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2026/0158 (NLE)

Proposal for a

COUNCIL DECISION

amending Council Decision 2021/1765 of 5 October 2021 on the position to be taken on behalf of the European Union, for the period 2021-2026, in the Specialised Committee on Fisheries established by 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

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns an amendment to Council Decision (EU) 2021/1765¹ on the position to be adopted on behalf of the European Union, for the period 2021–2026, within the Specialised Committee on Fisheries established by 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.

This proposal seeks to amend Decision (EU) 2021/1765 by extending its application until 30 June 2038.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-UK Trade and Cooperation Agreement

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 Trade and Cooperation Agreement')² sets out preferential arrangements in areas such as trade in goods and in services, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in Union programmes. Its provisions aim to ensure a level playing field and respect for fundamental rights. The Trade and Cooperation Agreement applied provisionally from 1 January 2021 and entered into force on 1 May 2021.

2.2. The Specialised Committee on Fisheries

Article 8(1)(q) of the Trade and Cooperation Agreement establishes the Specialised Committee on Fisheries. Article 8(4) of the Trade and Cooperation Agreement establishes the areas of competence of the Specialised Committees and Article 508 lists, in a non-exhaustive manner, the tasks and areas of competence of the Specialised Committee on Fisheries.

On 5 October 2021, the Council adopted Decision (EU) 2021/1765, which sets out the position to be adopted on behalf of the Union within the Specialised Committee on Fisheries.

Decision (EU) 2021/1765 was reviewed in July 2023 by the Commission and the Council, with the aim of assessing whether the Decision had been made operational until that point and whether the consultations and the meetings carried out under the Specialised Committee on Fisheries were conducted in line with the principles and orientations established under Decision (EU) 2021/1765. The review determined that no revision was necessary and no implementation issues have been identified since this review.

The discussions in the SCF and SCF Working Group are conducted in line with the principles and orientations outlined in Decision (EU) 2021/1765. The preparations of the SCF and SCF Working Group meetings take place in the Council Working Party on the UK on the basis of

¹ Council Decision (EU) 2021/1765 of 5 October 2021 on the position to be adopted on behalf of the European Union, for the period 2021–2026, within the Specialised Committee on Fisheries established by 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 (OJ L 355, 7.10.2021, pp. 135–141; ELI: <http://data.europa.eu/eli/dec/2021/1765/oj>)

² 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 (OJ L 149, , pp. 10–2539; ELI: [http://data.europa.eu/eli/agree_internation/2021/689\(1\)/oj](http://data.europa.eu/eli/agree_internation/2021/689(1)/oj)).

Commission services' non-papers further specifying the suggested EU position to be taken in these fora in line with the process established under Annex III of Decision (EU) 2021/1765. Overall, it is considered that Decision (EU) 2021/1765 is still fit for purpose and would not require any revision at this stage.

2.3. The envisaged acts of the Specialised Committee on Fisheries

Under Article 508(2) of the Trade and Cooperation Agreement, the Specialised Committee on Fisheries may adopt acts or measures, including decisions and recommendations:

- recording matters agreed by the Parties following consultations under Article 498 of the Trade and Cooperation Agreement;
- on any of the matters referred to in points (b), (c), (d), (e), (f), (g), (i), (j), (l), (m) and (n) in paragraph 1 of Article 508 of the Trade and Cooperation Agreement;
- amending the list of pre-existing international obligations referred to in Article 496(2) of the Trade and Cooperation Agreement;
- on any other aspect of cooperation on sustainable fisheries management under the fisheries heading of the Trade and Cooperation Agreement; and
- on the modalities of a review under Article 510 of the Trade and Cooperation Agreement Trade and Cooperation Agreement.

Annex II of Decision (EU) 2021/1765, sets out in detail the actions to be pursued by the Union with respect to the competences of the Specialised Committee on Fisheries, so as to establish the position to be adopted on behalf of the Union within the Specialised Committee on Fisheries under the Trade and Cooperation Agreement with regards to acts of the SCF having legal effects.

Since 2023, by way of an example, the Specialised Committee on Fisheries has adopted the following decisions and/or recommendations, pursuant to Article 508(2) of the Trade and Cooperation Agreement and in line with Decision (EU) 2021/1765:

- Decision 1/2023 of 24 July 2023 as regards the mechanism for voluntary in-year transfers of fishing opportunities.
- Recommendation 1/2023 of 24 July 2023 as regards guidelines for notifications under Article 496(3) of the Agreement.
- Recommendation 2/2023 of 24 July 2023 as regards the alignment of management areas for Lemon Sole, Witch, Turbot and Brill.
- Decision 1/2025 of 19 June 2025 as regards the arrangements on the level and conditions of access granted by each Party to vessels of the other Party to fish in its waters from 1 July 2026 to 30 June 2038.
- Recommendation 1/2026 of 22 April 2026 as regards a joint EU-UK agreement on monitoring, control and surveillance.

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

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union (TFEU), the Council shall adopt, on a proposal from the Commission, 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. Therefore, the positions to be adopted on the Union's behalf

within the Specialised Committee on Fisheries, on decisions adopted under Article 508(2) of the Trade and Cooperation Agreement, are adopted pursuant to Article 218(9) TFEU.

Decision (EU) 2021/1765 established a two-tier approach in establishing the position to be taken on the Union's behalf within the Specialised Committee on Fisheries. First, Annexes I and II of Decision (EU) 2021/1765 set out the principles and orientations to be reflected in the position to be adopted on the Union's behalf. Second, for each meeting where the Specialised Committee on Fisheries may be called upon to adopt acts or measures having legal effects, the position is to be supplemented by 'written documents' prepared by the Commission and discussed in the concerned Council Working Parties, in accordance with the procedure set out in Annex III of Decision (EU) 2021/1765.

Given that Decision (EU) 2021/1765 proved to be fit for purpose, this proposal aims to extend the Union's position within the Specialised Committee on Fisheries, as set out in Decision (EU) 2021/1765, until 30 June 2038.

The proposal implements the principles and orientations of the common fisheries policy (CFP) as laid down in Regulation (EU) No 1380/2013, in particular its Articles 2, 28 and 33. It also implements the provisions of multi-annual plans as laid down in Regulation (EU) 2018/973 establishing a multiannual plan for demersal stocks in the North Sea³ and Regulation (EU) 2019/472 establishing a multiannual plan for stocks fished in the Western Waters⁴.

As already provided in Decision (EU) 2021/1765 and in line with Article 218(10) TFEU and Council Decision (EU) 2021/689, the European Parliament is to be immediately and fully informed of the activities of the Specialised Committee on Fisheries, subject to the necessary arrangements in order to preserve confidentiality. As a general rule, the Commission will provide the information to the European Parliament through the responsible parliamentary committee. Such information should include the briefing and debriefing before and after meetings of the Specialised Committee on Fisheries, as well as all documents pertaining to its meetings at the same time the Commission shares them with the Council.

These working modalities are to be based on the principle of mutual sincere cooperation between the Union institutions, as enshrined in Article 13(2) TEU.

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*

³ Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008 (OJ L 179, 16.7.2018, pp. 1–13; ELI: <http://data.europa.eu/eli/reg/2018/973/oj>).

⁴ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 (OJ L 83, 25.3.2019, pp. 1–17; ELI: <http://data.europa.eu/eli/reg/2019/472/oj>).

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.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'⁵.

4.1.2. Application to the present case

The Specialised Committee on Fisheries is a body set up by an agreement, namely the Trade and Cooperation Agreement.

The measures adopted by the Specialised Committee on Fisheries are binding on the Parties, in accordance with Article 10 of the Trade and Cooperation Agreement, which provides that: '*The decisions adopted by the Partnership Council, or, as the case may be, by a Committee, shall be binding on the Parties and on all the bodies set up under this Agreement and under any supplementing agreement, including the arbitration tribunal referred to in Title I of Part 6. Recommendations shall have no binding force.*'

The measures adopted by the Specialised Committee on Fisheries will not supplement or amend the institutional framework of the Trade and Cooperation Agreement.

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 the envisaged 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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The envisaged decision falls within the area of the common fisheries policy.

Therefore, the substantive legal basis of the proposed decision is based on Article 43 TFEU.

4.3. Conclusion

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

⁵ 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.

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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, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 5 October 2021, the Council adopted Decision (EU) 2021/1765¹, which sets out the principles and orientations for the position to be adopted on behalf of the Union within the Specialised Committee on Fisheries for the period of 2021-2026. In this process, the Commission conducts the consultations on behalf of the Union based on Union positions specified by the Council under the relevant Treaty provisions, while ensuring close coordination with the Council and its preparatory bodies, in line with the principle of sincere cooperation between the Union institutions set out in Article 13(2) of the Treaty on European Union.
- (2) A review of Decision (EU) 2021/1765 took place in July 2023 and concluded that no amendments were necessary. Given the absence of any implementation issues having been identified since then, Decision (EU) 2021/1765 remains fit for purpose.
- (3) Decision (EU) 2021/1765 expires on 31 December 2026. It is therefore appropriate to extend its application with regards to the position to be taken on the Union's behalf within the Specialised Committee on Fisheries concerning acts or measures having legal effect.
- (4) The Commission should conduct a review on the effective implementation of Decision (EU) 2021/1765. The review should assess whether any revisions are necessary and if appropriate, the review should be accompanied by a proposal for a revision.
- (5) The European Parliament is to be immediately and fully informed, as provided for in Article 218(10) of the Treaty on the Functioning of the European Union.
- (6) Decision (EU) 2021/1765 should therefore be amended accordingly,

¹ Council Decision (EU) 2021/1765 of 5 October 2021 on the position to be adopted on behalf of the European Union, for the period 2021–2026, within the Specialised Committee on Fisheries established by 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 (OJ L 355, 7.10.2021, pp. 135, ELI: <http://data.europa.eu/eli/dec/2021/1765/oj>).

HAS ADOPTED THIS DECISION:

Article 1

Decision (EU) 2021/1765 is hereby amended as follows:

(1) Article 3 is replaced by the following:

‘This Decision shall apply until 30 June 2038.

It shall be assessed as necessary and, where appropriate, revised by the Council upon a proposal from the Commission. A review shall in any event take place by 31 December 2036.’

Article 2

This Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*