e]*ven a zero catch in 2024 will not ensure that the probability of SSB falling below B_{lim} in 2025 will be reduced to less than 5%*" (for the Bothnia herring stock).[94]

(150) Nevertheless, the Council, instead of taking the only possible (or allowed) legal action, consisting in closing the fisheries for the Two Herring Stocks by setting a 0 t TAC for each of them, the Council set the TACs referred to in point (140) above, of 40,368 t for the Central Baltic herring and of 55,000 t for Bothnia herring (see Article 4 read together with Tables 3 and 1, respectively, in the Annex of the Contested Act). Hardly can a violation be more blatant – the TACs set for the Two Herring Stocks are in direct contradiction to Article 4(6) of the Baltic MAP quoted in the previous point and thus plainly illegal; they should thus be revised back to 0 t (and remedial forward-looking measures taken immediately in an effort to contain the harm that will already have been done by on-going fishing activities until the Council's revision decision).

(iii) **Violation confirmed by other institutions**

(1) **The position taken by the European Commission in its legislative proposal**

(151) The Council refrained from going along with the European Commission's proposal underlying the legislative procedure that led to the promulgation of the Contested Act. This explains why the Council deleted, in its 24 October 2023 revisions to the Commission's 19 October proposal, the following language proposed by the

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93 ICES Advice Central Baltic Herring (see fn. 86 above), p. 3.

94 ICES Advice Bothnian herring (see fn. 87 above), p. 3.

Commission which implied that the only legal action would be a closure of the targeted fisheries for the Two Herring Stocks:[95]

a. Recital 7: "*There are certain stocks covered by Regulation (EU) 2016/1139 for which ICES either advises for zero catches ~~or estimates that achieving a probability of the biomass falling below Blim of less than 5% would not even be achieved with zero catches~~.* (…)"

b. Recital 7a (corresponding to Recital 8 in the Contested Act): "(…) *For 2024, ICES advises zero catches of western Baltic herring, eastern Baltic cod and main basin salmon. Moreover, ICES estimates that achieving a probability of the biomass falling below B_{lim} of less than 5% is not possible for Bothnian herring and central Baltic herring. Finally Moreover, the ICES precautionary advice for western Baltic cod is extremely low.*"

c. Recital 14 (corresponding to Recital 15 in the Contested Act): "*As regards herring in the Gulf of Bothnia, ~~ICES downsized the stock's biomass which is now below the reference point below which specific and appropriate management action is to be taken ($B_{trigger}$).~~ the fishery of which is of major socio-economic importance, ICES has provided MSY advice with ranges of catches. ~~Furthermore, ICES states that, even with no catches, the probability for the stock to fall below B_{lim} in 2025 is 9 %. In those circumstances, it is appropriate to close the targeted fisheries pursuant to Article 4(6) of Regulation (EU) 2016/1139 and to set the fishing opportunities for unavoidable by catches at a low level while avoiding the phenomenon of 'choke species'.~~ At the same time, the stock's biomass is below the reference point below which specific and appropriate management action is to be taken ($B_{trigaer}$), and there is a probability that the stock falls below B_{lim} in 2025. In those circumstances, it is appropriate, pursuant to Regulation (EU) 2016/1139, to set fishing opportunities in the lower F_{MSY} range."*

d. Recital 16 (corresponding to Recital 17 in the Contested Act): "*As regards central Baltic herring, ~~ICES now estimates that the stock has been below B_{lim} most of the last 30 years, including in recent years (…).~~ the fishery of which is of major socio- economic importance, ICES has provided MSY advice with ranges of catches. ~~Furthermore, even with no catches, the probability for the stock to stay below B_{lim} in 2025 is 22 %. In those circumstances, it is appropriate to close the targeted fisheries pursuant to Article 4(6) of Regulation (EU) 2016/1139 and to set the fishing opportunities for unavoidable by catches at a low level while avoiding the phenomenon of 'choke species'.~~ At the same time, ICES estimates that the stock has been below B_{lim} most of the last 30 years, including in recent years and that there is a probability that the stock remains below B_{lim} in 2025. In those circumstances, it is appropriate, pursuant to Regulation (EU) 2016/1139, to set fishing opportunities in the lower F_{MSY} range, and to set a spawning*

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[95] The following paragraphs feature a comparison between the Commission's proposal (Council of the European Union, Interinstitutional File: 2023/0301(NLE), "*Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters*", 14024/1/23 REV 1, Brussels, 19 October 2023 (**Annex 9**)) and the Council's revisions to it (Council of the European Union, Interinstitutional File: 2023/0301(NLE), "*Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters – Political agreement*", 14499/1/23 REV 1, Brussels, 24 October 2023 (**Annex 10**)), pp. 2-4. Changes are shown in "tracked changes" mode.

closure for fisheries using pelagic trawl as an additional remedial measure functionally linked to the fishing opportunities."

(152) That the Council deleted precisely those passages shows that while it was fully aware of the content of those passages – fully aware of those underlying facts, it deliberately chose to disregard them, in order not having to take the legal consequences following from them. This qualifies as manifest error of assessment.

(153) More specifically, that the Council deleted, from the Commission's draft language for Recital 14 (as shown in Points (151)c and (151)d above) exactly the passage reminding it that under Article 4(6) of the Baltic MAP, the closure of both the Bothnian and the Central Baltic herring fishery was mandatory and instead referred to language talking about the setting of fishing mortality below the upper range of F_{MSY} as required by Article 5(1), as well as, in the case of the Central Baltic herring stock below B_{lim}, foreseeing a – as will be shown below – wholly insufficient one-month spawning closure for the Central Baltic herring's subdivisions as further remedial measure under Article 5(2) of the Baltic MAP shows that the Council deliberately chose to disregard the law.

(154) Instead of adopting the merely analytical TACs that the Commission had foreseen for the Two Herring Stocks, allowing exclusively bycatches (no targeted fisheries),[96] the Council set in both cases substantial TACs. In addition to the mentioned manifest error of assessment, this also qualifies as exceedance of the Council's discretion, because the Council took a discretionary decision in a situation where the underlying legal provision, Article 4(6) of the Baltic MAP, did not even leave any margin of discretion.

(2) **The position taken by the Swedish Agency for Marine and Water Management of 19 September 2023**

(155) On 19 September 2023, the Swedish Agency for Marine and Water Management (*Havs och Vatten myndigheten* – "**SWAM**") sent a note to the Swedish Ministry of Agriculture and Infrastructure (Commented Agenda) for the Fisheries policy attaché meeting on 21 September 2023 (**Annex 11**).[97] In this note, the SWAM agrees with (and adds to) the Commission's analysis that, given the dire situation of the Two Herring Stocks, no targeted fishery should be allowed. The SWAM makes, amongst others, the following statements:

a. Central herring:[98]

i. "*ICES assesses the stock to be below safe biological limits and the advice is to reduce the total catch by 45 per cent compared to the 2023 advice. The assessment of the stock has been benchmarked for the 2024 advice and the reduced catch rates are mainly due to increased reference points for fishing mortality and spawning biomass. ICES also notes that the stock of herring in the central Baltic Sea consists of several different sub-stocks that have been shown to be genetically distinct. Differences in genetics and migration between different sub-stocks, as well as geographical differences in growth and sexual*

[96] Commission Proposal (14499/1/23 REV 1, see fn. 95 above), pp. 11 f.

[97] This documented commented on what must have been an earlier version of the Commission's legislative proposal referred to in Section D.III.1.a)(iii)(1) above, "*Commission Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters*", COM(2023) 492 final, Brussels, 28.8.2023, which in substance already foresaw the same language with regards to the Two Herring Stocks (see Recitals 8, 9, 16, 22).

[98] See point (137)b above.

maturity, make the overall stock vulnerable to loss of genetic diversity and overall productivity. Current advice does not take into account such differences between sub-stocks. Even at zero catch, ICES estimates that there is a 22 per cent risk that the stock will not reach safe biological limits by 2025" (emphasis added).[99]

ii. "*The Commission recognises that the herring stock in the central Baltic Sea has fallen below safe biological limits and therefore proposes to close all targeted fisheries and limit catches to unavoidable by-catch. It highlights that for the central herring, the scientific advice this year was an in-depth assessment to try to evaluate all factors affecting the stock, with the result that this stock has been around or below safe biological limits since the early 1990s. It emphasises that the ICES estimate of the probability of the biomass reaching the minimum safe biological level by 2025 is below the limits of the multi-annual plan. The Commission therefore proposes to close all targeted fisheries. Regarding the TAC level for unavoidable by-catch, the Commission has asked ICES for further information and will update its proposal in the light of this*" (emphasis added).[100]

iii. "*In addition to the importance of herring for coastal fisheries and the processing industry, herring has a central role as an ecosystem component in the Baltic Sea food web and constitutes important food for seals, seabirds and several other fish-eating fish species.* (...) *The size and age distribution of the stock is an important indicator of a healthy stock, where a higher proportion of large and older individuals creates the conditions for maintaining important ecosystem functions, promoting spawning stocks and recruitment and counteracting genetic changes in size and age at sexual maturity.* (...) *However, modelling calculations carried out by SLU Aqua have shown that a significant reduction in fishing mortality can affect the size structure of a stock by increasing the proportion of large and older individuals in the stock, but that such a change would probably occur over decades depending on reproductive success and mortality during the recovery period*" (emphasis added).[101]

iv. "*In order to take into account the results of the latest ICES benchmark, that the spawning biomass has been below safe biological limits for much of the last 30 years, and in order to better favour an increasing proportion of older and larger individuals in the stock, HaV considers that a TAC should be set within the framework of the multi-annual plan and that targeted fishing should only be carried out in exceptional cases.* (...)" (emphasis in the original).[102]

v. "*HaV's assessment is that targeted fishing should not be allowed, but that a by-catch quota by derogation should allow fishing for scientific*

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99 Swedish Agency for Marine and Water Management (*Havs och Vatten myndigheten*), Commented Agenda for the Ministry of Agriculture and Infrastructure regarding the Fisheries policy attaché meeting on 21 September 2023, 19 September 2023 (Convenience translation (DeepL) from the Swedish original – **Annex 12**), p. 8 (Swedish)/8-9 (English).

100 *Ibid.*, p. 9 (Swedish)/9 (English).

101 *Ibid.*, p. 9 (Swedish)/10 (English).

102 *Ibid.*, p. 10 (Swedish)/10 (English).

studies and limited fishing for direct human consumption. (...)" (emphasis in the original).[103]

b. Bothnian herring:[104]

i. "*The stock shows a continued negative development and the total spawning biomass is now below the limit for long-term sustainable levels. In the assessment for 2023, the spawning biomass for recent years is adjusted downwards, which is probably due to a downward adjustment of recruitment and individual numbers, as well as deteriorating condition for larger herring. The advice corresponds to a reduction in total catchability of 39% compared to the advice for 2023. Low condition for large herring combined with a lower proportion of older individuals is expected to result in a continued low proportion of large individuals in the catch.*"[105] (emphasis added).

ii. "*The Commission proposes to close all targeted fisheries and limit them to unavoidable by-catch. The biomass of the herring stock in the Gulf of Bothnia has fallen below long-term sustainable levels, probably due to low recruitment in recent years and a reduction in the size of older herring. The Commission emphasises that the probability of the spawning biomass recovering above long-term sustainable levels before 2025 is low, even if targeted fishing is banned. The Commission has asked ICES for further advice and will update its proposal in the light of this.*" (emphasis added).[106]

iii. "*In addition to the importance of herring for the coastal fishery and the processing industry (see description of the extent and dependency of the fishery under the socio-economic analysis below), herring has a central role as an ecosystem component in the Baltic Sea food web and constitutes important food for e.g. seals, seabirds and other fish-eating fish species. The size and age distribution of the stock is an important indicator of a healthy stock, where a higher proportion of large and older individuals creates the conditions for maintaining important ecosystem functions, promoting spawning and recruitment and counteracting genetic changes in size and age at sexual maturity.* (...) *However, modelling calculations carried out by SLU Aqua have shown that a significant reduction in fishing mortality can affect the size structure of a stock by increasing the proportion of large and older individuals in the stock, but that such a change would probably occur over decades depending on reproductive success and mortality during the recovery period.*" (emphasis added).[107]

iv. "*HaV shares the Commission's assessment of the status of the stock below long-term sustainable levels and the need for further restriction of fishing opportunities.* (...)" (emphasis added).[108]

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103 *Ibid.*, p. 10 (Swedish)/11 (English).
104 See point (137)a above.
105 *Ibid.*, p. 11 (Swedish)/12 (English).
106 *Ibid.*, p. 12 (Swedish)/12 (English).
107 *Ibid.*, p. 12 (Swedish)/13 (English).
108 *Ibid.*, p. 13 (Swedish)/13 (English).

v. *"HaV's assessment is to allow only limited fishing with a focus on human consumption.* (...)" (emphasis in the original).[109]

(3) **Conclusion**

(156) It can thus be said that, while the Commission stated expressly that given the factual situation, Article 4(6) of the Baltic MAP did not allow a continued direct fishing of the Two Herring Stocks, the SWAM agreed with the Commission's analysis and added to it, backing this position up with additional facts.

(iv) **Manifest error of assessment and exceedance of Council's discretion also confirmed by the approach to TAC-setting for other stocks**

(157) That the Council committed a manifest error of assessment and exceeded its discretion is also confirmed by the different (and correct) approach that the Council took to setting TACs for other stocks, such as the two (Eastern and Western) Baltic cod stocks and the Western Baltic herring stock.

(158) Member States and Council accept closed fisheries regarding the latter three stocks, namely because all of those stocks have collapsed. This fact is simply accepted and the fisheries are closed as they should be[110] (except that the Council is still also fixing by-catch quotas for those stocks to avoid the phenomenon of "choke" species, meaning that also other (mixed) fisheries have to be closed due to unavoidable by-catch of species that cannot any more be targeted).[111]

(159) However, we are in corresponding situations of already collapsed stocks also for Central Baltic and Bothnian herring – to avoid getting into that situation, Member States and Council should have been more cautious in the past (but they weren't). Now, the Commission's legislative proposal had offered an approach consistent with the treatment of the Baltic cod and the Western Baltic herring stocks, namely to close also the Central Baltic and Bothnian herring fisheries. It is thus inconceivable on what basis the Council thought it could instead fix sizeable TACs for these two stocks (deleting the very language in the Commission proposal that hinted at the discrepancy described here).[112]

(160) This contradiction exactly also counters the precautionary approach. The management implications of this approach would be to avoid the current situation (preventing a stock from falling below $B_{trigger}$ – which is the situation for the Bothnian

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109 *Ibid.*, p. 13 (Swedish)/14 (English).

110 As the Council notes in Recital 9 of the Contested Act, "[a]*s regards the eastern Baltic cod stock, ICES estimates that the biomass of the eastern Baltic cod stock continues to be below the limit reference point for the spawning stock biomass below which it is possible that reproductive capacity might be reduced (B_{lim}) and has hardly increased compared to 2022. ICES therefore advises for the fifth consecutive year not to catch any eastern Baltic cod. In these circumstances, it is appropriate, pursuant to Regulation (EU) No 1380/2013, to keep the targeted fisheries closed and to maintain the functionally linked remedial measures.* (...)". In Recital 10, the Council says "[a]*s regards the western Baltic cod stock, ICES has downgraded its advice, due to continued uncertainties, to precautionary advice. It appears now that the stock has been below B_{lim} for most of the past 15 years and was at a historic low in 2022. The precautionary catch advice is at an extremely low level. In these circumstances, it is appropriate, in accordance with Regulation (EU) No 1380/2013, to keep the targeted fisheries closed, to maintain the functionally linked remedial measures, and to close the recreational fisheries for western Baltic cod.* (...)" In Recital 16 of the Contested Act, the Council states "[a]*s regards western Baltic herring, ICES estimates that while the biomass of the stock has increased, it is only 71 % of B_{lim}. Furthermore, recruitment remains at historically low levels and the biomass is not expected to recover above B_{lim} in 2025. ICES therefore advises for the sixth consecutive year not to catch any western Baltic herring. In those circumstances, it is appropriate, pursuant to Regulation (EU) 2016/1139, to keep the targeted fisheries closed* (...)."

111 Contested Act, Recitals 9, 10, 16, and Article 4 in connection with Tables 2, 5, 6.

112 See Point (151) above.

herring stock – and certainly from ever falling below B_{lim} – which is the situation of the Central Baltic herring stock).

2. **Second limb: manifest error of assessment and exceedance of the bounds of the Council's discretion by TACs for the Two Herring TACs being set in violation of the MSY obligation under Articles 16(4) and 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP**

(161) This second limb establishes that the Two Herring TACs were not set in line with the obligation to restore or maintain stocks above levels which can provide the MSY in violation of the MSY obligation under Articles 16(4) and 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP. This violation is equivalent to an infringement of the Treaties and rules of law relating to their application.

(162) At the outset, it is important to recall the factual situation regarding the Two Herring Stocks: pursuant to ICES advice,

a. the Bothnian Herring Stock has a SSB value below MSY $B_{trigger}$, between B_{pa} and B_{lim}. ICES documents that the SSB of this stock has been in constant decline since 1991, when its SSB still amounted to 1,316,830 tons,[113] – with the exception of some very few years in which the SSB re-increased compared to the previous year (1994, 2002-2005, 2010, 2012 and 2018), reaching its ever-lowest value of 449,913 tons in 2023.[114]

b. the Central Baltic Herring Stock has a SSB value below MSY B_{lim}. In fact, the relevant ICES advice indicates that this stock started to get below $B_{trigger}$ in the late 1980's and fell under B_{lim} in the mid of the 1990's. The stock has since been either below or only slightly above B_{lim} for the past 30 years.[115] As stated above, an SSB of a stock below B_{lim} means its reproductive capacity may be reduced.[116] This is very far from stock levels capable of producing MSY.

(163) The Contested TACs (40,368 t for Central Baltic herring and 55,000 t for Bothnia herring (Article 4 read together with Tables 3 and 1, respectively, in the Annex of the Contested Act)) have not been set in line with the obligation to restore or maintain stocks above levels which can produce the MSY. This violates the MSY objective as set out in Article 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP, which is a legally binding obligation with a strict deadline.

(164) As a side remark, it is also questionable how setting a TAC for herring in SD 30 and 31 of 55 000 t (Bothnia herring) can be said to be in the lower range of the F_{MSY} range (as noted in the Contested Act, Recital 15) when ICES clearly stated that F_{lower} is equal to a TAC of 48,824 t.[117]

(165) Pursuant to Article 2(2) of the CFP Basic Regulation, the CFP shall aim at ensuring

> *"that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield" (emphasis added). In order to ensure that this overarching objective is reached, it further provides that "in order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield, the maximum*

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113 Table 9 of the relevant ICES advice (ICES Advice Bothnian herring (fn. 87 above – **Annex 8**), p. 8).

114 See fn. 113 above.

115 See the graph "*Relative Spawning Biomass*" in Figure 1 in Section "Stock development over time" in the relevant ICES advice (ICES Advice Central Baltic Herring (fn. 86 above – **Annex 7**), p. 1).

116 Also the CJEU has pointed this out in *Friends of the Irish Environment* (fn. 26 above), paragraph 90.

117 **Annex 8**, p. 1, 2 and 5.

sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks" (emphasis added).

(166) There is therefore a positive and binding obligation to achieve, i.e. not exceed, the MSY exploitation rate for all stocks by 2020 at the latest. The MSY Objective of Article 2(2) of the CFP Basic Regulation is also confirmed by Article 3(1) of the Baltic MAP.

(167) Article 16(4) of the CFP Basic Regulation provides that "[f]*ishing opportunities shall be fixed in accordance with the objectives set out in Article 2(2)* (...)," *i.e.* it requires the Council to fix the TACs at a level that will ensure that fish stocks are restored and maintained above levels which can produce the MSY. To do so, by 2020 at the latest, the Council shall set TACs at the MSY exploitation rate for all stocks. This provision therefore translates the general objective into a binding requirement to be respected by the Council and adopting the TAC Regulations based on Article 43(3) TFEU. The CJEU described the requirements of Article 2(2) of the CFP Basic Regulation as follows:

> "[T]*he first subparagraph of Article 2(2)* [of the CFP Basic Regulation] (...) *lays down the principle according to which the CFP 'shall apply the precautionary approach to fisheries management' and indicates that that policy is to 'aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the [MSY]'.*
>
> *Indeed, as recital 6 of that regulation states, the CFP should contribute to the Union's implementation of its obligations under UNCLOS and the UN Fish Stocks Agreement, to which it is a contracting party, in respect of the conservation, management and exploitation of fish stocks.*
>
> *In particular, as is apparent from recital 7 of that regulation and as the Advocate General emphasised, in essence, in points 25 and 26 of her Opinion, the adoption of that regulation seeks to act against the 'continued decline of many fish stocks' and to 'improve' the CFP by reorienting it towards the objective of the long-term sustainability of fishing activities, in particular by 'adapting [the] exploitation rates' of those stocks so as to ensure, 'within a reasonable time frame', the achievement of the objective of restoring and maintaining harvested populations above levels that can produce the MSY.*
>
> *More specifically, 'in order to achieve [that] objective', the second subparagraph of Article 2(2) of Regulation No 1380/2013 provides that 'the [MSY] exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks'.*
>
> *It is apparent from the wording of that provision that, while there is some latitude in setting an exploitation rate to achieve MSY between 2015 and 2020, on the other hand, as is emphasised by the expressions 'at the latest' and 'all stocks', the period for achieving that objective expires, in principle, in 2020, for all of the biological resources that occur in the management areas covered by the CFP, in accordance with the definition of 'stock' in Article 4(14) of that regulation.*"[118]

(168) The threat to the MSY Objective, the "*first and overall objective*" of environmentally sustainable fishing to be achieved in the long-term, pursuant to Article 2(1) of the CFP Basic Regulation, is in the case of the Bothnian Herring Stock, impressively confirmed by the over thirty years decline of SSB referred to above. Also the fisheries industry would prefer to still reap the benefit of a much healthier stock (of

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[118] *Friends of the Irish Environment* (fn. 26 above), paragraphs 60-64.

which the presence of a SSB 2.5 times larger than in 2023 in the early 1990's is only one component). In fact, "[t]*he Commission itself has, in the past, observed that fishing at MSY levels is actually more profitable for the fishing industry in the long run than continuously undermining those levels.*"[119]

(169) In order to be able to comply with its obligations under Article 16(4) and 2(2) of the CFP Basic Regulation, the Council must accordingly conduct an assessment as to what constitutes an MSY exploitation rate for each stock, and whether fixing a TAC at this rate by 2020 at the latest will allow for all stocks to be restored or maintained at a level which can produce the MSY.

(170) In conducting this assessment, the Council must be guided by the principles of the CFP, as set out in Article 3 of the CFP Basic Regulation. These include, *inter alia*, "*the establishment of measures in accordance with the best available scientific advice*". The setting of TACs constitutes one of the key "measures" in EU fisheries management to limit fishing mortality – a measure of the proportion of fish dying due to fishing rather than natural causes. Thus, in line with the CFP Basic Regulation Article 2(2) objective (and with Article 3(1) of the Baltic MAP, the TACs for all stocks must be determined in accordance with the best available scientific advice to achieve MSY for all stocks.

(171) As regards the Council's margin of discretion when adopting TACs, *i.e.* the Contested Act, as the CJEU has held, in the situation in which an EU institution makes the technical assessment (as in the context of the CFP), the EU institution is nonetheless obliged to "*establish whether the evidence relied on is factually accurate reliable and consistent, whether that evidence contains all the information which must be taken into account in order to assess a complex situation, and whether it is capable of substantiating the conclusions drawn from it*".[120] The CJEU has established that even where an EU institution is called upon to make a complex assessment, it has a duty to carefully and impartially verify all the relevant facts and a duty to act diligently which is "inherent in the principle of sound administration".[121] The GCEU has also established that this duty implies that scientific risk assessments must be "*carried out as thoroughly as possible on the basis of scientific advice founded on the principles of excellence, transparency and independence*" (emphasis added) and that this "*is an important procedural guarantee whose purpose is to ensure the scientific objectivity of the measures adopted and preclude any arbitrary measures* (...)".[122]

(172) The latter considerations also mean that the Council must, in certain situations, be critical about the ICES advice that it receives. While in normal situations, the Council may claim that it did not commit an error of assessment when following ICES headline advice, the current situation required the Council to recognise that the received ICES advice was contradictory and prone to be misunderstood, because it did not set 0 t TACs as headline advice for the Two Herring Stocks. However, as mentioned several times above, the Two Herring Stocks were in a dire situation: one

119 Opinion of AG Ćapeta in *Friends of the Irish Environment* (fn. 43 above – EU:C:2023:387), paragraph 34, with reference to the Communication from the Commission to the Council and the European Parliament, Implementing sustainability in EU fisheries through maximum sustainable yield (COM(2006) 360 final), 4 July 2006, point 2.2: "*Fishing at MSY levels would reduce costs and increase profits for the fishing industry, as the amount of effort (and associated costs, such as fuel) required per tonne of fish caught decreases. Choices for Member States and those who make their living from fishing will be easier when more fish can be caught and more wealth spread among the fishing industry.*"

120 Case T-177/13 *TestBioTech v Commission* ECLI:EU:T:2016:736, para 79.

121 Case C-691/15 P *Commission v Bilbaina de Alquitranes SA et al.* EU:C:2017:882, paragraph 35.

122 Case T-333/10 Animal Trading Company (ATC) BV a.o. v. Commission EU:T:2013:451, paragraphs 84 f.

stock was below B_{lim}, where ICES at the same time stated that "[e]*ven a zero catch in 2024 will not bring the* [central Baltic herring] *stock above B_{lim} in 2025 with 95% probability*" and that "[e]*ven a zero catch in 2024 will not ensure that the probability of SSB* [of the Bothnian herring stock] *falling below B_{lim} in 2025 will be reduced to less than 5%.*"[123] Considering the mentioned MSY Deadline that already expired 2020, both stocks are far from the situation commanded by Article 2(2) of the CFP Basic Regulation, meaning that we are here not talking about the maintaining obligation under Article 2(2) of the CFP Basic Regulation, rather of the restoring one. The Council will of course be aware that ICES advice also notes that all scenarios offered in Table 2 in the advice for Central Baltic Herring show with 88-99% probability that stocks will be below $B_{trigger}$,[124] the reference point above which the legislation aims to restore fish stocks and, once restored, maintain. The MSY deadline has, on 1st January 2024, when the Contested Act has entered into force, already passed for several years. Therefore, the Two Herring Stocks shouldn't be in this situation at all, also because TACs have been set too high in the previous years, allowing overfishing to continue, in violation of the MSY Obligation and 2020 MSY Deadline. Given ICES's stock analysis that even a zero catch will not guarantee restoring the central Baltic herring stock to above B_{lim} in 2025 with 95% probability and preventing the Bothnian herring stock from falling below B_{lim} in 2025, the Council's margin of discretion must be reduced to zero, in the sense that it must close the targeted fishery. This is because, considering the ICES statement referred to above, a zero TAC is the only possibility that offers a prospect of, possibly after several years, achieving an SSB of higher than B_{pa} and $B_{trigger}$, as well as, ultimately, B_{MSY}, as commanded by the MSY Objective of Article 2(2) of the CFP Basic Regulation and by Article 3(1) of the Baltic MAP.

(173) The dire SSB situation of the Two Herring Stocks[125] did in fact call for not setting any targeted TAC (other than a zero tons one, in line with Article 4(6) of the Baltic MAP); rather, additional management measures under Article 5 of the Baltic MAP would have been called for, which would have required the Council to instead adopt additional measures when setting TACs for other stocks in which the Two Herring Stocks might feature as bycatch in mixed fisheries (such as the Central Baltic Herring Stock in the Baltic sprat fishery).[126]

(174) This would certainly not have to be like this; in normal circumstances, the Council would have discretion as to how to set the fishing opportunities, and it may set them in the range of what ICES defines as MSY in its headline advice. Had the Council exercised this discretion more wisely in the past, including in particular in the first years after the expiration of the 2020 MSY Deadline and strongly addressed the misreporting of herring and sprat, the mentioned dire situation could have been avoided and the Council would have preserved its discretion to set TACs higher than zero tons for the Two Herring Stocks.

(175) Also a possible claim by the Council that additional remedial measures were foreseen (such as a temporary (one month in each case) closure of the fisheries for the central herring stock in the months of April and May 2024, the exact period depending on the subdivision – see Article 8 of the Contested Act[127]), cannot lead to increase the Council's available margin of discretion in view of the MSY Obligation

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123 See also Point (162) above.

124 See ICES Advice Central Baltic Herring (fn. 86 above – **Annex 7**), p. 2 (*Table 2 – "Herring in subdivisions 25-29 and 32, excluding the Gulf of Riga. Annual catch scenarios"*, column "*Probability of SSB (2025) < MSY Btrigger (%)*").

125 See Point (162) above.

126 Cf. *Friends of the Irish Environment* (fn. 26 above), paragraphs 66-78.

127 See point (25) above.

as of 2020. This is because experience suggests that in most of the relevant subdivisions, a large part of the set quota for central herring will have been fished by April[128] – even while this Request was still in the drafting stage, fishing in the areas in question had already started, and the few industrial fishing companies benefitting from the quotas in question will certainly make sure to have fished a substantial share of their aimed-at quantities by then.

(176) At the very least, corresponding to Article 5 of the Baltic MAP, additional management measures would have been called for also in connection with the sprat fishery, for which the Council allowed a sizeable TAC without setting any measures to contain the issue of substantial Central herring bycatch in. Merely deciding on spawning closures for SD 25-27, 28.2, 29 and 32 (*i.e.* the Central Baltic herring's), in various periods during April and May 2024, pursuant to Article 8 of the Contested Act, is not sufficient in this regard, for the reasons set out in section D.III.5 below.

3. **Third limb: manifest error of assessment and exceedance of the bounds of the Council's discretion due to failure to set the Two Herring TACs in line with the precautionary approach to fisheries management under Articles 16(4) and 2(2) of the CFP Basic Regulation**

a) **Content and applicability of the precautionary approach to instruments setting fishing quotas such as the Contested Act**

(177) Pursuant to Articles 16(4) and 2(2) of the CFP Basic Regulation, the Council must follow the precautionary approach to fisheries management when setting fishing opportunities. The CJEU has confirmed that the precautionary approach needs to be applied in fisheries management.[129] Also the CJEU has, most recently, stressed this, as follows:

> "[T]*he first subparagraph of Article 2(2)* [of the CFP Basic Regulation] *thereof lays down the principle according to which the CFP 'shall apply the precautionary approach to fisheries management' and indicates that that policy is to 'aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the [MSY]'.*"[130]

(178) Point 8 of Article 4(1) of the CFP Basic Regulation contains the following definition:

> "'*precautionary approach to fisheries management', as referred to in Article 6 of the UN Fish Stocks Agreement, means an approach according to which the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment*" (emphasis added).

(179) Also the CJEU has specifically stressed that the precautionary approach, where data is uncertain, should not be used as a pretext for postponing or failing to take conservation measures in fisheries management.[131]

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128 This can be seen in ICES' Baltic Fisheries Assessment Working Group (WGBFAS). October 2023: Report updated with the addition of Annex 10 (Additional catch scenarios for sole in subdivisions 20-24) Volume 5 | Issue 58. ICES Scientific Reports, available at <https://ices-library.figshare.com/articles/report/Baltic_Fisheries_Assessment_Working_Group_WGBFAS_/23123768> (last visited on 8.1.2024), Table 4.2.2, sections relating to SD 26, 27, 29 and 32 (p. 257, 258, 260 and 261, respectively – showing that not less than 45.5%, 66.7%, 40.7% and 36.2%, respectively, of all 2022 central herring landings in those subdivisions occurred already in Q1/2022).

129 Case C-128/15 *Spain v Council* EU:C:2017:3, paragraph 47.

130 *Friends of the Irish Environment* (fn. 26 above), paragraph 60.

131 *Spain v Council* (fn. 129 above), paragraph 48.

(180) Article 6 of the UNFSA invoked by Point 8 of Article 4(1) of the CFP Basic Regulation provides as follows:

> *"1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.*
>
> *2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.*
>
> *3. In implementing the precautionary approach, States shall: (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;*
>
> *(b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;*
>
> *(c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and*
>
> *(d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.*
>
> *4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks"* (emphasis added).

(181) The second sentence of Article 6(2) UNFSA, read together with Article 4(8) of the CFP Basic Regulation (see above) mean that neither uncertainty nor lack of knowledge or data can justify a delay or failure to resort to conservation measures for the fish stocks and their ecosystems.

(182) Article 9(2) of the CFP Basic Regulation states that,

> "[w]*here targets relating to the maximum sustainable yield as referred to in Article 2(2) cannot be determined, owing to insufficient data, the multiannual plans shall provide for measures based on the precautionary approach, ensuring at least a comparable degree of conservation of the relevant stocks.*"

(183) Also the Baltic MAP states, in its Article 3(1), that the objectives of Article 2 of the CFP Basic Regulation shall be achieved "*in particular by applying the precautionary approach to fisheries management.*" It does so right next to another reference to the MSY Obligation.

(184) As stated above, Article 191(2) TFEU confirms that the precautionary approach belongs to the fundamental principles of EU environmental policy, but, as the invocation of the precautionary principle in the context of fisheries rules such as CFP and MAP provisions, as well as in the UNFSA show, its application in EU law is not limited to legal acts that are based on Treaty provisions relating to environmental

policy. *"The principle is relevant wherever protection of the environment or health comes to the fore in the framework of EU activities."*[132] Indeed, Recital 10 of the CFP Basic Regulation also invokes Article 191(2) TFEU by stating as follows:

> *"Sustainable exploitation of marine biological resources should be based on the precautionary approach, which derives from the precautionary principle referred to in the first subparagraph of Article 191(2) of the Treaty, taking into account available scientific data."*

(185) The CJEU has held that

> "[t]*he precautionary principle requires the authorities in question, in the particular context of the exercise of the powers conferred on them by the relevant rules, to take appropriate measures to prevent specific potential risks to public health, safety and the environment, by giving precedence to the requirements related to the protection of those interests over economic interests*".[133]

(186) The Council's margin of discretion in the implementation of the precautionary principle and of the precautionary approach to fisheries management is limited by the obligation contained in Article 2(2) of the CFP Basic Regulation to reach the MSY Objective by 2020 at the latest for all stocks.

b) **The presence of data uncertainties with regard to the Two Herring Stocks, confirming the Council's obligation to follow the precautionary approach**

(187) Existing uncertainties about the exact situation of the Two Herring Stocks as shown in the ICES advice, as well as in other relevant ICES documentation, combined with the in any event dire SSB-situation of the Two Herring Stocks as set out above[134] called for the application of the precautionary approach to fisheries management in the Contested Act. CCB would like to point out that the following needed to be considered by the Council: uncertainties regarding the exact biomass levels (also considering misreporting and overshooting of previous quotas), as well as to the genetically distinct subpopulations of the Two Herring Stocks. The uncertainties, as well as also the dire situation of the Two Herring Stocks, are documented in the following extracts, as well as in the additional extracts offered further below in relation to species misreporting of herring and sprat.[135]

> *"Species misreporting of herring and sprat has occurred in the past, and there is evidence that this is an ongoing problem. These effects have been neither quantified nor included in the assessment due to lack of access to representative data. Considerable effort was made before the benchmark to estimate levels of misreporting, resulting in minor revisions to the catch time-series; but the work was not finalized and is still ongoing. Misreporting undermines the data quality used in the assessment and introduces a level of uncertainty in the assessment and advice that cannot be quantified."*[136]

> *"No information on Russian Federation catches for 2022 was officially reported to ICES. Therefore, the Russian Federation catch amount for 2022 included in the assessment was based on publically available information. No biological information on composition of these catches was available to ICES. The age*

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132 Langlet, D./Mahmoudi, S., *EU Environmental Law and Policy*, 2016, p. 51 f.

133 Case T-31/07 *Du Pont de Nemours et al. v. Commission* EU:T:2013:167, paragraph 134 – see also the further case law cited.

134 See in Points (162) and (172) above.

135 See under point (214) below.

136 ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 31 May 2023, *"Sprat (Sprattus sprattus) in subdivisions 22–32 (Baltic Sea)"* ("**ICES Advice Sprat**" – **Annex 13**), p. 3; exactly the same language can be found in ICES Advice Central Baltic Herring, see fn. 86 above, (**Annex 7**), p. 3.

composition from other countries was used to estimate Russian Federation data. (...) Russian Federation catches account for around 25% of the total catches, and the impact on the quality of the assessment cannot be quantified."[137]

"Even a zero catch in 2024 will not bring the [Central Baltic herring] *stock above B_{lim} in 2025 with 95% probability."*[138] */ "Even a zero catch in 2024 will not ensure that the probability of SSB* [of the Bothnian herring stock] *falling below B_{lim} in 2025 will be reduced to less than 5%."*[139]

"Herring in subdivisions 25-29&32 excl. Gulf of Riga (Central Baltic herring) (...) is the largest herring stock assessed by the WG, comprises several autumn and spring spawning components, some of which have been shown to be genetically distinct. (...) Spawning-stock biomass (SSB) has fluctuated around B_{lim} since 1995 and has been below B_{lim} for the last four years since. The reported landings taken within the pelagic trawl fisheries may be uncertain as it is mostly caught in mixed fisheries together with sprat. Fishing mortality has been above F_{MSY} since 2015, then to decrease to below F_{MSY} in 2022."[140]

"The species misreporting of herring and sprat in the Baltic has been discussed for many years (...). The RCG ISSG consequently made an attempt to provide the last benchmark of the stock with corrected time-series of catch data for which species misreporting had been corrected (...). It was concluded that the issue of misreporting could not be addressed adequately by all the countries in time for the benchmark and that the issue needs to be postponed. (...)"[141]

"Mixing of different herring stocks and stock components occurs in the Baltic Sea. The central Baltic herring is known to be dominated by a northern and a southern component. A recent workshop (...) showed how the latter shares numerous characteristics with the adjacent western Baltic herring stock. Its growth and otolith shape are more similar to those of herring of western origin than to fish from the northern component. Based on only growth, a high proportion of fast-growing herring is found in SD25 and especially in the westernmost rectangles but it remains unclear if those fish are part of the southern component of the central Baltic or if they are the results of extensive mixing with the western Baltic herring. Analyses suggest a progressive genetic differentiation along the entire southern Baltic coasts from SD24 to SD26 rather than a clear-cut division between different assessment units. Thus, separating the Central Baltic her- ring stock from the western Baltic spring spawning herring stock is problematic. The stock dis- crimination between the Central Baltic herring and the Gulf of Riga herring is less problematic as these two stocks are more clearly distinguishable based on the body and otolith morphometrics and other biological features."[142]

"A Kobe plot for the ensemble model is presented in Figure 4.2.17. The Kobe plot considers the time-series of pressure (F/F_{target}) on the y-axis and the state of the stock's biomass (SSB/SSB_{target}) on the x-axis. The reference point is $B_{30\%}$. The orange area indicates healthy stock sizes that are about to be depleted by overfishing. The red area indicates ongoing overfishing and that the stock is too small to produce maximum sustainable yields. The yellow area indicates that the biomass is too small/still recovering and that a reduction in fishing pressure is needed. The green area is the target area for management, indicating sustainable fishing pressure and a healthy stock size capable of producing high yields close to the chosen reference points (MSY or proxies).

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137 ICES Advice Sprat (fn. 136 above – **Annex 13**), p. 3; exactly the same language can be found in ICES Advice Central Baltic Herring (fn. 86 above – **Annex 7**), p. 3.

138 ICES Advice Central Baltic Herring (fn. 86 above – **Annex 7**), p. 3.

139 ICES Advice Bothnian herring (fn. 87 above – **Annex 8**), p. 3.

140 ICES's WGBFAS Report (fn. 128 above), p. 20.

141 *Ibid.*, p. 245.

142 *Ibid.*, p. 245.

The stock trajectory began in 1903 in the downright quadrant (i.e. green quadrant of the Kobe plot), when the biomass was higher compared to the reference points. In the period 1960–2000, the F level increased which resulted in a progressive erosion of the stock size, moving the stock trajectory towards the up-left quadrant (i.e. red quadrant of the Kobe plot). Following this, F has been fluctuating above and below the F reference point, but remained below the SSB reference point since then."[143]

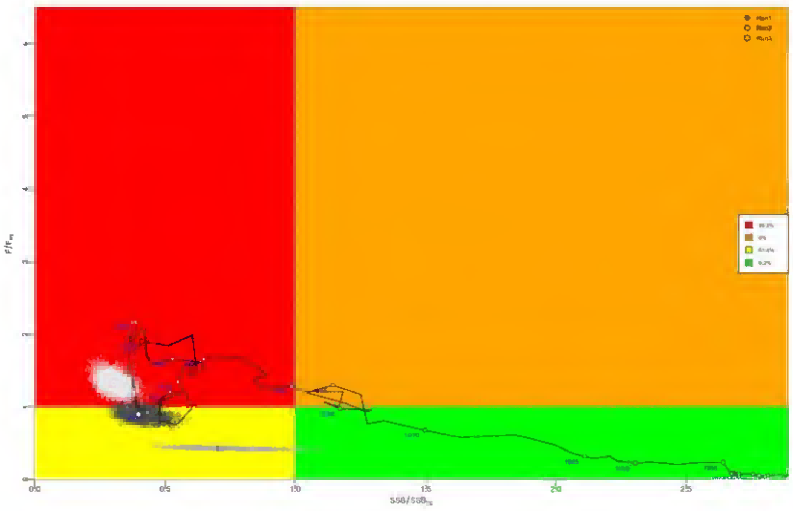

Figure 4.2.17. Herring in SD 25–29, 32 (excl. GoR). Kobe plot showing the trajectory of relative stock size (SSB/SSB30) over relative exploitation (F/F30) based on the final ensemble model (white dot: the weighted-median value of the 3 models). The points represent 5000 iterations from delta-MVNL of the final assessment year (2022).[144]

"[N]*o EU MAP scenario will keep the* [Central Baltic herring] *stock above* $B_{trigger}$ *in 2024, and the probability of being below* B_{lim} *is between 31% and 29%. Even a zero catch (in 2024 will not bring the stock above* B_{lim} *in 2025 with 95% probability. As the EU MAP states that "Fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5% probability of the spawning stock biomass falling below* B_{lim}*", F = 0 should be considered as basis for the advice (Table 4.2.11, catch scenario 'EU MAP:* $P(SSB_{2025} < B_{lim}) > 5\ \% \sim F = 0$*').*"[145]

"[N]*o EU MAP scenario will keep the* [Bothnian herring] *stock above* $B_{trigger}$ *in 2024, and the probability of being below* B_{lim} *is between 26% and 21%. Even a zero catch (in 2024 will not bring the stock above* B_{lim} *in 2025 with 95% probability. As the EU MAP states that "Fishing opportunities shall in any event be fixed in such a way as to ensure that there is less than a 5% probability of the spawning stock biomass falling below* B_{lim}*", F = 0 should be considered as basis for the advice (Table 4.4.9, catch scenario 'EU MAP:* $P(SSB_{2025} < B_{lim}) > 5\ \% \sim F = 0$*').*"[146]

(188) Numbers on herring landings in the Gulf of Bothnia for 2023 suggest that the set TAC of 80,047 t for that year[147] has been only partially utilised. The CCB got hold of

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143 *Ibid.*, p. 250.

144 *Ibid.*, p. 293.

145 *Ibid.*, p. 251.

146 *Ibid.*, p. 337.

147 Article 4 and Table 1 of the Annex of Council Regulation (EU) 2022/2090 of 27 October 2022 fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea

preliminary landings data for the entire year 2023 for Bothnian herring by the only two EU quota holders of this stock, Finland and Sweden. Finland states that it has not utilised, in 2023, 15.1% of its Bothnian herring quota (55,692 t instead of 65,627 t).[148] Sweden states that it has not utilised, in 2023, 22% of its Bothnian herring quota (11,243 t instead of 14,420 t).[149] In consequence, this data suggests that only 66,935 t of Bothnian herring were landed in 2023 by Finland and Sweden, a number relatively close to the level of the 2024 quota set for Bothnian herring of 55,000 t. This number corresponds to a underutilisation of the 2023 TAC allocations of 16.4%, but of 27.5% when calculated against the increased 2023 quota allocations under the year-to-year flexibility under Article 4 of Council Regulation 847/96.

(189) The situations of data uncertainties mentioned above and the known existence of genetically distinct subpopulations precisely call for the application of the precautionary approach. However, it needs to be applied correctly: as stated above, data uncertainties need to trigger a more cautious approach instead of being abused as pretext to set even higher quotas.

(190) The Council was thus bound to ensure that the Contested Act is in line with the precautionary approach to fisheries management. As will be shown below, it failed to comply with this obligation.

c) **The Council's failure to act in line with the precautionary approach to fisheries management**

(191) Considering the dire situation of both herring stocks,[150] and in particular that of the Central Baltic herring stock, that the Council set a TAC exceeding 0 although not even such a conservatory measure would likely be successful in bringing the Central Baltic herring stock above B_{lim} in 2025 and prevent the Bothnian herring TAC from falling below B_{lim} is, in addition to being a clear violation of 2020 MSY deadline under Article 2(2) of the CFP Basic Regulation as established above (as well as failing to achieve the same objective enshrined in Article 3(1) of the Baltic MAP, also an obvious violation of the precautionary principle. The failure of the Council to respect the precautionary approach to fisheries management is obvious when considering the above data uncertainties regarding the exact biomass levels, the prevalent misreporting issues and decades-long overshooting of previous quotas (which themselves were not in line with MSY), as well as when considering how far in particular the Central Baltic herring stock is from being in line with the MSY Obligation. This is most impressively shown by the above Kobe plot, from which it is clear how far the stock is from MSY, with the point value pertaining to 2020 being nearly as bad in terms of SSB situation and fishing mortality as the apparently worst year for the stock, the year 2000.[151]

(192) Similar considerations apply to the apparently occurred underutilisation of the 2023 TAC for Bothnian herring mentioned above (by 16.4% only considering the 2023

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for 2023 and amending Regulation (EU) 2022/109 as regards certain fishing opportunities in other waters (OJ L 281 of 31.10.2022, p. 1).

148 See here: https://kalastuskiintiotilanne.mmm.fi/#!/%23/ (last visited on 17.1.2024), see tab "Presentation in numbers", selecting the date 31 December 2023 plus the Bothnian herring stock, resulting in the overview "Quotas situation in Finland 31.12.2023".

149 The 11,243 t represent 78% of the Swedish quota allocation pursuant to Regulation (EU) 2022/2090 (fn. 147 above) plus an additional amount presumably due to the annual flexibility under Article 4 of Regulation 847/96), resulting in 16,337 t. See here: https://www.On the havochvatten.se/fiske-och-handel/kvoter-uppfoljning-och-fiskestopp/infiskning/daglig-infiskning.html#h-Preliminarakvotochfangstsiffror2023 (last visited on 17.1.2024), see tab "*Compare several years*", where Finnish data on "*Quotas situation in Finland*" for the years 2020-2024 can be selected.

150 See in Points (162) and (172) above.

151 See on previous page.

landings versus the TAC and by 27.5% if considering the landings versus the TAC plus year-to-year flexibility under Article 4 of Council Regulation 847/96).[152] It reduces the importance of the alleged quota reduction from 80,047 t (2023 TAC) to 55,000 t (2024 TAC), by over 31%, as 2023 landings only exceeded the level of the 2024 TAC of 55,000 t by some 12,000 t and because the underutilisation of the 2023 quota allows Finland and Sweden, yet for another year, to make use of the year-to-year flexibility under Article 4 of Regulation (EC) No 847/96.[153] In fact, since, different from the Council's TAC setting for the Central and Western Baltic herring stocks, where the application of the year-to-year flexibility has been excluded,[154] such exclusion is not foreseen in Table 1 of the Annex to the Contested Act setting the quota for the Bothnian herring stock. Article 4(2) of Regulation (EC) No 847 allows, in such cases to transfer up to 10% of the quota to the following year. This means that 8,005 t can be added to the 55,000 t TAC for Bothnian herring catches in 2024, resulting in total authorised catches of approximately 63,005 t – an amount that is not very far from the amount of (reported) 2023 catches of that stock, 66,935 t. The 55,000 t TAC is thereby converted into a 63,005 t TAC – an excessive TAC that grossly overstates the biomass situation of the Bothnian herring stock.

(193) Moreover, Recital 28 of the CFP Basic Regulation[155] makes it clear that the intention and purpose of the 10%-flexibility is to make the landing obligation workable and mitigate the effect of catch compositions in the context of a mixed fishery. The interannual flexibility regarding the Bothnia herring quota is clearly not used in a mixed fishery context, not relevant to making the landing obligation workable and not relevant to the catch composition. It is merely a way to increase the actual allowable catch to a level not compatible with Art. 4(6) of the Baltic MAP, as well as Art. 2(3) and Art. 2(2) in Regulation 1380/2013 (as set out above).

(194) Finally, that the 2023 TAC plus the added flexibility, resulting in a 2023 quota of 92,377, could only be utilised to 72.5%, also indicates that ICES' warnings about low biomass levels are justified.

(195) To sum up, all the above considerations confirm the violation of the precautionary approach to fisheries management.

4. **Fourth limb: manifest error of assessment and exceedance of the bounds of the Council's discretion because the setting of the Contested TACs (including the sprat TAC) violate the obligation to implement an ecosystem-based approach to fisheries management under Article 2(3) of the CFP Basic Regulation and Article 3(3) of the Baltic MAP and the principle of sincere cooperation under Article 4(3) TEU**

a) **Introduction**

(196) When fixing the Two Herring TACs in the Contested Act, the Council was under a legally binding obligation to implement the ecosystem-based approach to fisheries management ("**EBM**"). The Council's failure to do so consist in having fixed the Two Herring TACs at levels exceeding zero tons. This constitutes a violation of Article 2(3) of the CFP Basic Regulation, which provides as follows: the "*CFP shall implement the*

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152 See in point (188) above.

153 Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

154 See Article 4 in connection with Tables 2 (Western Baltic herring) and 3 (Central Baltic herring). Both tables state "*Article 4 of Regulation (EC) No 847/96 does not apply.*"

155 "*In order to make the landing obligation workable and to mitigate the effect of varying yearly catch compositions, Member States should be allowed to transfer quotas between years, up to a certain percentage.*"

ecosystem-based approach to fisheries management so as to ensure that negative impacts of fishing activities on the marine ecosystem are minimised, and shall endeavour to ensure that aquaculture and fisheries activities avoid the degradation of the marine environment" (emphasis added).

(197) As stated above, Recital 4 of the Baltic MAP states that "[t]*he objectives of the CFP are, inter alia, to ensure that fishing and aquaculture are environmentally sustainable in the long term, to apply the precautionary approach to fisheries management and to implement the ecosystem-based approach to fisheries management*" (emphasis added).

(198) Article 3(3) of the Baltic MAP provides that "[t]*he plan shall implement the ecosystem-based approach to fisheries management in order to ensure that negative impacts of fishing activities on the marine ecosystem are minimised. It shall be coherent with Union environmental legislation, in particular with the objective of achieving good environmental status by 2020 as set out in Article 1(1) of Directive 2008/56/EC*" (emphasis added). The Baltic MAP therefore explicitly refers to the MSFD. Moreover, its Recital 11 very directly points not only to the fisheries-related Descriptor of the MSFD (Descriptor 4), but also to its other Descriptors, stating that they are relevant for fisheries management: 1 (biodiversity), 4 (food webs) and 6 (sea floor integrity).[156]

(199) The EBM is defined in Article 4(1)(9) of the CFP Basic Regulation as "*an integrated approach to managing fisheries within ecologically meaningful boundaries which seeks to manage the use of natural resources, taking account of fishing and other human activities, while preserving both the biological wealth and the biological processes necessary to safeguard the composition, structure and functioning of the habitats of the ecosystem affected, by taking into account the knowledge and uncertainties regarding biotic, abiotic and human components of ecosystems*" (emphasis added). Fisheries management under the CFP therefore must follow an ecosystem-based approach, as laid down in Article 2(3) of the CFP Basic Regulation mentioned above.

(200) The CCB understands the EBM as follows:

> "*With the understanding that humans are part of the ecosystem, ecosystem based marine management is the adaptive management of all human activities to ensure healthy and productive ecosystems and their services. It is based on the best available knowledge about human pressures, ecosystem functions and interaction amongst organisms and environment.*
>
> *In managing human activities in an equitable way, priority should be given to achieving or maintaining good environmental status and contributing to reaching the 1,5 degree climate target.*"

(201) The purpose of the EBM is to enhance the less complex single-species approach, which manages species in isolation, failing to account for their interactions within the ecosystem and as part of mixed fisheries. As a consequence, TAC-setting must take into account ecosystem dynamics, such as interactions between species, as well as the impact of TACs for certain stocks on other stocks caught in the same mixed fisheries. Concretely, if implemented, this means that the TAC for certain target stocks will have to be set below the MSY exploitation rate in order to ensure that this MSY objective can also be reached for target stocks caught unintentionally in fishing operations targeting different target stocks in mixed fisheries. The latter

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[156] The full language of Descriptors 1, 3, 4 and 6 of the MSFD is cited in point (71) above.

thought is relevant for the sizeable TAC that the Council has set for the sprat fishery in the Baltic Sea in the Contested Act.

(202) In this context, in addition to the scientific single-stock advice, ICES provides Fisheries Overviews with mixed fisheries considerations which highlight trade-offs between catch levels of different species.[157] They contain projections, for all included stocks, of the catch levels expected for a variety of scenarios; for example, if fishing ceases when the single-stock advice level for a particular stock is reached. This information illustrates that catches for certain stocks are expected to either exceed or remain below their respective single-stock advice, depending on catches of other stocks in the same fisheries. Such scenarios – based on underlying assumptions about the behaviour of the fleet – give an idea of which stocks will be more or less limiting. For example, they highlight which stocks may have to be fished below the scientific advice given for the stock individually in order not to overfish other more vulnerable stocks caught in the mix.[158]

(203) In this sense, the EBM also means that fisheries management must take into consideration the implications of fisheries-based decisions on other components of the ecosystem, such as in particular protected species under the Habitats and Birds (Nature) Directives that rely on the fish stock in question as feed, including in the sense of as source for certain important nutrients. As mentioned above,[159] this fact is also very clearly noted in Article 3(3) of the Baltic MAP that explicitly refers to the MSFD, and its Recital 11 very directly points not only to the fisheries-related Descriptor (4) of the MSFD, but also to the following other Descriptors: 1 (biodiversity), 4 (food webs) and 6 (sea floor integrity).[160]

b) **Why the Contested Act does not follow the EBM and violates the principle of sincere cooperation under Article 4(3) TEU**

(i) **Introduction regarding the principle of sincere cooperation pursuant to Article 4(3) TEU**

(204) Article 4(3) TEU[161] enshrines the principle of sincere cooperation in a way clarifying that it is not a one-way-street where only the Member States would be bound by it, but also the Union and its institutions, amongst which, pursuant to the second subparagraph of Article 13(1) TEU, the Council. The CJEU has, thus, held that "*in accordance with the principle of sincere cooperation, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.*"[162] EU institutions have in this regard also been considered to be required not to interfere, e.g. through legislation, with Member

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157 For example, ICES, "*ICES Fisheries Overviews. Baltic Sea ecoregion – Fisheries overview. ICES Advice: Fisheries Overviews. Published 30 November 2022. Version 2: 6 February 2023*", {"**ICES Fisheries Overview**"}, available at <https://ices-library.figshare.com/articles/report/Baltic_Sea_ecoregion_fisheries_overview/21646934?file=39080657> {last visited on 13.1.2024} p.19-22; see also ICES, "*ICES Ecosystem Overviews. Baltic Sea Ecoregion. Published 15 December 2022*", available at <https://ices-library.figshare.com/articles/report/Baltic_Sea_Ecoregion_Ecosystem_overview/21725438> {last visited 15.1.2024}, p. 6-8.

158 ClientEarth, "*How (not) to implement the ecosystem-based approach when setting Total Allowable Catches (TACs)?*", December 2020, available at: <https://www.clientearth.org/media/1papkfea/how-not-to-implement-the-ecosystem-based-approach-when-setting-total-allowable-catches-tacs.pdf> {last visited on 6 January 2024).

159 See point {198} above.

160 The full language of Descriptors 1, 3, 4 and 6 of the MSFD is cited in point {71} above.

161 See point {26} above.

162 Joined Cases C-428/21 PPU and C-429/21 PPU *HM and TZ* EU:C:2021:876, paragraph 44; see also Case C-220/18 PPU *Generalstaatsanwaltschaft (Conditions of detention in Hungary)* EU:C:2018:589, paragraphs 104 and 109 and the case-law cited.

States' efforts to comply with their obligations under international conventions to which they are parties next to the Union.[163] This cannot be different in situations where EU Directives contain specific obligations for Member States; it would be against the principle of sincere cooperation under Article 4(3) TEU (as well as presumably against the principles of good faith and good administration) if an EU institution was, by its acts, to obstruct Member States' efforts in complying with specific requirements flowing from EU Directives.

(205) The principle of sincere cooperation features amongst the basic constitutional principles of the European Union.[164] A further expression of it can also be found in the special provision requiring sincere cooperation amongst the EU institutions, to be found in Article 13(2) TEU.[165]

(ii) **TACs set for the Two Herring Stocks disregard the impact on the Two Herring Stocks themselves, against the spirit of the Marine Strategy Framework Directive**

(206) Recital 3 of the MSFD (quoted in point (48) above) states that the ultimate aim of preservation efforts in the marine environment is the maintenance of biodiversity. Recital 9 of the CFP Basic Regulation requires the CFP to "*ensure coherence with the fisheries targets laid down in the Decision by the Conference of the Parties to the Convention on Biological Diversity on the Strategic Plan for Biodiversity 2011 – 2020, and with the biodiversity targets adopted by the European Council of 25 and 26 March 2010*".[166] Moreover, Recital 11 of the Baltic MAP states that the qualitative descriptors 1, 3, 4 and 6 of Annex I of the MSFD are relevant for fisheries management. The first of those descriptors talks about the maintenance of biological diversity. It requires that "*the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.*"

(207) Furthermore, as mentioned above, the MSFD's Article 1(2)(a) requires Member States to develop and implement marine strategies to "*protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where they have been adversely affected*" (emphasis added). Article 1(3) MSFD requires such strategies to "*apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations*".

(208) As is known by the Council, since ICES has stressed this already for a long time, the Two Herring Stocks are not genetically homogeneous. Rather, each of them is rich in several genetic variants of herring.

> "*The Central Baltic herring stock consists of several different spawning components (...), which have been shown to be genetically distinct (...). Differences in genetics and migration routes between spawning components, and spatial differences in growth and maturity (...), makes the Central Baltic*

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163 Opinion of AG Kokott of 20.11.2007 in Case C-308/06 *Intertanko and Others* EU:C:2007:689, paragraphs 78 f.

164 Vedder, C./Heintschel von Heinegg, W. (eds.), *Europäisches Unionsrecht. EUV. AEUV. GrCh. EAGV. Handkommentar*, 2nd edition (2018), Article 4 point 22.

165 Ibid., Article 4 point 30. The wording of Article 13(2) TEU is printed in point (27) above.

166 The more recent endorsement of the Council regarding the EU Biodiversity Strategy for 2030 is referred to in points (104) f. above.

herring stock complex vulnerable to loss in genetic diversity and overall productivity."[167]

(209) The problem with setting substantial TACs in a situation where one of those stocks is below $B_{trigger}$ and one of them below B_{lim} is that taking out such substantial amounts of biomass might distort the age and size distribution relationships between these genetic variants. Possibly, it might lead to the entire extinction of one or several of these variants.

(210) Taking such ecosystem risks without any good reason (as stated above, socio-economic considerations are,[168] after 2020, not anymore relevant in this regard) violates both the EBM and the Council's obligation of sincere cooperation under Article 4(3) TEU, because it risks to make it harder for Member States to achieve an important objective of the MSFD, maintenance of biodiversity. This interferes with Member States' obligations to "*protect and preserve the marine environment and to prevent its deterioration*" (Article 1(2)(a) MSFD), with the EBM and with "*keeping the collective pressure of human activities within levels compatible with the achievement of good environmental status*" and compromises "*the capacity of marine ecosystems to respond to human-induced changes*" (Article 1(3) MSFD).

(211) This violation of the Council's obligation to sincerely cooperate under Article 4(3) TEU must also be seen in the context of both the CFP Basic Regulation and the Baltic MAP directly referring to the "*objective of achieving good environmental status by 2020 as set out in Article 1(1) of* (...) [the MSFD]" (Article 2(5)(j) of the CFP Basic Regulation, corresponding fully to the wording of Article 3(3) of the Baltic MAP). The Council appears to have failed in taking this into consideration. How can national strategies be implemented to reach good environmental status when the core fish stocks of herring are failing and with the set TAC will not reach even the lowest limit value B_{lim} in 2025 according to the best available science? This is a clear violation of the EBM, against the spirit of the MSFD, in violation of the Council's obligation of sincere cooperation under Article 4(3) TEU.

(212) A further remark in this context: reading through the Council's solemn endorsements of the Commission's EU Biodiversity Strategy for 2030, which are in part cited to above,[169] all of this appears like a farce – how can the Council on the one hand call for a "*collective effort*" (of basically everyone else but itself) to implement that strategy "*rapidly and ambitiously*", recognise "*the urgent need to step up efforts to ensure the effective management of all protected areas*", acknowledge "*that preventing further decline of the current state of biodiversity and nature will be essential*", "*request to urgently mainstream EU biodiversity policy objectives into all other relevant EU and national policy fields* (...)", call on the Commission "*to integrate these objectives in future legislative proposals* (...)", and recognize "*the need to urgently advance action on the protection and conservation of marine and coastal ecosystems and biodiversity, including by addressing major threats, including* (...) *over-exploitation of marine resources*",[170] but on the other

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167 ICES's WGBFAS Report (fn. 128 above), p. 253. See also ICES, Benchmark Workshop on Baltic Pelagic Stocks (WKBBALTPEL), Vol. 5. Issue 47, ICES Scientific Reports, 31.5.2023, available at <https://ices-library.figshare.com/articles/report/Benchmark_Workshop_on_Baltic_Pelagic_stocks_WKBBALTPEL_/23216492>, Section 2.2 "Stock ID and Substock Structure", p. 5 f.

168 In fact, the short-sightedness of the Council's decisions even fails to further socio-economic objectives in a sustainable way, in the long-term.

169 See in point (105) above.

170 See Recitals 3, 4, 11, 13, 14 and 20 of the Council's Conclusions on the Biodiversity Strategy for 2030, all of which cited in point (105) above.

hand blatantly disregard these objectives (and even contribute to jeopardise their achievement) in its own fisheries policy decisions?

(iii) **TAC set for the Sprat Stock disregards the additional pressure it entails for the Central Baltic herring stock outside safe biological limits**

(213) The Contested Act is also not in line with the EBM, because the Council set a sizeable TAC for sprat (201,000 t pursuant to Article 4 in connection with Table 10 of the Contested Act), although catching considerable amounts of Central Baltic herring in the sprat fishery cannot be avoided (as the Council notes itself in Recital 20 of the Contested Act[171]), and considering that both of the Two Herring Stocks are, as stated above, outside safe biological limits (Central Baltic Herring being below the lowest limit value B_{lim} and Bothnian Herring being between $B_{trigger}$ and B_{lim}, with a considerable risk of also falling below B_{lim}).

(214) That this exerts additional pressure on the Central Baltic herring stock (which is, considering the dire SSB situation of this stock,[172] wholly inappropriate) is confirmed by ICES, both in the ICES advice relating to sprat and herring and in its Working Group on the Baltic Fisheries A S Report, as shown by the following extracts (in addition to the extracts from ICES advice documents relating to Baltic sprat, Central Baltic and Bothnian herring referred to above, relating to species misreporting, undermined data quality and data uncertainty,[173] as well as to unavailability of data on Russian Federation catches for 2022 and resulting negative implications for data quality[174]):

> *"Potential needs for corrections of national catch data of Baltic sprat and central Baltic herring were analysed by the 8 member states of the ISSG Small Pelagic Fisheries Baltic. The effects of central Baltic herring and sprat misreporting on assessment of both stocks were analysed in the framework of the WKBALTPEL and showed a greater sensitivity of spawning stock biomass estimates than of fishing mortality estimates to misreporting."*[175]

> *"The species misreporting of herring and sprat in the Baltic has been discussed for many years (ICES 2022). The RCG ISSG consequently made an attempt to provide the last benchmark of the stock with corrected time-series of catch data for which species misreporting had been corrected (ICES, 2023a). It was concluded that the issue of misreporting could not be addressed adequately by all the countries in time for the benchmark and that the issue needs to be postponed. The working document in the last benchmark report (ICES, 2023a) outlines the approach taken by countries so far to analyse if there are errors in the time-series of catch data due to inadequate reporting of species and/or other reasons and if the countries foresee that alternative time-series of catch should be provided. Denmark and Sweden provided alternative time-series of catches, of which the time-series of catches from Denmark was included in the benchmark assessment."*[176]

> *"ICES has been stating for several years that the pelagic fisheries take a mixture of herring and sprat and this causes uncertainties in catch levels. The extent to which species misreporting has occurred and is occurring is however not well known. Analysis of a questionnaire answered by all Baltic countries in 2012 revealed that misreporting is mainly an issue of the industrial trawl fishery targeting sprat-herring mix in nearshore waters (...). Countries with major*

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171 See in point (23) above.
172 See in Points (162) and (172) above.
173 See under point (187) above (at fn. 136).
174 See under point (187) above (at fn. 137).
175 ICES's WGBFAS Report (fn. 128 above), p. 234 f.
176 *Ibid.*, p. 245.

proportions of sprat catches used for industrial purposes are Sweden, Poland and Denmark. Countries with major proportions of herring catches used for industrial purposes are Finland and Sweden. An attempt was made as part of the latest benchmark (ICES 2023a) to estimate the extent of the misreporting and provide alternative catch scenarios for sensitivity testing. Although some information about the potential problem of misreporting was provided by each of the countries, no alternative time-series of catch data was provided for simulation testing on impacts on the development of the stock. Significant misreporting can potentially be a large problem with regard to our perception of these stocks."[177]

(215) To add some numbers to this perspective, for the Baltic Sea as a whole, the distribution of pelagic landings of herring and sprat in 2022 was 40.64% for herring and 59.36% for sprat.[178] Since there is hardly any sprat caught in SD 30 and 31 (the Gulf of Bothnia),[179] even disregarding those landings leads to a distribution of landings of herring and sprat in the Central Baltic Sea (SD 25-29 and 32) in 2022 of approximately 30% for herring versus approx. 70% for sprat.[180] At the same time, the Central Baltic herring TAC of 40,368 t approximately represents only 16.7% of the sum of the Central Baltic herring TAC and of the Baltic sprat TAC of 201,000 t (241,368 t).[181] The actual herring landings likely to occur (and hidden through misreporting) in the Central Baltic Sea are thus approximately 80% higher (30%-16.7%=13.3%, representing 79.6% of 16.7%) than those that would be "allowed" under the (albeit illegal, see above) Central Baltic herring TAC of 40,368 t. In other words, the misreporting issue referred to above might lead to actual herring landings of over 72,500 t. Well noted, this assumes that the combined TACs of 40,368 t for Central Baltic herring and 201,000 t for sprat, of 241,368 t would not also be "circumvented" due to intentional under-reporting (which is different from intentional misreporting to increase utilisation of existing quotas in mixed fisheries), which, unfortunately, likewise appears to be a practical reality also in the Baltic fisheries.

(216) If fishing patters could be assumed to be roughly similar in 2024 compared to 2022, the allocated sprat TAC will likely consume the entire Central Baltic herring TAC agreed, leaving *e.g.* no herring quota at all for targeted herring fishing by the smaller coastal fisheries for human consumption (since the Council appears to be concerned about socio-economic considerations). Even with a changed fishing pattern, a substantial "by-catch" of Central Baltic herring in the Baltic sprat fishery is unavoidable.

(217) Considering the dire SSB situation of the Central Baltic herring stock (CCB recalls that pursuant to ICES, not even a 0 catch in 2024 would restore that stock to levels above B_{lim} in 2025 with 95% probability),[182] where the stock will already be overfished by at least 40,368 t in 2024, every additional ton of landings will be far too much and will only aggravate the impending ecological disaster for this stock.

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177 *Ibid.*, p. 253.

178 ICES's WGBFAS Report (fn. 128 above), Table 4.1.1, p. 240. Further detail on the interactions between the herring and sprat fisheries are contained in ICES Fisheries overview (fn. 157 above), p. 19 ff.

179 *Ibid.*, p. 239 f.

180 Since the ICES data used (*ibid.*) to calculate these landing numbers (see the table in **Annex 14**, which is based on ICES's WGBFAS Report (fn. 128 above), Table 4.1.1., pp. 239-240) did not offer unaggregated numbers for SD 28 (i.e. offered a number aggregating the landings of herring and sprat in SD 28.1 and SD 28.2), these numbers include landings also in the Gulf of Riga.

181 Even taking into account that the sprat TAC of 201,000 t also will be used for SD 22-24, which are not reflected in the above numbers, will only marginally lift the size relationship of the Central Baltic herring TAC to the Baltic sprat TAC upwards (from 20.1% to 20.3%, considering that, throughout 2019-2022, sprat landings in SDs 22-24 accounted for less than 1% of Baltic sprat landings overall, as shown in the ICES WGBFAS Report 2023 (see fn. 128 above), Table 7.2, titled "*Sprat landings in the Baltic Sea by country and Subdivision (thousand tonnes).*", p. 462 (years 2019-2022 shown on p. 469-471).

182 See in Point (162)b and (172) above.

However, adding even 79.6% additional percent, resulting in an estimated overfishing of at least 72,500 t, brings the Council's disrespect for the EBM to entirely new dimensions.

(218) Moreover, we must assume that also the Russian fishing industry will continue to fish for sprat and herring, and those additional catches are not even considered in the numbers presented in point (215) above.

(iv) **TACs set for the Two Herring Stocks (as well as the substantial sprat TAC in the presence of wide-spread misreporting of herring for sprat) disregard the impact on species protected under the Habitats and Birds Directives, as well as under the Helsinki Convention**

(219) Article 3(3) of the Baltic MAP, which has been cited above, does even expressly refer to the Habitats Directive, in connection with its reference to the EBM. Reference is also made to Recitals 6 and 18 of the Marine Strategy Framework Directive, which refers to both Nature Directives. EU Member States have extensive conservation obligations under the Habitats and Birds Directive for many species present in the Baltic, as documented below.[183] Reference is in this regard made to the Articles 3(1), 6(1) and (2) of the Habitats Directive,[184] as well as to Articles 1, 2 and 13 of the Birds Directive.[185] In general, it belongs to the spirit, protection objectives and ultimately the *effet utile* of the MFSD and the Nature Directives to require protection and preservation, and, at the very least, to prevent further deterioration.[186]

(220) Directive 2000/60/EC establishing a framework for Community action in the field of water policy has a similar legislative structure as the MSFD. With regard to a non-deterioration provision similar to Article 1(2)(a) of the MSFD that is contained in the Water Framework Directive 2000/60/EC,[187] the Court of Justice has held that

> *"Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."*[188]

(221) Moreover, there are many other judgements in which the CJEU has confirmed the violation of the Habitats Directive by actions that led (or would lead) to the deterioration of sites or conditions for protected species present in such sites or that would fail to implement effective conservation measures under those directives.[189]

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183 See point (224) below.

184 See point (90) above.

185 See points (91) ff. above.

186 This can be seen from numerous recitals and operative provisions in these instruments, such as (i) Recital 8 of the MSFD (which refers to the ecosystem-based approach to fisheries management, stating that one of its components is the prevention of "*subsequent deterioration*" – see point (53) above), and Recitals 30 and 32 of the MSFD (see points (59) and (60) above), as well as from Article 1(2)(a) of the MSFD (see point (66) above); (ii) Article 6(2) of the Habitats Directive (see point (90) above); and Article 13 of the Birds Directive (see point (93) above).

187 Directive 2000/60 of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

188 Case C-461/13 *Bund v BRD (Weser)* EU:C:2015:433, paragraph 51.

189 See Case C-241/08 *Commission v France* EU:C:2010:114, paragraphs 32, 39 and 76 (with regard to Article 6(2) of the Habitats Directive); Case C-308/08 *Commission v Spain* EU:C:2010:281, paragraph 21 ("*Under the Habitats Directive, Member States must take appropriate protective measures to preserve the characteristics of sites which host priority natural habitat types and/or priority species and which have been identified by Member States with a view to their inclusion on the Community*

(222) As will be set out in more detail below, the setting of the excessive Two Herring TACs seriously jeopardises the achievement of all these conservation objectives. The CCB cannot see how the Council considers that the Contested Act is in line with those objectives, even if it referred to the CFP Basic Regulation and the Baltic MAP as legal basis for the Contested Act. When setting the TACs for the Two Herring Stocks, the Council failed not only to appropriately manage the Two Herring Stocks as such, in violation of the MFSD's conservation objectives. Thereby, however, it violated also further conservation objectives regarding other species, flowing in particular from the Habitats and Bird Directives – herring being the staple food for species such as seals, porpoises, birds, cod, pike, perch and salmon.[190] The Council itself has increased those species' need to rely on herring as the next best food chain option due to the collapse of the cod stocks. The Contested Act does, in this regard, violate both the EU law principle of sincere cooperation (of Article 4(3) TEU), which has been cited above,[191] and puts into question the *effet utile* of the two Nature Directives. Moreover, the Council disregards the risk of violating the Helsinki Convention, to which the EU has acceded, as stated above,[192] namely its Article 15, which requires conservation of "*natural habitats and biological diversity*" and protection of "*ecological processes*" in the Baltic Sea Area. This is also a violation of the principle of sincere cooperation under Article 4(3) TEU.

(223) Just for the sake of completeness and to be clear, the fact that numerous species that are protected under the Nature Directives as well as the Helsinki Convention (mammals (harbour porpoise and various types of seals), many types of fish (e.g. wild salmon), as well as many types of herring-feeding Sea birds) and present in protected habitats within the Baltic Sea is documented (albeit not in an exhaustive way) in **Annex 15**.

(224) As shown in the Table contained in **Annex 15**, the Helsinki Convention also protects salmon (*salmo solar*). The Helcom State of the Baltic Sea report offers the following information as regards the status of the salmon stock in the Baltic Sea, excluding the Gulf of Finland (SD22-31):[193] Regarding fishing pressure, the stock does not achieve the set conditions (red) regarding its status, with a decreasing trend. Regarding stock size, it does not achieve the set conditions (red), with an increasing trend. In total, the stock failed to achieve the set conditions (red). It has a Vulnerable (VU) status on the HELCOM Red List.

(225) Following the fisheries-caused collapse of the Baltic cod stocks, herring constitutes the main source of vitamin B_1 (thiamine) for salmon. If the Two Herring Stocks will continue to deteriorate, the Baltic salmons' diet will rely chiefly on sprat. Thiamine concentrations in sprat and herring change with age: "*it is lowest in the youngest fish, and in the oldest fish it again decreases. The maximum thiamine concentrations*

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list. Member States cannot therefore authorise intervention where there is a risk that the ecological characteristics of those sites will be seriously compromised as a result. That is particularly so where there is a risk that intervention of a particular kind will bring about the extinction of priority species present on the sites concerned"); C-404/09 *Commission v Spain* EU:C:2011:768, paragraph 197 (with regard to Article 6(2)-(4) in connection with Article 7 of the Habitats Directive); Case C-461/14 *Commission v Spain* EU:C:2016:895, paragraph 101 (with regard to both Article 6(2) of the Habitats and Article 4(4) of the Birds Directive); Case C-441/17 *Commission v Poland* EU:C:2018:255, paragraphs 213 f., 218 and 221 (with regard to conservation obligations under both Article 6(2) of the Habitats and Article 4(1) and (2) of the Birds Directive).

190 See also point (224) below.

191 See in point (26) above.

192 See point (40) above.

193 HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), Table 4.1 (p. 87).

in herring were in age groups 3-7, but in sprat not until age groups 6-10 years."[194] This leads to the following problem:

> *"The fattier fish salmon eat, the higher the amount of thiamine needed. Considering the demand, the supply of thiamine is lowest when salmon prey mainly on sprat, especially young sprat.*
>
> *During the long spawning migration and a long prespawning fasting period, thiamine reserves accumulated in the feeding areas are depleted. Fish fat contains lots of unsaturated fatty acids, specifically omega-3 fatty acids. A low thiamine intake and ample amounts of unsaturated fatty acids both increase susceptibility to oxidation of unsaturated fatty acids, in which reactions thiamine is destroyed. Thus the thiamine stores of female salmon decrease too much. Diminished thiamine body stores do not allow adequate deposition of thiamine into developing eggs; the development of offspring cannot be sustained until the end of the yolk-sac period, when fry start external feeding."*[195]

(226) In short, a higher share of younger sprat in the Baltic salmons' diet, will result in a wider spread of the thiamine deficiency syndrome M74 in Baltic salmon present in the Central Baltic Sea. In consequence, salmon eggs will be weakened and, in many cases, not anymore survive the egg stage.[196] This negative food-web relationship has been known for years, at least since 2012.[197]

(227) Ultimately, the Council's reckless herring TAC setting risks to jeopardise the continued presence of the few remaining wild Baltic salmon stocks. This problem is further worsened by the setting of a substantial sprat TAC, risking to increase the mortality of Central Baltic herring even further in the mixed fishery with sprat, in particular due to the known misreporting issues, likewise to the detriment of the salmon stocks in the Central Baltic Sea.

(228) The Nature Directives go to great lengths in requiring Member States to protect ecosystems, including the protected species under both mentioned Directives. All herring stocks in the main open area of the Baltic Sea are already outside safe biological limits[198] (in addition to the dire situation of the Two Herring Stocks,[199] also the Western Baltic herring stock (herring in SD 22-24, see Article 1(e) of the Baltic

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194 See Finnish Game and Fisheries Institute, "*The mystery of the M74 syndrome solved: Plentiful fatty sprat as prey for salmon leads to reproduction disorder*", press release of 4.4.2012, available at <https://core.ac.uk/download/pdf/141935837.pdf> (last visited on 14 January 2024), p. 1.

195 *Ibid.*

196 "*The thiamine deficiency syndrome M74 is a reproductive disorder, which causes mortality among yolk-sac fry of Baltic salmon. The development of M74 is caused by a deficiency of thiamine in the salmon eggs that, in turn, is suggested to be coupled to an abundant, but unbalanced fish diet with too low a concentration of thiamine in relation to fat and energy content. The intake of thiamine for Baltic salmon in relation to energy and fat remains lowest by eating young clupeids, especially young sprat. Although a large sprat stock may have a positive impact on salmon growth, it may increase M74 and thereby mortality of Baltic salmon fry.*" ICES Fisheries overview *2022/2023* (fn. 157 above), p. 22. See also Keinänen, M./Vuorinen, P. J., "*Mystery of the M74 syndrome solved: plentiful fatty sprat as prey for salmon leads to reproduction disorder*", available at <https://www.researchgate.net/publication/318754697_Mystery_of_the_M74_syndrome_solved_plentiful_fatty_sprat_as_prey_for_salmon_leads_to_reproduction_disorder> (last visited on 14.1.2024) and Keinänen, M./Käkelä, R./Ritvanen, T./Myllylä, T./Pönni, J./Vuorinen, P. J., "*Fatty acid composition of sprat (Sprattus sprattus) and herring (Clupea harengus) in the Baltic Sea as potential prey for salmon (Salmo salar)*", Helgoland Marine Research (2017) 71:4, available at <https://hmr.biomedcentral.com/counter/pdf/10.1186/s10152-017-0484-0.pdf> (last visited on 14.1.2024).

197 *Cf.* the timing of the press release (4.4.2012) referred to in fn. 194 above.

198 Central Baltic Herring being below the lowest limit value B_{lim} and Bothnian Herring being between $B_{trigger}$ and B_{lim}, with a considerable risk of also falling below B_{lim}.

199 See in Points (162) and (172) above.

MAP) has an SSB of below MSY $B_{trigger}$, B_{pa} and B_{lim},[200] *i.e.* its status is as bad as that of the Central Baltic herring stock; only the separately managed Riga Bay stock (Article 1(d) of the Baltic MAP: herring in SD 28.1) is in a better state[201]). Not even a zero catch in 2024 will, according to ICES, bring the Central Baltic herring stock above B_{lim} in 2025 with 95% probability and ensure that the probability of the Bothnian herring stock's SSB falling below B_{lim} in 2025 will be reduced to less than 5%. The Council, by nevertheless still allowing the catch of close to 100,000 tons of these two herring species does not only authorise the direct (and reckless) removal of a sizeable amount of staple food for many protected species under the Nature Directives,[202] it moreover entirely puts into question the sustainability of the relevant food base for these protected species, as it risks the entire breakdown of both of the Two Herring Stocks and the known subpopulations. The Council thus acted in blatant disrespect of the Member States' conservation obligations under the Nature Directives regarding all protected species that rely on herring as staple food. In other words, it seriously jeopardises the achievement of the ecosystem goals of the Nature Directives, questioning also their *effet utile*,[203] in violation of its obligation of sincere cooperation with the Member States in carrying out tasks which flow from the Treaties under Article 4(3) TEU.[204]

(229) The following passages in HELCOM's most recent State of the Baltic Sea report can serve to underpin these relationships as well as the poor conservation status of certain protected species:

a. *"the collapse of the western Baltic cod and the western Baltic spring-spawning herring stock during the current assessment period indicates further deterioration, which is associated with negative consequences on, for example, harbour porpoises"*[205] – note that this concerning statement only talks about the already depleted Western Baltic herring, i.e. it does not yet take into account the now impending collapse of the Central Baltic and Bothnian herring stocks that the Council is risking.

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200 ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 31 May 2023, *"Herring (Clupea harengus) in subdivisions 20–24, spring spawners (Skagerrak, Kattegat, and western Baltic)"* (**Annex 16**), p. 1.

201 As a side remark, the fact that this stock is in a so much better shape than the Bothnian and Central Baltic herring stocks ("*Fishing pressure on the* [Gulf of Riga herring] *stock is below* F_{MSY} *and spawning-stock size is above MSY* $B_{trigger}$, B_{pa}, *and* B_{lim}." (*ICES Advice on fishing opportunities, catch, and effort. Baltic Sea ecoregion. Published 31 May 2023. Herring (Clupea harengus) in Subdivision 28.1 (Gulf of Riga)*, available at <https://ices-library.figshare.com/ndownloader/files/41007131> (last visited on 15.1.2024), p. 1)}) proves wrong the claim sometimes made by stakeholders and the Member States that the main pressure on fish stocks are environmental factors, such as climate change, eutrophication, salinity and oxygen levels, not fisheries. This claim cannot be squared with the completely divergent SSB situation of the Two Herring Stocks and the herring stock in the Gulf of Riga – unless the stakeholders and Member States would like to claim that the Gulf of Riga is not affected by any of the above environmental factors.

202 These threats come on top of other threats for protected species due to fishing activities. "*Estimates are uncertain, but studies on birds have shown that gillnet fishery causes the death of up to 100,000-200,000 birds annually in the Baltic Sea and North Sea combined*" (HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), p. 93). "[G]*rey seals are caught in by-catch by the thousands*" (*Ibid.*).

203 In this regard, reference is made to the quoted Recitals and operative provisions of the Habitats and Birds Directives in sections B.II.3.e)(i) and B.II.3.e)(ii) above, points (89) f. and (91) f., respectively.

204 See point (204) above.

205 HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), p. 61.

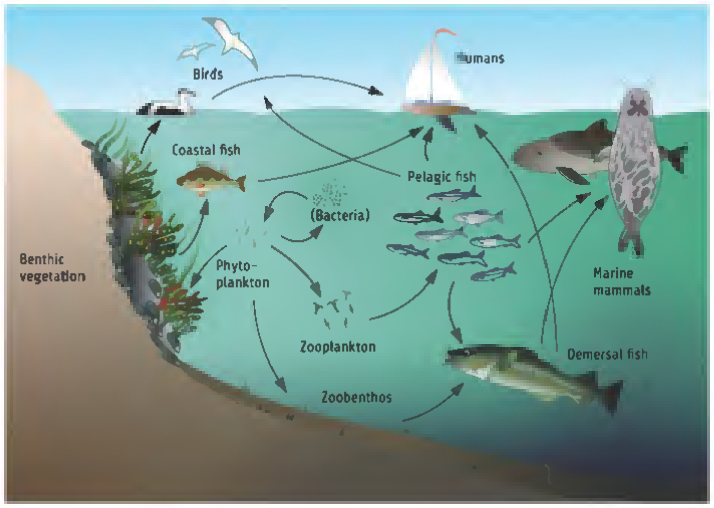

Figure 3.17. The Baltic Sea food web includes primary producers, which make energy and nutrients available to the ecosystem, primary consumers, which feed on the primary producers, and different levels of predators, which feed on lower trophic levels. It also includes species that use dead organic material and contribute to recycling energy and nutrients, and some species function as parasites. Natural food webs are often highly complex, as there are many links between species and a variety of feeding relationships.
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Source: HELCOM, State of the Baltic Sea report (see in fn. 205), p. 61.

b. This comes on top of other directly fisheries-based threats for the concerned species, such as by-catch, as already mentioned above:[206] "*Unintentional by-catch is of concern with regards to marine mammals and sea birds, which mainly drown in gillnets but also in trawls.* (...) *By-catch is a problem for species with poor conservation status, such as the harbour porpoise in the Baltic Sea.*"[207]

c. "*A large and, for some species, probably unsustainable bycatch of seabirds (greater scaup, common guillemot, and long-tailed duck) occurs at times in the gillnet fisheries; these fisheries also catch individuals of the critically endangered harbour porpoise in the Baltic Proper.*"[208]

d. HELCOM indicates the integrated assessment results of pressures and status across topics for waterbirds, the harbour porpoise and seals as "not good" (i.e. either the worst or second-worst category available) throughout the Baltic Sea.[209]

e. "*Marine mammals* (...) *exhibit not good status in the Baltic Sea* (...). *While grey seal (Halichoerus grypus) and harbour seal (Phoca vitulina) are increasing in some areas, overall population growth rates are assessed as too low, and neither the reproductive nor the nutritional status reach their threshold values. The quality of monitoring data to evaluate the status of ringed seals (Pusa hispida) in the Bothnian Bay has decreased due to behavioural changes in the population, possibly attributed to a warming climate. The status of the harbour porpoise (Phocoena phocoena) in terms of both abundance and*

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206 See fn. 202 above.

207 HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), p. 10.

208 ICES Fisheries overview (fn. 157 above), p. 10.

209 See HELCOM, *State of the Baltic Sea 2023 report* (see fn. 7 above), Figure ES2 ("*Summary of pressures and state per sub-bassin*"), p. 11. The only exception concerns seals in the Kattegat, for which the summary of the integrated assessment results of pressures and status are indicated in pink, which is the category between "Not good" and "Good".

distribution is not good for any of the Baltic Sea populations, based on a qualitative evaluation."[210]

f. "*Marine mammals are top predators in the Baltic Sea food web and are strongly dependent on the availability and quality of their prey, mainly fish.*"[211]

g. "*In the 19th and early 20th centuries, harbour porpoises were widespread throughout the entire Baltic, occurring as far as the inner parts of the Gulf of Bothnia and the Gulf of Finland. The harbour porpoise population in the Baltic Proper has declined dramatically over the past 100 years. Today, harbour porpoise observations are very rare in the Baltic Proper. The number of individuals remaining is estimated to be a few hundred at most* (...), *and there are indications that this population is facing extinction* (...)."[212]

h. "*Food webs are not possible to manage directly, but the status of food webs benefits from strengthening its key components and from the proper management of the human activities that causes pressures on them, such as eutrophication, fishing pressure, contaminants, and non-indigenous species*"[213] (emphasis added).

(230) Moreover, this is not the only food web-based consideration that matters under the EBM: the Council also appears not at all to worry about possible negative repercussions due to missing zooplankton regulation (in which herring have a meaningful role) in coastal areas.[214]

(231) All of this indicates the Council's violation of its obligation of sincere cooperation with the Member States under Article 4(3) TEU, as well as its violation of the Nature Directives' *effet utile*.

5. **Fifth limb: manifest error of assessment and exceedance of the bounds of the Council's discretion due to failure to take appropriate and sufficient remedial measures under Article 5(1) and (2), as well as (4) of the Baltic MAP.**

(232) CCB has already above established that the TACs for the Two Herring Stocks are not only violating the MSY Obligation under Articles 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP, but also the mandatory requirement under Article 4(6) of the Baltic MAP to ensure that there is less than a 5% probability of the spawning stock biomass falling below B_{lim}.[215] However, the TACs for the Two Herring Stocks do not only violate Article 4 of the Baltic MAP, which is titled "Targets" and contains guidance for fisheries management regarding the setting of fishing mortality, i.e. F values, and e.g. the mandatory requirement of Article 4(6), but also, as will be set out in more detail below, the Baltic MAP Rules on "Safeguards", which is the title of its Article 5, which concerns biomass reference points and deals with the recovery of stocks.

(233) The dire SSB situation of the Two Herring Stocks that has been referred to above multiple times[216] required the Council to adopt, for both herring stocks, "*all appropriate remedial measures to ensure rapid return of the stock concerned to levels above those capable of producing MSY*" under Article 5(1) of the Baltic Sea

210 *Ibid.*, p. 56.
211 *Ibid.*, p. 57.
212 *Ibid.*, p. 58.
213 *Ibid.*, p. 62.
214 *Ibid.*, p. 61.
215 See sections D.III.1.a) and D.III.2 above, points (147) ff. and (162) ff.
216 See in Points (162) and (172) above.

MPA Regulation (which applies where the SSB is below MSY $B_{trigger}$, which is the case for both of the Two Herring Stocks). Moreover, for the Central Baltic herring stock, the Council was under the obligation to take even "*further* [meaning additional] *remedial measures*" under Article 5(2) of the Baltic MAP (which applies where the SSB is below MSY B_{lim}, which is the case for the Central Baltic herring stock), to ensure exactly the same objective as stated above for Article 5(1), "*a rapid return of the stock concerned to levels above those capable of producing MSY*". Well noted, that remedial measures are indispensable when a stock's biomass situation is as bad as in the case of the Two Herring Stocks follows directly from the wording of Article 5(1) and 5(2) of the Baltic MAP ("*all appropriate remedial measures shall be adopted*" (emphasis added) under Article 5(1), and "*further remedial measures shall be taken*" (emphasis added) under Article 5(2) – "*shall*" having the equivalent meaning to "must" or "have/has to". The CJEU has most recently confirmed this for a parallel provision in the Western Waters MAP Regulation[217] (its Article 8).[218] This interpretation has likewise been confirmed by the co-legislators in a 2020 amending Regulation to the Baltic MAP.[219]

(234) The CCB would like to stress that the biomass level to achieve and stay above is not B_{lim}, but in fact $B_{trigger}$ (or, to reach MSY, as required by Article 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP, even B_{MSY}). Considerations under Article 5 of the Baltic MAP are therefore in line with only a very small margin of discretion in the first place and further remedial measures must be focused on rebuilding the stock, but of course primarily reduce the fishing pressure to negligible amounts. As noted earlier in Point (172) above, the probability of reaching biomass levels above $B_{trigger}$ for the Central Baltic herring stock are only about 12% or less even with zero fishing (or at least 88% certainty that biomass will be below $B_{trigger}$, see advice scenario for F=0 table 2), according to ICES in the case of the Central Baltic herring stocks.

(235) Under Article 4(4) of the Baltic MAP, "[t]*he choice of measures referred to in this Article shall be made in accordance with the nature, seriousness, duration and repetition of the situation where the spawning stock biomass is below the levels referred to in Article 4a*" (emphasis added). Article 4(a) refers to the MSY $B_{trigger}$ and B_{lim} conservation reference points that must be requested from ICES for target stocks under Article 1(1) of that Regulation.

(236) Both of those reference points are far from an SSB situation where a stock is capable of producing MSY, *i.e.* in line with the mandatory situation under the 2020 MSY deadline of the overarching MSY Obligation under Article 2(2) of the CFP Basic Regulation, as referred to also in Article 3(1) of the Baltic MAP. As stated above, and as also the CJEU has pointed out,[220] when a stock is below B_{lim} like the Central Baltic herring stock, its reproductive capacity may be reduced. The Bothnian herring stock, at the same time, was, even with zero catches in 2024, under a higher than 5% probability of falling below B_{lim} in 2025 (contrary to the objectives of the Baltic MAP.

(237) Now, even disregarding that the Council deliberately deleted from the Commission's legislative proposal for the Contested Act the language that showed

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217 Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks (...), OJ L 83 of 25.3.2019 ("**Western Waters MAP Regulation**"), p. 1.

218 *Friends of the Irish Environment* (fn. 26 above), paragraph 16, stating that, under that Article 8 of the Western Waters MAP Regulation, a scientifically indicated below B_{lim} SSB situation of a stock means that "*further remedial measures must be taken in order to ensure rapid return of the stock to levels above the levels capable of producing MSY.*" (emphasis added).

219 See the language of Recital of 5 of Regulation (EU) 2020/1781 set out in point (87) above.

220 See Point (162)b above and fn. 116.

that it was under, under Article 4(6) of the Baltic MAP under the obligation of closing both the Central Baltic and the Bothnian herring fishery, the Council cannot be serious in pretending that the "conservation measures" it foresaw in the Contested Act qualify as "*all appropriate remedial measures*" that are required under Article 5(1) and, regarding the Central Baltic herring fishery, as sufficient "*further remedial measures*" that are required under Article 5(2) of the Baltic MAP to ensure the rapid return of a stock that has been below B_{lim} already for most of the last 30 years above "*the level capable of producing MSY*". Even if the Council has in principle discretion with regards to the choice of those measures, not only the wording showing the high standards that are set in Article 5(1) and (2), but also the wording of Article 5(4) of the Baltic MAP suggests that in the present situation, the Council's discretion was reduced to a very small margin if not entirely to zero. The CCB would like to remind the Council that its discretion only refers to the precise choice of conservation measure to be taken, but that it has no discretion with regard to the question of whether "*appropriate remedial measures*" and "*further remedial measures*" need to be taken under the first and second paragraphs, respectively, of Article 5 of the Baltic MAP. As shown above, there is no difference in this regard between the mandatory language of Article 5(1) and 5(2).

(238) The CCB is aware that a possible judicial control of the Council's margin of discretion with regard to the choice of the exact remedial measures to be taken is in principle limited to a control for manifest error of assessment and exceedance of margin of discretion. However, the circumstances of the present case, in particular the dire situation of both of the Two Herring Stocks[221] operated in a way to considerably limit the Council's margin of discretion. The CCB even would like to submit that it considers that the Council's margin of discretion was in the case of both herring fisheries reduced to zero,[222] *i.e.* that the Council was under the obligation, considering the dire SSB situation of both stocks, to close both targeted fisheries.

(239) At the very least, the CCB submits that the safeguard measures taken by the Council, can neither be considered "*all appropriate measures*" regarding both of the Two Herring Stocks nor sufficient "*further remedial measures*" for the Central Baltic herring stock. The measure the Council took for both stocks, to "*set fishing opportunities in the lower F_{MSY} range*" requested by the second sentence of Article 5(1) of the Baltic MAP might, if correctly applied, have qualified as one (but not all) appropriate measure. Since, as stated above and in Recital 13 of the Baltic MAP, the lower F_{MSY} range is capped so that the probability of the stock falling below the limit spawning stock biomass reference point (B_{lim}) is no more than 5%. However, the SSB situation of both of the Two Herring Stocks was so dire that this 5% probability was exceeded both for the risk of the Central Baltic herring stock remaining under B_{lim} in 2025 and for the Bothnian herring stock falling under B_{lim} in 2025, and this in both

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221 See in Points (162) and (172) above.

222 A typical case of reduction of margin of discretion to zero in German administrative law relates indeed to Union law. Under the German Administrative Procedure Act, an authority has discretion to withdraw an unlawful administrative act. This discretion must be exercised by considering various aspects. Where the unlawful administrative act consists in unlawful State aid under Article 108(3) TFEU and the authority learns that the European Commission has decided that the unlawful aid is also incompatible aid (i.e. State aid under Article 107(1) TFEU that cannot be justified by any of the alternatives foreseen in Article 107(3) TFEU), the national authority's margin of discretion to withdraw the administrative act granting the unlawful and incompatible aid is reduced to zero. See *Bundesverwaltungsgericht*, Judgment of 17.2.1993, BVerwG 11 C 47.92, BVerwGE 92, 81 (87). This reduction of margin of discretion to zero has also been confirmed by the Court of Justice, which argued with the principle of practical effectiveness (in other contexts also referred to as *effet utile*) of Union law to establish that the national authority's margin of discretion to withdraw the administrative act is reduced to zero. Case C-24/95 *Land Rheinland-Pfalz v Alcan Deutschland GmbH* EU:C:1997:163, paragraphs 34-43. Thus, also EU law can lead to situations of reduction of margin of discretion to zero. See Vedder/Heintschel von Heinegg (fn. 164 above), Article 4 point 32.

cases even in the case of a zero catch in 2024. Therefore, the CCB submits that the measure referred to above, which was in any event mandatory under the 2nd sentence of Article 5(1), was not correctly applied by the Council, in neither of the two cases.

(240) In any event, as set out above,[223] in the case of the Bothnian herring stock, the Council failed to remove the year-to-year flexibility under Article 4 of Regulation 847/96, which *de facto* again increases the quota by over 8,000 t (due to a close to an under-utilisation of the 2023 quota by (i) 16.4% (if considering the actual 2023 TAC alone) and (ii) 27.5% (if considering the 2023 TAC plus 10% of the higher 2022 quota). This means that the quota reduction from 80,047 t for 2023 to (effectively) 63,005 t for 2024 – an amount that is not very far from the actual (reported) 2023 catches of that stock of 66,935 t. This corresponds to an excessive TAC that likely will not be utilised, as it is disproportionate to the actual biomass situation of the Bothnian herring stock. It can thus also not be considered to qualify as a remedial measure under Article 5(1) of the Baltic MAP. Moreover, as pointed out above,[224] Recital 28 of the CFP Basic Regulation shows that the interannual flexibility regarding the Bothnia herring quota is clearly not used in a mixed fishery context, not relevant to making the landing obligation workable and not relevant to the catch composition. It is merely a way to increase the actual allowable catch to a level not compatible with Art. 4(6) of the Baltic MAP, as well as Art. 2(3) and Art. 2(2) in Regulation 1380/2013 (as set out above).

(241) Moreover, Article 5(1) requires the Council to take "*all appropriate remedial measures*". This suggests that more than one remedial measure needs to be taken already under Article 5(1). Even if the said measure could have been considered the bare minimum of an appropriate measure (*quod non*, as just stated, for none of the Two Herring Stocks), the Council failed to foresee several, in particular "*all*", appropriate measures, contrary to the requirement of Article 5(1) of the Baltic MAP.

(242) Furthermore, as state above, the Bothnian herring fishery underutilised the 2023 TAC allocations by 16.4%, but of 27.5% when calculated against the increased 2023 quota allocations under the year-to-year flexibility under Article 4 of Council Regulation 847/96. This makes the quota reduction from 80,047 t for 2023 to 55,000 t for 2024 (and due to the annual flexibility, to 63,000)[225] less relevant. It can certainly not be considered as a remedial measure under Article 5(1) of the Baltic MAP, especially since the Council reserved the right to continue to use the year-to-year flexibility in this case.

(243) Moreover, the CCB invites the Council also to look at Article 5 of the Baltic MAP from a systematic perspective. Where a stock does not only qualify for Article 5(1), but also for Article 5(2) – which can only be the case where its SSB situation is more critical compared to the SSB situation of a stock that "only" qualifies for Article 5(1), this must have an impact on the choice of "*all appropriate measures*" under Article 5(1) also for a stock qualifying for Article 5(2). The Council commits a manifest error of assessment and exceeds the bounds of its margin of discretion if it sets precisely the same remedial measure for a stock qualifying for Article 5(2) as for a stock "only" falling under Article 5(1).[226] This is precisely what has happened here. It is for the Council to explain how it considered to have made proper use of its discretion in the

223 See points (188) and (192)-(195) above.

224 See point (193) above.

225 See point (188) above.

226 The only conceivable exception might be a situation where the Council sets a maximum of appropriate measures which might be considered to deal with both poor conservation situation (*i.e.* it sets measures that might be more than what is required for the Article 5(1) only-stock, but qualify also as "*all appropriate measures*", *i.e.* are sufficient, for the Article 5(2) stock.

case of the Central Baltic herring stock, for which it set the same remedial measure under Article 5(1) than for the Bothnian herring stock, although the former was in more serious condition than the latter, and this already for a very long time. The CCB wonders how this can be brought in line with the guidance provided to the Council with regard to the application of its margin of discretion by Article 4(4) of the Baltic MAP.

(244) The Council had to consider the seriousness (as documented inter alia by the impressive Kobe plot shown above[227]), duration and repetition (having been below B_{lim} already for most of the last 30 years) of the below B_{lim}-situation of the Central Baltic herring stock (in line with Article 4(4) of the Baltic MAP). The Council having set a sizeable TAC in this case (i.e. anything else than a remedial measure that might be considered appropriate under Article 5(1), where Article 5(2) required further remedial measures in any event) and having set as such "*further remedial measures*" under the mentioned provision a one month spawning closure for the subdivisions of the Central Baltic herring at a time where at least a considerable part if not most of the quota amount would already have been fished can likewise not be considered a choice of measure in line with the nature, seriousness, duration and repetition of the below B_{lim} situation.[228] The CCB therefore questions the appropriateness of this "*further remedial measure*". Moreover, as in the case of one instead of all appropriate remedial measures under Article 5(1) of the Baltic MAP, the Council only set one further measure (Central herring spawning closures under Article 8 of the Contested Act) instead of (several) "further measures", as required under Article 5(2).

(245) This applies even more so where the Council takes additional management measures, even if related to other target stocks under Article 1(1) of the Baltic MAP, that even further increase the pressure exerted on the stock in question subject to Article 5(2) of the Baltic MAP, as has happened with regard to the sprat stock which pertains to the same mixed fishery as the Central Baltic herring stock. This has been set out in detail above.[229] The CCB submits that the negative impact of the sizeable sprat TAC on the SSB situation of the Central Baltic herring stock by far outweighs any conservation effect that those spawning closures could have.

(246) Also the spawning closures have therefore not been chosen, under Article 5(2) of the Baltic MAP in correct exercise of the Council's margin of discretion under Article 5(4).

(247) Moreover, the fact that the Council deliberately chose to swipe away the Commission's proposed application of its reduced margin of discretion in the legislative proposal, in particular to close the targeted fisheries for the Two Herring Stocks, as well as the deletion of facts relevant for the assessment and exercise of its discretion indicates the Council's manifest error of assessment and exceedance of the bounds of its discretion. Since the Commission had proposed, with the closure of the Central Baltic herring stock, a measure that was also suggested by the second sentence of Article 5(2) of the Baltic MAP, the suspension of the targeted fishery and the adequate reduction of fishing opportunities, the Council could not just delete this suggestion without offering any valid reason for doing so, in particular not by deleting, on top of everything, the Commission's very language regarding the parameters of Article 5(4) that would have helped the Council to exert its discretion.

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227 See between Points (188) and (190) above.

228 See point (176) above.

229 See section D.III.4.b)(iii) (Points (213) ff.) above.

6. **Second plea under the first ground: The Council misused its powers under Article 16(4) of the CFP Basic Regulation by using them to set TACs based on other objectives than those recognised under Article 2(2) of the CFP Basic Regulation**

(248) It is settled case law of the European courts that "*an act is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case*".[230]

(249) The CCB submits that this is the case for the Two Herring TACs. The analysis above demonstrates that the Council adopted TACs based on objectives other than to achieve the objectives of Article 2(2) of the CFP Basic Regulation and of Article 3(1) of the Baltic MAP, as well as on other objectives than those regarding the targets for fishing mortality and safeguards for stocks the biomass of which needs to be recovered under Articles 4 and 5 of the Baltic MAP, all of which should have been the main purpose of setting the TACs by way of the Contested Act. The Council instead pursued another main purpose, namely to permit the fishing industry to continue to operate in the short-term without taking into consideration whether or not that will achieve the objectives of Article 2(2) of the CFP Basic Regulation and of Article 3(1) of the Baltic MAP as well as of Articles 4 and 5 of the Baltic MAP.

(250) The Council thereby also evaded a procedure specifically prescribed by the Treaties, namely the ordinary legislative procedure prescribed by Article 43(2) of the TFEU, including the involvement of the European Parliament, which would have been necessary to achieve the Council's purposes of:

a. reducing the scope of the obligation to restore or maintain fish stocks above levels which can produce the MSY to certain stocks only;

b. derogating from or postponing the legally binding deadline to set TACs at the MSY exploitation rates for all target stocks by 2020 at the latest for the Two Herring TACs;

c. eliminating the mandatory requirement of Article 4(6) to close targeted fisheries in the situation described there; and

d. doing away with the obligation to adopt appropriate safeguard measures under Articles 5(1), (2) and (4) of the Baltic MAP

(251) Thus, the CBB submits that the Council misused its powers in setting these TACs at these levels, because it followed a purpose other than the ones foreseen in the Contested Act as included in Article 16(4) and 2(2) of the CFP Basic Regulation, and the requirements of Articles 4(6) and 5(1), (2) and (4) of the Baltic MAP, and because it effectively evaded the procedure foreseen for an act with the purpose of derogating from the established objective of the CFP, namely Article 43(2) of the TFEU.

IV. **Second ground (single plea): the Council disregarded essential elements of the CFP Basic Regulation and of the Baltic MAP when setting the TACs for the Two Herring**

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230 CJEU, Case C-121/10 *Commission v Council* EU:C:2013:784, paragraph 81 and the case-law cited; Case C-310/04 *Spain v Council* EU:C:2006:521, paragraph 69.

Stocks and the Baltic sprat stock and thus adopted the Contested Act despite a lack of competence

(252) The CCB respectfully submits that the Council lacked competence under Article 43(3) TFEU to adopt the TACs for the Two Herring Stocks, as well as for the Baltic sprat stock, because it explicitly disregarded essential elements of the CFP Basic Regulation, adopted on the basis of Article 43(2) TFEU, thereby exceeding its powers under Article 43(3) TFEU.

(253) The CJEU has held that the Council, when it adopts measures on the basis of Article 43(3) TFEU, has to acts within the limits of its powers and within the legal framework already established by the EU legislator under article 43(2) TFEU.[231] As has been set out in detail above, the CCB submits that in adopting the Contested Act, the Council disregarded essential elements of the relevant legal framework. In particular, it violated the CFP Basic Regulation, the Baltic MAP, as well as its obligation to engage in sincere cooperation with the EU Member States under Article 4(3) TEU to not jeopardise the achievement of the objectives and the *effet utile* of the MSFD, as well as of the Habitats and the Birds Directives.

(254) The CCB submits that the Council lacked the competence to adopt the Contested Act under Article 43(3) TFEU for the Two Herring Stocks, because, as the analysis above shows, it explicitly disregarded essential elements of the CFP Basic Regulation as well as of the Baltic MAP, representing acts adopted by the co-legislators under Article 43(2) TFEU and thus constituting the legal framework that the Council had to respect when acting without the involvement of the European Parliament, under Article 43(3) TFEU. The Council thus exceeded its powers under Article 43(3).

(255) Reference is made to the wording of Article 43(2) and (3) TFEU, as reproduced above.[232] The CJEU has held that measures adopted under Article 43(3) TFEU are of a "primarily technical nature" intended to be adopted to "*implement provisions adopted on the basis of Article 43(2) TFEU*",[233] such as the CFP Basic Regulation or, in the case at hand, also the Baltic MAP. The CJEU has further stated that "[t]*he essential elements of basic legislation are those which in order to be adopted, require political choices falling within the responsibilities of the EU legislator.* (...) *Identifying the elements of a matter which must be categorised as essential must be based on objective factors amenable to judicial review, and requires account to be taken of the characteristics in particular features of the field concerned.*"[234]

(256) As stated above, the Council's competence under Article 43(3) TFEU is limited by the legal framework established under article 43(2) TFEU, including the essential elements of the CFP basic regulation and, in the case at hand, of the Baltic MAP. This includes the MSY Obligation and deadline enshrined in Article 16(4) and 2(2) of the CFP Basic Regulation, as well as in Article 3(1) of the Baltic MAP, the target and safeguard provisions of the Baltic MAP (in its Articles 4(6) and 5(1), (2) and (4)), the precautionary approach to fisheries management under Articles 16(4) and 2(2) of the CFP Basic Regulation, the ecosystem-based approach to fisheries management under Article 2(3) of the CFP Basic Regulation and Article 3(3) of the Baltic MAP. All

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231 See *Friends of the Irish Environment* (fn. 26 above), paragraph 58; see also Joined Cases C-124/13 and C-125/13 *Parliament and Commission v Council* EU:C:2015:790, paragraph 58.

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233 Joined Cases C-103/12 an C-165/12 European Parliament and European Commission v Council of the European Union EU:C:2014:2400, paragraph 50; see also *Friends of the Irish Environment* (fn. 26 above), paragraph 58.

234 Case C-44/16 P *Dyson v Commission* EU:C:2017:357, paragraphs 58-59.

of these provisions are essential elements of fisheries rules adopted by the co-legislators under the ordinary legislative procedure based on Article 43(2) TFEU.

(257) As shown under the first ground above, the Council decided to adopt the TACs for the Two Herring Stocks as well as for the Baltic sprat stock in violation of the above rules set by EU fisheries legislation under Article 42(2) TFEU, which, as set out in detail below, enshrines (as well as refers to) numerous rules of environmental law. These violations implied policy choices that the Council could only have made jointly with the European Parliament in the ordinary legislative procedure. Since it avoided the ordinary the legislative procedure under Article 43(2) TFEU to change the legislation in a way that it would allow the Council to adopt the Contested TACs, the Council lacked the competence to adopt the Contested Act.

E. **CONCLUSION**

(258) By this Request for Internal Review, the CCB has submitted facts and legal arguments that raise serious doubts about the legality of the Contested Act as regards the setting of the 2024 TACs for the Two Herring Stocks as well as for the Baltic sprat stock as referred to in point (1) . The CCB hereby asks the Council of the European Union to review Council Regulation (EU) 2023/2638 of 20 November 2023 in accordance with the Aarhus Regulation.

(259) As set out above, the CCB considers that the Council, by adopting the Contested Act, infringed the Treaties and rules of law relating to their application, and misused the powers conferred by those rules. In particular, the Council committed manifest errors of assessment and exceeded the bounds of its discretion by setting the TACs for the Two Herring Stocks and, in part also the Baltic sprat stock, in violation of fisheries and environmental rules laid down in the CFP Basic Regulation and in the Baltic MAP, as well as in violation of the Council's obligation to sincere cooperation under Article 4(3) TEU. In this regard, the Contested Act

a. directly violates the target set in Article 4(6) of the Baltic MAP;

b. is vitiated by manifest errors of assessment and exceedance of the bounds of the Council's discretion

i. by TACs for the Two Herring TACs being set in violation of the MSY obligation under Articles 16(4) and 2(2) of the CFP Basic Regulation and Article 3(1) of the Baltic MAP;

ii. due to a failure to set the Two Herring TACs in line with the precautionary approach to fisheries management under Articles 16(4) and 2(2) of the CFP Basic Regulation;

iii. because the setting of the Contested TACs (including the sprat TAC) violate the obligation to implement an ecosystem-based approach to fisheries management under Article 2(3) of the CFP Basic Regulation and Article 3(3) of the Baltic MAP and the principle of sincere cooperation under Article 4(3) TEU in connection with the MSFD and the Nature Directives;

iv. due to failure to take appropriate and sufficient remedial measures under Article 5(1) and (2), as well as (4) of the Baltic MAP.

(260) Moreover, as also set out above, the Council disregarded essential elements of the CFP Basic Regulation and of the Baltic MAP when setting the TACs for the Two

Herring Stocks and the Baltic Sprat Stock and thus adopted the Contested Act despite a lack of competence.

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F. TABLE OF ANNEXES

ANNEXES	
No.	**Title, References**
1.	ICES, Acronyms and terminology, ICES Advice 2012, Book 1
2.	Constitution of the Coalition Clean Baltic as enacted on 16 May 1992 and revised on 11 June 1995, 26 May 2002, 25 May 2008, 22 April 2018, 5 June 2020, 14 June 2023
3.	CCB's Annual Activity Reports of the last two years[235]
3.1	<https://www.ccb.se/publication/ccb-summary-annual-report-2021>
3.2	<https://www.ccb.se/publication/ccb-summary-annual-report-2022>
4.	CCB's Certificate of Registry (as "*copy of the legal registration with the national authorities*" under Article 2(5)(c) of CD (EU) 2023/748)
5.	CCB's Power of Attorney, docu-signed on 8 December 2023
6.	Confirmation of admission of the external counsel to a bar association of an EU Member State
7.	ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 13 June 2023, "*Herring (Clupea harengus) in subdivisions 25–29 and 32, excluding the Gulf of Riga (central Baltic Sea). Replacing advice provided in May 2023*"
8.	ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 31 May 2023, "*Herring (Clupea harengus) in subdivisions 30 and 31 (Gulf of Bothnia)*"
9.	Commission's proposal: Council of the European Union, Interinstitutional File: 2023/0301(NLE), "*Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters*", 14024/1/23 REV 1, Brussels, 19 October 2023
10.	Council's revisions the Commission's proposal: Council of the European Union, Interinstitutional File: 2023/0301(NLE), "*Proposal for a COUNCIL REGULATION fixing the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea for 2024 and amending Regulation (EU) 2023/194 as regards certain fishing opportunities in other waters – Political agreement*", 14499/1/23 REV 1, Brussels, 24 October 2023
11.	Swedish Agency for Marine and Water Management (*Havs och Vatten myndigheten*), Commented Agenda for the Ministry of Agriculture and Infrastructure regarding the the Fisheries policy attaché meeting on 21 September 2023, 19 September 2023
12.	Swedish Agency for Marine and Water Management (Havs och Vatten myndigheten), Commented Agenda for the Ministry of Agriculture and Infrastructure regarding the Fisheries policy attaché meeting on 21 September 2023, 19 September 2023 (Convenience translation (DeepL) from the Swedish original)
13.	ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 31 May 2023, "*Sprat (Sprattus sprattus) in subdivisions 22–32 (Baltic Sea)*"
14.	Excel-Table: Herring and Sprat Landings ('000 t) 2022 in Central Baltic (incl. Gulf of Riga) Sea by SD and Quarter
15.	Table: overview protected species with herring as main or important feed source
16.	ICES Advice on fishing opportunities, catch and effort. Baltic Sea ecoregion, published on 31 May 2023, "*Herring (Clupea harengus) in subdivisions 20–24, spring spawners (Skagerrak, Kattegat, and western Baltic)*"

[235] Kindly refer to fn. 69 above.

G. **LIST OF WEBSITE LINKS WORKING IN PDF FORMAT**

Fn. containing link	Link
11	https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2084(INI)&l=en
30 und 33	UN website documenting the deposition of ratification instruments relating to the UNCLOS and related Agreements: https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm#Agreement%20for%20the%20implementation%20of%20the%20provisions%20of%20the%20Convention%20of%2010%20December%201982%20relating%20to%20the%20conservation%20and%20management%20of%20straddling%20fish%20stocks%20and%20highly%20migratory%20fish%20stocks
57	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0380
67	https://data.consilium.europa.eu/doc/document/ST-11829-2020-INIT/en/pdf
128	https://ices-library.figshare.com/articles/report/Baltic_Fisheries_Assessment_Working_Group_WGBFAS_/23123768
157	https://ices-library.figshare.com/articles/report/Baltic_Sea_ecoregion_fisheries_overview/21646934?file=39080657
157	https://ices-library.figshare.com/articles/report/Baltic_Sea_Ecoregion_Ecosystem_overview/21725438
158	https://www.clientearth.org/media/1papkfea/how- not-to-implement-the-ecosystem-based-approach-when-setting-total-allowable-catches-tacs.pdf
167	https://ices-library.figshare.com/articles/report/Benchmark_Workshop_on_Baltic_Pelagic_stocks_WKBBALTPEL_/23216492
196	https://www.researchgate.net/publication/318754697_Mystery_of_the_M74_syndrome_solved_plentiful_fatty_sprat_as_prey_for_salmon_leads_to_reproduction_disorder

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