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COM(2023) 423 final

2023/0249 (NLE)

Proposal for a

COUNCIL DECISION

**on 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 (EU)
2019/867**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the behalf of the European Union at the annual meetings of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) for the period 2024-2028 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 (CAMLRL Convention) is the conservation and rational use of Antarctic marine living resources, which form part of the Antarctic ecosystem. The Convention entered into force on 7 April 1982.

The EU¹ and a number of its Member States² 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 EU.

As a member of the CCAMLR, the EU 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 EU'S BEHALF

The position to be adopted on behalf of the EU 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 of the EU's position on a multiannual basis and it is subsequently adjusted for each annual meeting by Commission services non-papers to be endorsed by the Council.

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

² The following Member States have signed 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).

For the CCAMLR, this approach is implemented by Council Decision (EU) 2019/867 of 14 May 2019 setting out the EU's position in the CCAMLR for the period 2019-2023. The Decision contains general principles but also takes into account, as far as possible, the specific features of the CCAMLR. In addition, it sets out the standard process for establishing the EU's position year by year, as requested by Member States.

Council Decision (EU) 2019/867 incorporated the principles of the new common fisheries policy, as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council³, also taking into account the objectives set out in the Commission's Communication on the external dimension of the common fisheries policy⁴. Moreover, it adjusted the EU's position to the Treaty of Lisbon.

Council Decision (EU) 2019/867 provides for an assessment and where appropriate a revision of the EU's position before the 2024 annual meeting. Therefore, this proposal sets out the EU's position in the CCAMLR for the period 2024-2028, thereby replacing Council Decision (EU) 2019/867.

The current revision takes into consideration, in relation to fishing, the European Green Deal, notably Biodiversity⁵, Climate Adaptation⁶ and Farm to Fork Strategies⁷. It also takes into account the Plastics Strategy⁸ and the Zero pollution Action Plan⁹. Furthermore, it also takes into consideration, the International Ocean Governance Joint Communication¹⁰.

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 EU'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'.

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 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).

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381)

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy COM(2018) 28 final.

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: Towards Zero Pollution for Air, Water and Soil COM/2021/400 final.

¹⁰ Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

‘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’¹¹.

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 on 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 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 fishing¹²;
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy¹³;
- Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets¹⁴;
- 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 resources¹⁵;
- 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 resources¹⁶; and
- Council Regulation (EC) No 1035/2001 establishing a catch documentation scheme for *Dissostichus spp*¹⁷.

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 EU’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.

¹¹ 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.

¹² OJ L 286, 29.10.2008, p. 1.

¹³ OJ L 343, 22.12.2009, p. 1.

¹⁴ OJ L 347, 28.12.2017, p. 81.

¹⁵ OJ L 97, 1.4.2004, p. 1.

¹⁶ OJ L 97, 1.4.2004, p. 16.

¹⁷ OJ L 145, 31.5.2001, p. 1.

4.2.2. Application to the present case

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

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision will replace Council Decision (EU) 2019/867, which covers the period 2019-2023.

4.3. Conclusion

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

Proposal for a

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on 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 (EU) 2019/867

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/EEC¹ 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, Germany, Spain, France, Italy, Poland, and Sweden are also Contracting Parties to the CAMLR Convention. Greece, Netherlands and Finland 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 Council² 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 the 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

¹ Council Decision of 4 September 1981 on the conclusion of the Convention on the conservation of Antarctic marine living resources (81/691/EEC) (OJ L 252, 5.9.1981, p. 26).

² 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) In line with the Biodiversity³, Climate Adaptation⁴ and Farm to Fork Strategies⁵, it is essential to protect nature and reverse the degradation of ecosystems. The risks stemming from climate change and loss of biodiversity must not jeopardise the availability of the goods and services that healthy marine ecosystems provide to fishers, coastal communities and humanity at large.
- (5) The Plastics Strategy⁶ refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear. Furthermore, the Zero pollution Action Plan⁷ aims at reducing by 50% plastic litter at sea and by 30% micro-plastics released into the environment.
- (6) Under the International Ocean Governance Joint Communication⁸, marine biodiversity protection and conservation are key priorities under the EU's external action. The EU is the most prominent actor in Regional Fisheries Management Organisations (RFMOs) and fisheries bodies worldwide. There, the EU promotes the sustainability of fish stocks, promotes transparent decision-making based on sound scientific advice, enhances scientific research, and strengthens compliance.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the CCAMLR for the period 2024-2028, as the CCAMLR conservation measures may be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulation (EC) No 1005/2008⁹; Council Regulation (EC) No 1224/2009¹⁰; Regulation (EU) 2017/2403 of the European

³ 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).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381)

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy COM(2018) 28 final.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: Towards Zero Pollution for Air, Water and Soil COM/2021/400 final.

⁸ Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

⁹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated 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).

¹⁰ 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).

Parliament and of the Council¹¹; Council Regulation 600/2004¹²; Council Regulation 601/2004¹³ and Council Regulation (EC) No 1035/2001¹⁴.

- (8) Currently the position to be taken on the Union's behalf in the meetings of the CCAMLR is established by Council Decision (EU) 2019/867¹⁵. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.
- (9) In view of the evolving nature of fishery resources in the CAMLR Convention Area and the consequent need for the Union's position to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the CCAMLR, procedures should be established for the year-to-year specification of the Union's position for the period 2024-2028 in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union.

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 of this Decision.

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 2029.

Article 4

Decision (EU) 2019/867 is repealed.

¹¹ 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).

¹² Council Regulation (EC) No 600/2004 of 22 March 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).

¹³ Council Regulation (EC) No 601/2004 of 22 March 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).

¹⁴ 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).

¹⁵ Council Decision of 14 May 2019 on the position to be taken on behalf of the European Union in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and repealing the Decision of 24 June 2014 on the position to be adopted, on behalf of the Union, in the CCAMLR (OJ L 140, 28.5.2019, p. 72).

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*