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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION establishing the position to be taken on behalf of the Union in the consultations with the United Kingdom to agree on fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022

COUNCIL DECISION (EU) 2021/...

of ...

**establishing the position to be taken on behalf of the Union
in the consultations with the United Kingdom
to agree on fishing opportunities for shared stocks for 2021
and, for certain deep-sea stocks, for 2021 and 2022**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Council Decision (EU) 2020/2252¹, the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part² (the ‘Agreement’), was signed on 30 December 2020 and applies on a provisional basis as from 1 January 2021.
- (2) Under Article 494 of the Agreement, the Union and the United Kingdom agreed to cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties. Both Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield.

¹ Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 444, 31.12.2020, p. 2).

² OJ L 444, 31.12.2020, p. 14.

- (3) Pursuant to Article 498 of the Agreement, the Union and the United Kingdom are to hold consultations to agree on total allowable catches ('TACs') for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022.
- (4) The annual consultations related to fisheries under the Agreement should be carried out by the Commission on the basis of Union positions which are to be established by the Council in accordance with the relevant Treaty provisions.
- (5) The Council should therefore establish the position to be taken on behalf of the Union in the consultations with the United Kingdom to agree on fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022.
- (6) On 29 January 2021, the Council approved initial guidance for the consultations concerning fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022. On the basis of that guidance, the Commission has engaged in consultations with the United Kingdom on fixing the fishing opportunities for those stocks. The regular and full involvement of the Council and its preparatory bodies in that process has been and should continue to be ensured by means of the approval by the Council of the Union position, including its particulars, and of extensive coordination and cooperation between the Council and the Commission, in line with the principle of sincere cooperation among the Union institutions. Those arrangements should also cover any amendments of the TACs which may be appropriate in the course of 2021.

- (7) The coordination arrangements should be compatible with external representation powers of the Commission, should allow for a swift and timely outcome of the consultations and should respect the Commission's right of initiative.
- (8) Article 2(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council¹ provides that the Union is to 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.

¹ 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, 28.12.2013, p. 22).

- (9) Article 2(2) of Regulation (EU) No 1380/2013 provides that the Union is to apply the precautionary approach to fisheries management, and is to aim to ensure that exploitation of living marine biological resources restores and maintains population of harvested species above levels, which can produce the maximum sustainable yield (MSY). Under Article 2(5) of that Regulation, fisheries management should be coherent with achieving a good environmental status under Directive 2008/56/EC of the European Parliament and of the Council¹. Article 2(5) further provides that the Union is to support the gradual elimination of discards by promoting fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, as well as fishing with low impact on marine ecosystem and fishery resources. Point (c) of Article 3 of that Regulation provides that the Union is to take management and conservation measures based on the best available scientific advice. Article 28 of that Regulation specifically provides that the objectives and principles set out in Articles 2 and 3 of that Regulation, including the support to the development of scientific knowledge and advice, are to be applied by the Union in the conduct of its external fisheries relations, and that the provisions on external policy as set out in Part VI of that Regulation are without prejudice to specific provisions adopted under Article 218 of the Treaty. Article 33 of that Regulation provides for the principles and objectives of management of stocks of common interest to the Union and third countries and agreements on exchange and joint management.

¹ 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, 25.6.2008, p. 19).

- (10) While the Union by Council Regulation (EU) 2021/92¹, in accordance with Article 499 of the Agreement and after having consulted the United Kingdom, has fixed provisional fishing opportunities from 1 January 2021, definitive fishing opportunities should be agreed with the United Kingdom.
- (11) It is therefore appropriate to establish the position to be taken on behalf of the Union during the consultations with the United Kingdom, as the result of those consultations will be implemented into Union law,

HAS ADOPTED THIS DECISION:

¹ Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 31, 29.1.2021, p. 31).

Article 1

1. The position to be taken on behalf of the Union in the consultations with the United Kingdom under Article 498 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the ‘Agreement’) to agree on fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022 is set out in the Annex.
2. The position referred to in paragraph 1 shall be further specified in accordance with the arrangements set out in Article 2.

Article 2

1. The regular and full involvement of the Council during the entire consultation process shall be ensured by means of extensive coordination and cooperation between the Council and the Commission. That process shall include in situ coordination meetings, presentations, debriefings and discussions, and the full involvement of national delegations in the consultations, including as part of the Union delegation, as well as, when needed, in technical meetings.

2. During the consultations referred to in paragraph 1, the position to be expressed on behalf of the Union shall take account of the latest scientific and other relevant information, in accordance with the principles and orientations set out in the Annex. That shall be appropriately reflected in the written record documenting the arrangements made between the Parties to the Agreement as a result of consultations under Article 498 thereof.
3. To that effect, and based on the information referred to in paragraph 2, the Commission shall transmit to the Council, in sufficient time before signature of the written record referred to in that paragraph, the proposed specification of the Union's position for endorsement of the detailed results of the consultations.
4. If, in the course of the meetings between the Parties to the Agreement, it is impossible to reach an agreement on the specification of the position, the matter shall be referred to the Council or its preparatory bodies.
5. If, after the conclusion of the consultations, it is appropriate to amend the fishing opportunities in the course of 2021, the Commission shall, in sufficient time and on the basis of the latest scientific and other relevant information and in accordance with the principles and orientations set out in the Annex, submit to the Council a written document setting out the particulars of the proposed specification of the Union's position, for discussion and endorsement of the details of the position to be expressed on behalf of the Union before a signature of the written record referred to in paragraph 2.

If, in the course of the consultations between the Parties to the Agreement, it is impossible to reach an agreement, the matter shall be referred to the Council or its preparatory bodies.

Article 3

This Decision is addressed to the Commission.

Done at ...,

For the Council

The President

ANNEX

The position to be taken on behalf of the Union
in the consultations with the United Kingdom to agree
on fishing opportunities for shared stocks for 2021
and, for certain deep-sea stocks, for 2021 and 2022

1. PRINCIPLES

In the framework of the consultations with the United Kingdom, the Union shall:

- (a) Seek to ensure that the fishing opportunities agreed are consistent with international law, and in particular with the provisions of the 1982 United Nation ('UN') Convention on the Law of the Sea and of the 1995 UN Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
- (b) Seek to ensure that the Union's international commitments are respected.
- (c) Seek consistency and synergy with the policy that the Union is pursuing as part of its bilateral fisheries relations with other third countries and within regional fisheries management organisations, and ensure coherence with its other policies notably in the field of external relations, employment, environment, trade, development, research and innovation.
- (d) Seek that TACs are jointly determined in line with the objective of the Common Fisheries Policy (CFP) to ensure that fisheries 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, including the core conservation objective of the CFP, MSY and the applicable multiannual plans.

- (e) Seek alignment with the Council conclusions of 19 March 2012 on a Communication from the Commission on the External dimension of the Common Fisheries Policy.
- (f) Seek consistency with the Communication of the Commission of 16 June 2020 ‘Towards more sustainable fishing in the EU: state of play and orientations for 2021’.
- (g) Seek to ensure, as much as possible, a level-playing field for the Union fleet based on the same principles and standards as those applicable under Union law.
- (h) Seek to establish timelines for the annual consultations on fishing opportunities in 2021.
- (i) Seek to take into account, as much as possible, the priorities for stocks which are politically sensitive, in particular, haddock, whiting and cod in the Celtic Sea; cod in West of Scotland; red seabream in 6, 7 and 8; tusk in 5, 6 and 7; undulate ray in 8, 9, 7d and 7e; anglerfish in 2a and 4; megrims in 2a and 4; saithe in 3a and 4; hake in 2a and 4; sole in 7f and 7g; sole in 7h, 7j and 7k; plaice in 7h, 7j and 7k; cod in 7a.
- (j) Seek that the initial guidance provided by the Council, as further developed by this Decision, be fully adhered to.

2. ORIENTATIONS

The Union shall, where appropriate, endeavour to reach agreement with the United Kingdom for the fishing opportunities (TACs and their functionally linked measures) for 2021 and for 2021 and 2022 for certain deep-sea stocks, based on the approach outlined below.

The Union shall, where necessary, consider how, for individual cases or issues, a specific approach might need to be developed to delivering results that contribute to the overall objective of sustainable management of the fisheries and marine biological resources in its three dimensions (environmental, economic and social) in line with the objectives of the CFP, including flexibilities available under multiannual plans. In doing so, the Commission should work closely with the Council during consultations for further development of that approach, in order to:

- (a) Seek to set TACs on the basis of the best available scientific advice, which would bring or maintain the achievement of the MSY exploitation rate, and, where such advice is not available, under the principle of precautionary approach to fisheries.
 - For the TACs of western Channel herring, plaice and sole West of Scotland, saithe in western waters, no scientific advice from the International Council for the Exploration of the Sea (ICES) was received. Therefore, the Union should seek a roll-over of the TAC for 2020, as no risk of overexploitation was identified.
 - For the TACs of lemon sole and witch, turbot and brill, sandeel and *nephrops*, there is a mismatch between the ICES advice area and the management area. Some TACs are composed of more than one species, while other advice assesses different stocks of the same species covered in one TAC. For those TACs, the Union should seek a combination of different best available advices, including, where advice combines MSY and precautionary advice, similar to earlier years.

- (b) Seek TAC levels in accordance with the MSY objective of the CFP and the applicable multiannual plans for 27 TACs with MSY assessment and FMSY advice.
- Where the multiannual plans allow for the use of the FMSY ranges as provided by ICES, the Union should seek to make use of those provisions, if the conditions set out in those multiannual plans are fulfilled, seeking the optimum level in light of the quantitative and qualitative elements in the advice.
 - The Union should seek to take into account the difficulty of fishing all stocks in a mixed fishery at the MSY level at the same time, and in particular where it is very difficult to avoid the phenomenon of choke species. That is the case for the following TACs:
 - Celtic Sea cod (0 TAC advice). This stock is assessed below the limit value for reproduction. The Union should seek the creation of a by-catch TAC at levels that would avoid the choking of the fishery for other species, while respecting the need for further protection of this vulnerable stock.
 - The Union should seek to accompany the TAC level with remedial measures, as developed under the regionalisation and submitted by Member States as joint recommendations for implementation in 2021.
 - Both herring with 0 TAC advice (7g, 7h and 7k – MSY advice, and 5b, 6b and 6aN – precautionary advice) have been kept at low levels of fishing in the past, with fishing limited to levels that support the further scientific assessment. The Union should seek continuation of this approach with scientific/sentinel TACs at levels corresponding to past years.

- (c) Seek agreement based on the precautionary approach corresponding to the headline advice in the ICES advice sheet for 43 TACs with precautionary advice.
- Precautionary advice is given mostly for by-catch stocks (under multiannual plans). There are some target stocks (under the multiannual plans) where ICES has not been able to provide MSY assessment. Those TACs should also be agreed upon based on the precautionary advice.
 - A limited number of TACs receive multiannual precautionary advice (e.g. boarfish, ling in the North Sea and ling in the Western waters). For those TACs, the Union should seek stability of the TACs for the corresponding years.
 - West of Scotland cod (0 TAC advice). This stock is in a similar state as the Celtic sea stock. A by-catch TAC is justified here to avoid choking of the fisheries, mainly haddock.
- (d) Seek to ensure that TAC levels, in accordance with scientific advice, are fixed in time for the start of the fishing year for sandeel, sprat and Norway Pout in the North Sea, where the fishing year does not follow the calendar year.
- (e) Seek consistency with the Union's specific approach in relation to, in particular, picked dogfish, greater silver smelt and the European eel stock.
- (f) Seek confirmation and prolongation of the list of prohibited species, as developed over time and based on scientific advice, namely the general prohibition for the fisheries on deep-sea sharks.

- (g) Seek to agree with the United Kingdom on the method and application of the adjustments to the agreed TACs following the application of exemptions to the landing obligation (*de minimis* and survivability exemptions to the obligation to land all catches). The highest possible level of convergence of such exemptions consistent with Article 15 of Regulation (EU) No 1380/2013 should be sought.
- (h) Seek agreement on continuation of the approach developed for the conservation of the northern seabass, notably the implementation of measures as provided for in Regulation (EU) 2021/92 ensuring that the overall fishing pressure remains based on the scientific advice provided by ICES.
- (i) Seek to agree on other measures, functionally linked to the TACs in line and to the extent as adopted under Regulation (EU) 2021/92, in particular maintaining special conditions and inter-area flexibilities, as set out in the footnotes to TAC tables in, and as established under, Regulation (EU) 2021/92.
- (j) Seek to agree on inter-annual and inter-species flexibilities in line with Regulation (EU) No 1380/2013, in particular Article 15(8) and (9) thereof, while making clear that neither Party may unilaterally use inter-area, inter-annual or inter-species flexibilities in a way which would violate the quota shares or other rules set out in the Agreement.
- (k) Engage, on exploratory basis, in discussions to facilitate sufficient access to sustainable continuation of the fishing activity for non-quota species, without prejudging the Union's position to be taken within the Specialised Committee on Fisheries competent under the Agreement to adopt such measures.

- (l) Without prejudging the Union's position to be taken within the Specialised Committee on Fisheries competent under the Agreement to decide on the details of the in-year swapping mechanism, engage on exploratory basis in discussions on quota transfers and on in-year quota swapping possibilities; that swapping mechanism should be built on voluntary contributions by Member States and should ensure that the Member States who contribute to the swaps also proportionally benefit from them.
 - (m) Support measures developing and promoting the use of tools (technologies, information exchange systems, registers, etc.) to support and facilitate the implementation of the Agreement, and ensure that they are compatible with those developed within the Union for addressing similar purposes.
 - (n) Support measures aimed at strengthening transparency, dialogue and cooperation with relevant stakeholders on matters related to the implementation of the Agreement.
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