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PECHE 107

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	8 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 109 final
Subject:	Proposal for a COUNCIL DECISION concerning the position to be taken on behalf of the European Union in the Commission for the Conservation of Antarctic Marine Living Resources and repealing Decision 10840/14

Delegations will find attached document COM(2019) 109 final.

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Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the European Union in the Commission for the Conservation of Antarctic Marine Living Resources and repealing Decision 10840/14

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the Union's behalf at the annual meetings of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) for the period 2019-2023 in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Convention for the Conservation of Antarctic Marine Living Resources

The objective of the Convention for the Conservation of Antarctic Marine Living Resources (CAMLR Convention) is the conservation, including the rational use, of Antarctic marine living resources, which form part of the Antarctic ecosystem. The Convention entered into force on 7 April 1982.

The Union[1] and a number of its Member States[2] are contracting parties to the CAMLR Convention.

2.2. Commission for the Conservation of Antarctic Marine Living Resources

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is the body established by the CAMLR Convention to adopt measures to ensure the conservation of Antarctic marine living resources, including their rational use. To this end, it formulates, adopts and revises conservation measures based on the best scientific evidence available. Such measures may become binding upon the Union.

As a member of the CCAMLR, the Union is entitled to participate in, and vote on, its decisions. The CCAMLR takes its decisions by consensus.

2.3. CCAMLR decisions

The CCAMLR meets at least once a year. It adopts conservation measures, based on the best available scientific information, that govern the use of marine living resources in the Antarctic.

In accordance with Article IX.6 of the CAMLR Convention, members are notified of the measures immediately after the annual meetings and the measures become binding 180 days later. Members that object to such a measure within 90 days of being notified are not bound by that measure.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be adopted on behalf of the Union at the annual meetings of regional fisheries management organisations (RFMOs) is currently established according to a two-tier approach. A Council Decision sets out the guiding principles and orientations of the Union's position on a multiannual basis and it is subsequently adjusted for each annual meeting by Commission non-papers to be discussed in the Council Working Party.

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1 Council Decision 81/691/EEC (OJ L 252, 5.9.1981, p. 26).

2 The following Member States have acceded to the Convention: Belgium (1980), Finland (1989, but not a member of the CCAMLR), France (1980), Germany (1980), Greece (1987, but not a member of the CCAMLR), Italy (1989), the Netherlands (1990), Poland (1980), Spain (1984), Sweden (1984) and the United Kingdom (1980).

For the CCAMLR, this approach is implemented by Council Decision 10840/14 of 25 June 2014 setting out the Union's position in the CCAMLR for the period 2014-2018. The Decision contains general principles and orientations, but also takes into account to the extent possible the specificities of the CCAMLR. In addition, it sets out the standard process for establishing the Union's position year by year, as requested by Member States.

Decision 10840/14 provides for a review of the Union's position before the 2019 annual meeting. Therefore, this proposal sets out the Union's position in the CCAMLR for the period 2019-2023, thereby replacing Decision 10840/14.

Decision 10840/14 incorporated the principles and orientations of the new common fisheries policy (CFP), as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[3], also taking into account the objectives set in the Commission's Communication on the external dimension of the CFP[4]. Moreover, it adjusted the Union's position to the Lisbon Treaty.

The current revision takes into consideration, in connection with the impacts of fishing, of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a *European strategy for plastics in a circular economy*[5], the Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission on *International ocean governance: an agenda for the future of oceans*'[6] and the Council conclusions on that Joint Communication[7].

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement'.

'Acts having legal effects' include acts that have legal effects by virtue of the rules of international law governing the body in question, and instruments that do not have a binding effect under international law, but are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[8].

4.1.2. Application to the present case

The CCAMLR is a body set up by an agreement, namely the CAMLR Convention.

The acts that the CCAMLR is called upon to adopt constitute acts having legal effects. They are to be binding under international law in accordance with Article X.6 of the CAMLR Convention and, because CCAMLR decisions may supplement, amend or replace obligations

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3 Regulation (EU) No 1380/2013 of the European Parliament and of the Council 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).

4 COM(2011) 424, 13.7.2011.

5 COM(2018) 28 final, 16.1.2018.

6 JOIN(2016) 49 final, 10.11.2016.

7 7348/1/17 REV 1, 24.3.2017.

8 Judgment of the Court of Justice of 7 October 2014, *Germany* v *Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

laid down in existing EU legislation, are capable of decisively influencing the content of that legislation, including:

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing[9];
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the CFP[10];
- Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets[11];
- Council Regulation (EC) No 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources[12];
- Council Regulation (EC) No 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources[13]; and
- Council Regulation (EC) No 1035/2001 establishing a catch documentation scheme for *Dissostichus spp*[14].

The envisaged acts do not supplement or amend the institutional framework of the CAMLR Convention.

Therefore, the procedural legal basis for the proposed Decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a Decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If that act pursues two aims or has two components, and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the Decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to fisheries. Regulation (EU) No 1380/2013 is the legal basis setting out the principles to be reflected in this position.

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision is to replace Council Decision 10840/14, which covers the period 2014-2018.

4.3. Conclusion

The legal basis of the proposed Decision should be Article 43(2) TFEU, in conjunction with Article 218(9) TFEU.

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9 OJ L 286, 29.10.2008, p. 1.
10 OJ L 343, 22.12.2009, p. 1.
11 OJ L 347, 28.12.2017, p. 81.
12 OJ L 97, 1.4.2004, p. 1.
13 OJ L 97, 1.4.2004, p. 16.
14 OJ L 145, 31.5.2001, p. 1.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Decision 81/691/EEC[15] the European Community concluded the Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention), which entered into force on 7 April 1982 and established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). Belgium, France, Germany, Italy, Poland, Spain, Sweden and the United Kingdom are also Contracting Parties to the CAMLR Convention. Finland, Greece and the Netherlands are Contracting Parties to the CAMLR Convention but not Members of the CCAMLR.

(2) Pursuant to Article IX.1 of the CAMLR Convention, the CCAMLR is responsible for the adoption of conservation measures at its annual meetings designed to ensure the conservation of Antarctic marine living resources, including their rational use. Such measures may become binding upon the Union.

(3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[16] 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. It also 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. It further provides that the Union is to take management and conservation measures based on best available scientific advice, to support the development of scientific knowledge and advice, to gradually eliminate discards and to promote fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, to fishing with low impact on

[15] Council Decision of 4 September 1981 on the conclusion of the Convention on the conservation of Antarctic marine living resources (OJ L 252, 5.9.1981, p. 26).

[16] 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).

marine ecosystem and fishery resources. Besides, Regulation (EU) No 1380/2013 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.

(4) As stated in the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on *International ocean governance: an agenda for the future of oceans*[17], and the Council conclusions on that Joint communication[18], the promotion of measures to support and enhance the effectiveness of regional fisheries management organisations (RFMOs) and, where relevant, improve their governance is central to the Union's action in these fora.

(5) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a *European Strategy for Plastics in a Circular Economy*[19], refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the CCAMLR for the period 2019-2023, as the CCAMLR conservation measures will be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulation (EC) No 1005/2008[20]; Council Regulation (EC) No 1224/2009[21]; Regulation (EU) 2017/2403 of the European Parliament and of the Council[22]; Council Regulation 600/2004[23]; Council Regulation 601/2004[24] and Council Regulation (EC) No 1035/2001[25].

(7) Currently the position to be taken on the Union's behalf in the meetings of the CCAMLR is established by Council Decision 10840/14[26]. It is appropriate to repeal Decision 10840/14 and to replace it by a new Decision for the period 2019-2023

(8) In view of the evolving nature of fishery resources in the CAMLR Convention Area and the consequent need for the position of the Union to take account of new

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17 JOIN(2016) 49 final of 10.11.2016.

18 7348/1/17 REV 1 of 24.3.2017.

19 COM(2018) 28 final, 16.1.2018.

20 Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

21 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

22 Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

23 Council Regulation 600/2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources (OJ L 97, 1.4.2004, p. 1).

24 Council Regulation 601/2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources (OJ L 97, 1.4.2004, p. 16).

25 Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for *Dissostichus spp* (OJ L 145, 31.5.2001 p. 1).

26 Council Decision of 25 June 2014 on the position to be adopted, on behalf of the European Union, in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

developments, including new scientific and other relevant information presented before or during the meetings of the CCAMLR, procedures should be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union (TEU), for the year-to-year specification of the Union's position for the period 2019-2023.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is set out in Annex I.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the CCAMLR shall be conducted in accordance with Annex II.

Article 3

The Union's position set out in Annex I shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest for the annual meeting of the CCAMLR in 2024.

Article 4

Decision 10840/14 of 25 June 2014 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President