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2026/0159 (NLE)

Proposal for a

COUNCIL DECISION

amending Council Decision 2021/1875 of 22 October 2021 concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns an amendment to Council Decision 2021/1875¹ concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches.

This proposal seeks to amend Decision (EU) 2021/1875 by extending its application until 30 June 2038.

2. CONTEXT OF THE PROPOSAL

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 entered into force on 1 May 2021, and establishes that the Union and the United Kingdom are to hold annual consultations to agree on TACs applicable to shared stocks for the following year or years pursuant to Article 498. The Commission, on behalf of the Union, engages in these annual consultations with the United Kingdom.

On 22 October 2021, the Council adopted Decision (EU) 2021/1875, which sets out the procedure, as well as the principles and orientations of the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom on fishing opportunities for shared stocks, including deep-sea stocks, under Article 498 of the Trade and Cooperation Agreement. In particular, Decision (EU) 2021/1875 authorises the Commission to conduct those consultations and provides that the Union position shall be based on the best available scientific advice, the precautionary approach, and the objective of restoring and maintaining populations above levels capable of producing maximum sustainable yield. Thus, Decision (EU) 2021/1875 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.

¹ Council Decision (EU) 2021/1875 of 22 October 2021 concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches (OJ L 378, 26.10.2021, pp. 6–11; ELI: <http://data.europa.eu/eli/dec/2021/1875/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)).

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>).

Furthermore, it sets out the principles and arrangements for the preparation and conduct of the consultations, including coordination with the Council and information to the European Parliament, and allows for the Union position to be updated in light of new scientific advice or developments during the consultations.

Decision (EU) 2021/1875 was reviewed in July 2023, with the aim of assessing whether the Council Decision had been made operational until that point and whether the consultations with the United Kingdom carried out were conducted in line with the principles and orientations established therein. The review determined that no revision was necessary and no implementation issues have been identified. The annual consultation discussions are conducted in line with the positions established by the Council and in compliance with the principles and orientations established in Decision (EU) 2021/1875. The preparation of annual consultation on fishing opportunities takes place in the Council Working Party on Fisheries Policy and follows the process established under Article 2 of Decision (EU) 2021/1875. It is considered that Decision (EU) 2021/1875 is still fit for purpose and would not require any revision at this stage.

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 in the annual consultations on fishing opportunities with the United Kingdom pursuant to the Trade and Cooperation Agreement, are adopted pursuant to Article 218(9) TFEU.

Decision (EU) 2021/1875 establishes the principles and orientations for the position to be taken by the Union during the annual consultations with the United Kingdom on fishing opportunities, particularly the setting of total allowable catches (TACs) for shared stocks, while ensuring that the Commission and the Council remain appropriately coordinated.

Given that Decision (EU) 2021/1875 has proven to be fit for purpose, this proposal aims to extend the application of Decision (EU) 2021/1875 until 30 June 2038, so as to establish the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom, as the outcome of those consultations should be implemented in Union law.

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.'*

4.1.2. Application to the present case

In line with the TCA, the Union and the United Kingdom shall consult on the joint management of shared marine biological resources (in particular shared fish stocks). This obligation is in line with Article 63 of the United Nations Convention on the Law of the Sea.

The annual consultations are needed for the parties to agree on fishing opportunities and intrinsically linked conditions pursuant to Articles 498(2), 498(4) (a) to (d) and 498(6) TCA.

The envisaged act does not supplement or amend the institutional framework of the 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.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the setting of annual fishing opportunities for stocks shared between the Union and the United Kingdom.

Therefore, the substantive legal basis of the proposed decision is Article 43(3) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 43(3) TFEU, in conjunction with Article 218(9) TFEU.

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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(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 22 October 2021, the Council adopted Decision (EU) 2021/1875¹, which sets out the principles and orientations for the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom on fishing opportunities for shared stocks, including deep-sea stocks, pursuant to Article 498 of 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. 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) 2021/1875 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) 2021/1875 remains fit for purpose.
- (3) Decision (EU) 2021/1875 expires on 30 June 2027. It is therefore appropriate to extend its application with regard to the position to be taken on the Union’s behalf in the annual consultations with the United Kingdom on fishing opportunities for shared stocks, as the outcome of those consultations should be implemented into Union law.
- (4) The Commission should conduct a review on the effective implementation of Decision (EU) 2021/1875. 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) 2021/1875 should therefore be amended accordingly,

¹ Council Decision (EU) 2021/1875 of 22 October 2021 concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches (OJ L 378, 26.10.2021, p. 6, ELI: <http://data.europa.eu/eli/dec/2021/1875/oj>).

² OJ L 149, 30.4.2021, p. 10.

HAS ADOPTED THIS DECISION:

Article 1

Decision (EU) 2021/1875 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*