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2023/0254 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Inter-American Tropical Tuna Commission and the Meeting of the Parties to the Agreement on the International Dolphin Conservation Programme and repealing Decision (EU) 2019/812

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 meetings of the Inter-American Tropical Tuna Commission (IATTC) and the Meeting of the Parties to the Agreement on the International Dolphin Conservation Programme for the period 2024-2028 in connection with the envisaged adoption of measures.

2. CONTEXT OF THE PROPOSAL

2.1. Antigua Convention and International Dolphin Conservation Programme

The Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention) aims, by establishing the IATTC, to ensure the long-term conservation and sustainable use of the fish stocks covered by the Antigua Convention. The Antigua Convention entered into force on 10 October 2008.

The Agreement on the International Dolphin Conservation Programme (IDCP Agreement) aims, by establishing the Meeting of the Parties to the AIDCP, progressively to reduce incidental dolphin mortality in the area covered by the Antigua Convention area to levels approaching zero. Under Article XIV of the Antigua Convention, the IATTC is to play an integral role in coordinating the implementation of the Agreement and in implementing the measures adopted under the framework of the AIDCP. The Agreement entered into force on 15 February 1999.

The EU is a party to the IATTC and the AIDCP, having approved the Antigua Convention and the AIDCP under Council Decisions 2006/539/EC¹ and 2005/938/EC² respectively.

2.2. Inter-American Tropical Tuna Commission and Meeting of the Parties to the Dolphin Conservation Programme

The IATTC is the body established by the Antigua Convention to be responsible for managing and conserving the fishery resources in the Antigua Convention area. It adopts conservation and management measures to ensure the long-term conservation and sustainable use of the fish stocks covered by the Convention.

The Meeting of the Parties to the AIDCP is the body established by the AIDCP to ensure the long-term sustainability of living marine resources associated with purse-seine tuna fisheries in the Antigua Convention area. The IATTC has significant responsibilities for the implementing measures adopted by the Meeting of the Parties to the AIDCP, and provides the secretariat of the AIDCP.

Measures adopted by the IATTC and the Meeting of the Parties to the AIDCP may become binding on the EU.

¹ Council Decision 2006/539/EC of 22 May 2006 on the conclusion, on behalf of the European Community of the Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (OJ L 224, 16.8.2006, p. 22).

² Council Decision 2005/938/EC of 8 December 2005 on the approval on behalf of the European Community of the Agreement on the International Dolphin Conservation Programme (OJ L 348, 30.12.2005, p. 26).

As a member of the IATTC and the Meeting of the Parties to the AIDCP, the EU is entitled to participate in, and vote on, its decisions. The IATTC and the Meeting of the Parties to the AIDCP take their decisions by consensus.

2.3. Decisions adopted by the IATTC and the Meeting of the Parties to the AIDCP

The IATTC has the authority to adopt conservation and management measures ('resolutions') for the fisheries for which it is responsible, and these are binding on the contracting parties.

In accordance with Article IX.7 of the Antigua Convention, resolutions enter into force 45 days after the date on which the contracting parties are notified of them by the IATTC.

The Meeting of the Parties to the AIDCP has the authority to adopt decisions to achieve the objectives of the AIDCP. Such decisions are binding on the contracting parties upon adoption.

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.

For the IATTC, this approach is implemented by Council Decision (EU) 2019/812 of 14 May 2019, which sets out the EU's position in the IATTC and the Meeting of the Parties to the AIDCP for the period 2019-2023. The Decision contains general principles, but also takes into account, as far as possible, the specific features of the IATTC and the AIDCP. 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) 2019/812 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 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) 2019/812 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 IATTC for the period 2024-2028, thereby replacing Council Decision (EU) 2019/812.

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

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)

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’.

‘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 this case

The IATTC and the Meeting of the Parties to the AIDCP are bodies set up by an agreement, namely the Antigua Convention and the AIDCP.

The acts that the IATTC and the Meeting of the Parties to the AIDCP are called on to adopt constitute acts having legal effects. The envisaged acts are to be binding under international law in accordance with Article IX of the Antigua Convention and Article VII of the AIDCP, and are capable of decisively influencing the content of EU 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 of 12 December 2017 on the sustainable management of external fishing fleets¹⁴; and
- Regulation (EU) 2021/56 of the European Parliament and of the Council of 20 January 2021 laying down management, conservation and control measures applicable in the Inter-American Tropical Tuna Convention area and amending Council Regulation (EC) No 520/2007¹⁵.

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.

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 24, 26.1.2021, p. 1.

The envisaged acts do not supplement or amend the institutional framework of the Antigua Convention or the AIDCP.

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.

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) 2019/812, 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.

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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 2006/539/EC¹, the European Union concluded the Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention)², which established the Inter-American Tropical Tuna Commission (IATTC).
- (2) The IATTC is the body responsible for the management and conservation of the fishery resources of the Antigua Convention Area. The IATTC adopts conservation and management measures to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention. Such measures will become binding upon the Union.
- (3) By Council Decision 2005/938/EC³, the Union approved the Agreement on the International Dolphin Conservation Programme (AIDCP)⁴, which established the Meeting of the Parties to the AIDCP. Article XIV of the Antigua Convention provides for the IATTC to have an integral role in coordinating the implementation of the AIDCP and implementing the measures that are adopted within the framework of the AIDCP. The Secretariat of the AIDCP is provided by the IATTC.
- (4) The Meeting of the Parties to the AIDCP is the body established by the AIDCP to promote the progressive reduction of incidental dolphin mortalities in the tuna purse-seine fishery in the Antigua Convention area to levels approaching zero. The Meeting of the Parties to the AIDCP adopts decisions to ensure the long-term sustainability of living marine resources associated with the purse-seine tuna fishery in the Antigua Convention area. Such measures will become binding upon the Union.

¹ Council Decision of 22 May 2006 on the conclusion, on behalf of the European Community of the Convention for the Strengthening of the Inter-America Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica, (OJ L 224, 16.8.2006, p. 22).

² OJ L 224, 16.8.2006, p.24.

³ Council Decision 2005/938/EC of 8 December 2005 on the approval on behalf of the European Community of the Agreement on the International Dolphin Conservation Programme, (OJ L 348, 30.12.2005, p. 26).

⁴ OJ L 348, 30.12.2005, p.28.

- (5) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁵ 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 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.
- (6) In line with the Biodiversity⁶, Climate Adaptation⁷ and Farm to Fork Strategies⁸, 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.
- (7) The Plastics Strategy⁹ 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 Plan¹⁰ aims at reducing by 50% plastic litter at sea and by 30% micro-plastics released into the environment.
- (8) Under the International Ocean Governance Joint Communication¹¹, 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

⁵ 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).

⁶ 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).

⁷ 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).

⁸ 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).

⁹ 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.

¹⁰ 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.

¹¹ 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.

sustainability of fish stocks, promotes transparent decision-making based on sound scientific advice, enhances scientific research, and strengthens compliance.

- (9) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the IATTC and the Meeting of the Parties to the AIDCP for the period 2024-2028, as the IATTC conservation and enforcement measures and the decisions of the Meeting of the Parties to the AIDCP will be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulation (EC) No 1005/2008¹², Council Regulation (EC) No 1224/2009¹³, Regulation (EU) 2017/2403 of the European Parliament and of the Council¹⁴, and Regulation (EU) 2021/56 of the European Parliament and of the Council¹⁵.
- (10) Currently the position to be taken on the Union's behalf in the meetings of the IATTC is established by Council Decision (EU) 2019/812¹⁶. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.
- (11) In view of the evolving nature of fishery resources in the Antigua 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 IATTC and the Meeting of the Parties AIDCP, 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 of the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the Inter-American Tropical Tuna Commission (IATTC) and the Meeting of the Parties to the Agreement on the International Dolphin Conservation Programme (AIDCP) is set out in Annex I of this Decision.

¹² Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing activities, 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).

¹³ 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).

¹⁴ 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).

¹⁵ Regulation (EU) 2021/56 of the European Parliament and of the Council of 20 January 2021 laying down management, conservation and control measures applicable in the Inter-American Tropical Tuna Convention area and amending Council Regulation (EC) No 520/2007 (OJ L 24, 26.1.2021, p. 1.).

¹⁶ Council Decision (EU) 2019/812 of 14 May 2019 on the position to be taken on behalf of the European Union in the Inter-American Tropical Tuna Commission (IATTC) and the Meeting of the Parties to the Agreement on the International Dolphin Conservation Programme, and repealing the Decision of 12 June 2014 on the position to be adopted, on behalf of the Union, in the IATTC.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the IATTC and the Meeting of the Parties to the AIDCP 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 IATTC in 2029.

Article 4

Decision (EU) 2019/812 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*