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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.8.2008
COM(2008) 512 final

2008/0166 (CNS)

Proposal for a

COUNCIL DECISION

on the approval of amendments to the Convention on future multilateral co-operation in the North-East Atlantic Fisheries allowing for the establishment of a dispute settlement procedures, the extension of the scope of the Convention and a review of the objectives of the Convention

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Objectives of the proposal:

The Contracting Parties to the Convention on future multilateral co-operation in the North-East Atlantic Fisheries (the Convention) adopted an amendment to the Convention at the 23rd Annual Meeting in November 2004 allowing the North-East Atlantic Fisheries Commission (NEAFC) to adopt Recommendations establishing procedures for the settlement of disputes arising from the Convention. By a postal vote, on 11 August 2006, they adopted an amendment to the Convention whereby the scope of the Convention was extended to include sedentary species and the objectives of the Convention were reviewed.

The proposal intends to implement the aforementioned amendments to the Convention in Community legislation.

General context:

Developments in other international fora for fisheries management that have effect on fisheries in the NEAFC Convention area have been cited in the introductory part of the Convention.

New definitions have been introduced to create more clarity

Sedentary species are harvested or affected by fisheries and have therefore been introduced in the scope of the Convention.

The Convention provides that NEAFC shall perform its functions in the interest of the conservation and optimum utilisation of fishery resources. In addition to these objectives, it has been introduced that NEAFC shall perform its functions taking into consideration that long-term management and the management of fishery resources should provide sustainable economic, environmental and social benefits.

According to the Convention, NEAFC shall in performing its functions take account of the best scientific evidence available to it. In addition it has been introduced that in fulfilling its objectives, the Contracting Parties shall take into account the precautionary approach, the ecosystem approach and the need to conserve marine biological diversity.

The possibility to introduce a dispute settlement procedure under the Convention has been introduced. This will allow the Contracting Parties to establish a dispute settlement procedure which would allow for an expeditious way of resolving disputes as well as allowing the possibility of resolving disputes in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982¹ as well as the Agreement for the implementation of the Provisions of the United Nations on the

¹ OJ L 179, 23.6.1998, p. 1

Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks of 4 August 1995².

Existing provisions in the area of the proposal:

The Convention on future multilateral co-operation in the North-East Atlantic Fisheries (the Convention), was signed in London on 18 November 1980 and entered into force on 17 March 1982. The Community acceded to the Convention on 13 July 1981.³

The Convention established a Regional Fisheries Management Organisation (RFMO) with the aim of promoting the conservation and optimum utilisation of fisheries resources of the North-East Atlantic within a framework appropriate to the regime of extended Coastal State jurisdiction over fisheries, and accordingly of encouraging international co-operation and consultations with respect to resources.

Consistency with other policies and objectives of the Union:

The measures proposed are designed to harmonise with the objectives of the Common Fisheries Policy and are consistent with the Community's policy on sustainable development.

2. CONSULTATIONS OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultations of interested parties:

Consultations have taken place with Member States and legal experts of the Contracting Parties to the Convention.

Impact assessment:

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

Legal basis:

Article 37, in conjunction with Article 300(2) and the first subparagraph of Article 300(3), of the EC Treaty.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

² OJ L 189, 3.7.1998, p. 14

³ OJ L 227, 12.8.1981, p. 21

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300 (2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Whereas:

- (1) The Convention on future multilateral co-operation in the North-East Atlantic Fisheries (the Convention), was signed in London on 18 November 1980 and entered into force on 17 March 1982.
- (2) The European Community acceded to the Convention on 13 July 1981⁶.
- (3) According to Article 19(2) of the Convention an amendment of the Convention requires that three quarters of the Contracting Parties adopt the amendment. In accordance with Article 19 (3) of the Convention, an amendment will take effect 120 days following the date of notification by the Depositary of receipt of written notification of approval of three quarters of all Contracting Parties.
- (4) The Contracting Parties to the Convention adopted an amendment to the Convention at the 23rd Annual Meeting of the North-East Atlantic Fisheries Commission (NEAFC) in November 2004 allowing NEAFC to adopt Recommendations establishing procedures for the settlement of disputes arising from the Convention.
- (5) By postal vote on 11 August 2006 the Contracting Parties to the Convention adopted an amendment to the Convention whereby the scope of the Convention is extended so as to include sedentary species and the objectives of the Convention are broadened. The Convention was also amended so as to mention developments in other

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ L 227, 12.8.1981, p. 21.

international fora for fisheries management that have effect on fisheries in the NEAFC Convention area, and certain new definitions were introduced.

- (6) Sedentary species are harvested or affected by fisheries and it is therefore appropriate to include those species in the scope of the Convention.
- (7) The Convention provides that NEAFC shall perform its functions in the interest of the conservation and optimum utilisation of fishery resources. In addition to these objectives, it is important to underline the importance of long-term management and that the management of fishery resources should provide sustainable economic, environmental and social benefits. It is therefore appropriate to include these elements as objectives in the Convention.
- (8) According to the Convention, NEAFC shall in performing its functions take account of the best scientific evidence available to it. In fulfilling the objectives, it is also important to take into account the precautionary approach, the ecosystem approach and the need to conserve marine biological diversity. It is therefore appropriate that NEAFC also take the aforementioned elements into account in performing its functions.
- (9) A dispute settlement procedure established under the Convention might allow the expeditious settlement of disputes, which would be in the interest of the Community.
- (10) Furthermore, such a procedure would help towards the strengthening and modernisation of regional fisheries management organisations, and in particular of NEAFC, and thereby ensure the long-term sustainability of the fisheries in the North-East Atlantic.
- (11) The proposed amendments to the Convention would help the Community towards fulfilling the objectives of the EC Treaty.
- (12) In the light of the fishing possibilities accruing to the Community under the Convention, it is therefore in the Community's interest to approve the proposed amendments,

HAS DECIDED AS FOLLOWS:

Article 1

The amendments to the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries set out in the annex to the present Decision are hereby approved on behalf of the Community.

Article 2

The President of the Council is hereby authorised to designate the person empowered to notify the Depositary Government of the Community's approval in accordance with Article 19(3) of the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries.

Article 3

This Decision shall take effect on the day of its adoption.

Done at Brussels,

*For the Council
The President*

ANNEX

The Convention on future multilateral co-operation in the North-East Atlantic Fisheries is amended as follows:

1. In the preamble, a new second paragraph is inserted as follows:

"Recognising the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982; the Agreement for 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, 1995; the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organisation of the United Nations in October 1995."

2. In the preamble the third paragraph is replaced by the following:

"Desiring to promote the long-term conservation and optimum utilisation of the fishery resources of the North-East Atlantic area, and in doing so to safeguard the marine ecosystems in which the resources occur, and accordingly to encourage international cooperation and consultation with respect to these resources."

3. Article 1 is replaced by the following:

"Article 1

For the purpose of this Convention the following definitions apply:

- (1) "The Convention Area" means the areas
 - (a) within those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, but excluding:
 - the Baltic Sea and the Belts lying to the south and east of lines drawn from Hasenore Head to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to the Kullen, and
 - the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° latitude and the meridian of 5°36' west longitude
 - (b) within that part of the Atlantic Ocean north of 59° north latitude and between 44° west longitude and 42° west longitude.
- (2) "*Fishery resources*" means resources of fish, molluscs, crustaceans and including sedentary species, excluding, in so far as they are dealt with by other international agreements, highly migratory species listed in Annex I of

the United Nations Convention on the Law of the Sea of 10 December 1982, and anadromous stocks;

- (3) "Living marine resources" means all living components of marine ecosystems;
- (4) "Marine biological diversity" means the variability among marine living organisms and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."

4. Article 2 is replaced follow by the following:

"Article 2

The objective of this Convention is to ensure the long-term conservation and optimum utilisation of the fishery resources in the Convention Area, providing sustainable economic, environmental and social benefits."

5. Article 4 is replaced by the following:

"Article 4

- (1) The Commission shall perform its functions in order to fulfil the objective set out in Article 2.
- (2) When making recommendations in accordance with Article 5 or 6 of this Convention the Commission shall in particular:
 - (a) ensure that such recommendations are based on the best scientific evidence available;
 - (b) apply the precautionary approach;
 - (c) take due account of the impact of fisheries on other species and marine ecosystems, and in doing so adopt, where necessary, conservation and management measures that address the need to minimise harmful impacts on living marine resources and marine ecosystems; and
 - (d) take due account of the need to conserve marine biological diversity.
- (3) The Commission shall provide a forum for consultation and exchange of information on the state of the fishery resources in the Convention Area and on the management policies, including examination of the overall effects of such policies on the fishery resources and, as appropriate, other living marine resources and marine ecosystems."

6. In Articles 5, 6, 8, 9, 12, 13, 15, 18 and 20 "fisheries jurisdiction" is replaced by "jurisdiction".

7. A new Article 18 bis is inserted after Article 18 as follows:

"Article 18 bis

The Commission shall make recommendations establishing procedures for the settlement of disputes arising under this Convention."