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PECHE 111

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) 111 final
Subject:	Proposal for a COUNCIL DECISION concerning the position to be taken on behalf of the European Union in the International Commission for the Conservation of Atlantic Tunas and repealing Decision 10974/1/14 REV 1

Delegations will find attached document COM(2019) 111 final.

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Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the European Union in the International Commission for the Conservation of Atlantic Tunas and repealing Decision 10974/1/14 REV 1

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 meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the period 2019-2023 in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. International Convention for the Conservation of Atlantic Tunas

The International Convention for the Conservation of Atlantic Tunas (ICCAT Convention) aims, by establishing the ICCAT, to promote cooperation in maintaining the populations of tuna and tuna-like fish in the Atlantic Ocean at levels that permit the maximum sustainable catch for food and other purposes. The Convention entered into force on 21 March 1969.

The Union is a party to the ICCAT, having approved the Convention pursuant to the Council Decision of 9 June 1986[1].

2.2. International Commission for the Conservation of Atlantic Tunas

The ICCAT is the body established by the ICCAT Convention to adopt binding decisions ('recommendations') for the conservation and management of the fisheries under its purview. Such measures may become binding on the Union.

As a contracting party of the ICCAT, the Union has participation and voting rights. The ICCAT takes its decisions by consensus.

2.3. ICCAT decisions

The ICCAT has the authority to adopt recommendations for the conservation and management of the fisheries under its purview and these are binding on the contracting parties.

In accordance with Article VIII.2 of the ICCAT Convention, the recommendations enter into force six months after the date on which the contracting parties are notified of them by the ICCAT. A recommendation is not binding on a contracting party if it has submitted and reaffirmed an objection to it. If the objection is supported by a majority of the contracting parties, the recommendation does not come into effect.

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.

For the ICCAT, this approach is implemented by Council Decision 10974/1/14 REV 1 of 20 June 2014, which sets out the Union's position in the ICCAT for the period 2014-2018.

[1] Council Decision of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984 (OJ L 162, 18.6.1986, p. 33).

The Decision contains general principles and orientations, but also takes into account to the extent possible the specificities of the ICCAT. In addition, it sets out the standard process for establishing the Union's position year by year, as requested by Member States.

Decision 10974/1/14 REV 1 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 ICCAT for the period 2019-2023, thereby replacing Decision 10974/1/14 REV 1.

Decision 10974/1/14 REV 1 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[2], also taking into account the objectives set in the Commission's Communication on the external dimension of the CFP[3]. Moreover, it adjusted the Union's position to the Lisbon Treaty.

The current revision takes into consideration, in connection with 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*[4], 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*[5] and the Council conclusions on that Joint Communication[6].

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' includes 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'[7].

4.1.2. Application to the present case

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

The acts that the ICCAT is called upon to adopt constitute acts having legal effects. They are to be binding under international law in accordance with Article VIII of the ICCAT Convention and, because ICCAT recommendations may supplement, amend or replace obligations laid down in existing EU legislation, are capable of decisively influencing the content of that legislation, including:

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2 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).

3 COM(2011) 424, 13.7.2011.

4 COM(2018) 28 final, 16.1.2018.

5 JOIN(2016) 49 final, 10.11.2016.

6 7348/1/17 REV 1, 24.3.2017.

7 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.

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing[8];
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy[9];
- Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets[10];
- Regulation (EU) 2016/1627 of the European Parliament and of the Council on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009[11];
- Council Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish[12];
- Council Regulation (EC) No 520/2007 laying down technical measures for the conservation of certain stocks of highly migratory species and repealing Regulation (EC) No 973/2001[13]; and
- Council Regulation (EC) No 1984/2003 introducing a system for the statistical monitoring of trade in swordfish and bigeye tuna within the Community[14].

The envisaged acts do not supplement or amend the institutional framework of the ICCAT 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 Decision 10974/1/14 REV 1, 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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8 OJ L 286, 29.10.2008, p. 1.
9 OJ L 343, 22.12.2009, p. 1.
10 OJ L 347, 28.12.2017, p. 81.
11 OJ L 252, 16.9.2016, p. 1.
12 OJ L 263, 3.10.2001, p. 1.
13 OJ L 123, 12.5.2007, p. 3.
14 OJ L 295, 13.11.2003, 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 of 9 June 1986[15] the European Community concluded the International Convention for the Conservation of Atlantic Tunas (ICCAT Convention), which established the International Commission for the Conservation of Atlantic Tunas (ICCAT).

(2) The ICCAT is responsible for the adoption of measures designed to ensure the long-term conservation and sustainable use of the fishery resources in the ICCAT Convention area and to safeguard the marine ecosystems in which these resources occur. 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 marine ecosystem and fishery resources. Besides, Regulation (EU) No 1380/2013

[15] Council Decision of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984 (OJ L 162 of 18.6.1986, p. 33).

[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).

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 ICCAT for the period 2019-2024, as the ICCAT 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]; and Regulation (EU) 2017/2403 of the European Parliament and of the Council[22]; Regulation (EU) 2016/1627 of the European Parliament and the Council[23]; Council Regulation (EC) No 1936/2001[24]; Council Regulation (EC) No 520/2007[25]; and Council Regulation (EC) No 1984/2003[26]. This is because the recommendations adopted by ICCAT might supplement, amend or replace the obligations foreseen in the existing EU legislation.

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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 Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

24 Council Regulation (EC) No 1936/2001 of 27 September 2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish (OJ L 263, 3.10.2001, p. 1).

25 Council Regulation (EC) No 520/2007 of 7 May 2007 laying down technical measures for the conservation of certain stocks of highly migratory species and repealing Regulation (EC) No 973/2001 (OJ L 123, 12.5.2007, p. 3).

26 Council Regulation (EC) No 1984/2003 of 8 April 2003 introducing a system for the statistical monitoring of trade in swordfish and bigeye tuna within the Community (OJ L 295, 13.11.2003, p. 1).

(7) Currently the position to be taken on the Union's behalf in the meetings of the ICCAT is established by Council Decision 10974/1/14 REV 1[27]. It is appropriate to repeal Decision 10974/1/14 REV 1 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 ICCAT Convention area and the consequent need for the position of the Union to take account of new developments, including new science and other relevant information presented before or during the meetings of the ICCAT, 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 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 International Commission for the Conservation of Atlantic Tunas (ICCAT) is set out in Annex I of this Decision.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the ICCAT 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 ICCAT in 2024.

Article 4

Decision 10974/1/14 REV 1 of 20 June 2014 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

[27] Council Decision of 20 June 2014 on the position to be adopted, on behalf of the European Union, in the International Commission for the Conservation of Atlantic Tunas (ICCAT).