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2023/0139 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic on amendments to the Decision on delineation and the Recommendation on the management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area (NACES MPA)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the North-East Atlantic Marine Environment Protection Commission in connection with the envisaged adoption of a Decision amending Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area (NACES MPA) to extend its conservation scope and a Recommendation amending Recommendation 2021/01 on the management of the NACES MPA under the Convention for the protection of the marine environment of the North-East Atlantic (the 'OSPAR Convention').

2. CONTEXT OF THE PROPOSAL

2.1. The OSPAR Convention

The OSPAR Convention aims to protect the North-East Atlantic maritime area against the adverse effects of human activities to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas, which have been adversely affected. It has 16 Contracting Parties: Belgium, Denmark, the EU¹, Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom, Luxembourg and Switzerland. The Convention was open for signature at the Ministerial Meeting of the Oslo and Paris Commissions in Paris on 22 September 1992 and entered into force on 25 March 1998.

2.2. The OSPAR Commission

The OSPAR Commission, established according to Article 10 of the Convention, is made up of representatives of each of the Contracting Parties; it meets at regular intervals and at any time, due to special circumstances. Its duties include supervising the implementation of the Convention and reviewing the condition of the maritime area, the effectiveness of the measures being adopted, the priorities and the need for any additional or different measures.

According to Article 20 of the Convention, each Contracting Party has one vote in the Commission. The EU is entitled to a number of votes equal to the number of its Member States, which are Contracting Parties to the Convention. The EU shall not exercise its right to vote when its Member States exercise theirs and conversely.

According to Article 15(3) of the Convention, the Commission shall adopt amendments of the Convention by unanimous vote of the Contracting Parties.

2.3. The envisaged acts of the OSPAR Commission

On 1 October 2021 during the ministerial segment of its 24th annual meeting, the OSPAR Commission adopted the OSPAR Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area (MPA) and the Recommendation 2021/01 on its management. At the same time, it was also decided that the conservation scope of the MPA would need to be reviewed in the future, with a view to expanding it. On the basis of the review process launched in OSPAR in 2022, it is now proposed to expand the conservation scope of the MPA in order to enhance its protection by including additional species and habitats as well as the seabed, ocean floor and subsoil thereof.

¹ Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic (OJ L 104, 3.4.1998, p. 1)

A Decision amending Decision 2021/01 (the ‘envisaged Decision’) and a Recommendation amending Recommendation 2021/01 (the ‘envisaged Recommendation’) are being finalised in OSPAR (together referred to as the ‘envisaged acts’).

The only substantial amendment in the envisaged acts, is the expansion of the MPA conservation scope and objectives beyond the protection of seabirds and the ecosystems of the waters superjacent to the seabed (already covered by the existing OSPAR Decision and Recommendation). This expansion aims to maintain and, where appropriate, restore not only seabird populations, but, more broadly, also marine biodiversity and the integrity of the various ecosystems as well as their functions and processes within the MPA.

The Decision extends the conservation scope of the existing NACES MPA and indicates the geographical coordinates (latitude/longitude) of its boundaries. The Recommendation amending Recommendation 2021/01 on the Management of the NACES MPA aims to guide OSPAR Contracting Parties in the adoption of measures to maintain and, where appropriate, restore seabird populations, marine biodiversity and the integrity of the various ecosystems and their functions and processes within the MPA, in line with the general and specific conservation objectives set out in the Annex of this Recommendation.

The supporting scientific analyses are presented in a comprehensive document published in the OSPAR website². The NACES MPA is the largest MPA in the OSPAR network and covers nearly 600,000km² (an area the size of France). It is the eighth collectively designated MPA in the area beyond national jurisdiction within the OSPAR maritime area.

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

The need to protect of marine biodiversity and ecosystems, including in maritime areas beyond national jurisdiction, has been recognised repeatedly. The Council Conclusions on the EU biodiversity strategy for 2030 adopted in October 2020 welcome the objective of protecting a minimum of 30% of the EU’s seas, one third of which under strict protection. They also emphasize that this is an objective to be reached by Member States collectively and recognise the urgent need to step up efforts to ensure the effective management of all protected areas, to define clear conservation objectives and measures, and to monitor and strengthen them appropriately. Moreover, the Conclusions emphasize the importance of seeking synergies and co-benefits with biodiversity-related Multilateral Environmental Agreements, such as OSPAR, and to integrate biodiversity considerations and goals into relevant international and regional processes. In this context, the Conclusions confirmed the EU support for the conclusion of an ambitious legally binding international agreement on marine biological diversity of areas beyond national jurisdiction (BBNJ) under the United Nations Convention on the Law of the Seas (UNCLOS) in 2021.

In December 2022, the 15th Conference of the Parties to the Convention on Biological Diversity (CBD) adopted the Kunming Montreal Global Biodiversity Framework including target 3 to “ensure and enable that by 2030 at least 30% of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures...” The EU and all its Member States are Parties to the CBD.

² Latest version available in :

[01_naces_rev_nomination_proforma_20221201_version_for_consultation.pdf \(ospar.org\)](https://ospar.org/01_naces_rev_nomination_proforma_20221201_version_for_consultation.pdf)

In view of the OSPAR Commission meeting of 26-30 June 2023, a Union position is necessary because the envisaged Decision is a legally binding text. Even if the envisaged Recommendation would not be legally binding, it is proposed that the Union position covers both envisaged acts due to the fact that they are closely related and are envisaged to be adopted together. Since these envisaged acts will facilitate the implementation of EU international commitments and ambitions and improve the protection of the environment, it is proposed that the Union supports the adoption of the envisaged Decision and the envisaged Recommendation.

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 that “*the Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision [...] 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*”.

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.

4.1.2. Application to the present case

The OSPAR Commission is a body set up by an agreement, namely the OSPAR Convention.

The Decision which the OSPAR Commission is called upon to adopt, constitutes an act having legal effects, because all OSPAR Decisions are legally binding for the Contracting Parties, according to the OSPAR Convention (Article 13§2). Although Recommendations are not legally binding, in the present case, the OSPAR Recommendation on the Management of the NACES MPA is closely related to the OSPAR Decision on delineation and it is therefore appropriate to cover them by the same decision establishing the position of the Union.

The envisaged acts do not supplement or amend the institutional framework of the OSPAR 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 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 acts relate to protection of the environment.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1), 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 Convention for the Protection of the Marine Environment of the North-East Atlantic on amendments to the Decision on delineation and the Recommendation on the management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area (NACES MPA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention for the Protection of the Marine Environment of the North-East Atlantic³ ('the Convention'), to which the Union is a Contracting Party, entered into force on 25 March 1998.
- (2) Pursuant to Article 10(3) of the Convention, the Commission established by Article 10(1) of the Convention ("the OSPAR Commission") may adopt Decisions and Recommendations in accordance with Article 13 of the Convention.
- (3) The OSPAR Commission, during the ministerial segment of its 24th annual meeting on 1 October 2021, adopted OSPAR Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area and Recommendation 2021/01 on its management⁴. At the same time, it was also decided that the conservation scope of the MPA would need to be reviewed, with a view to expanding it.
- (4) This review was carried out and led to the OSPAR Commission envisaged Decision amending OSPAR Decision 2021/01 on the establishment and the envisaged Recommendation amending OSPAR Recommendation 2021/01 on the management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area ('NACES MPA'). The OSPAR Commission is to adopt this envisaged Decision and this envisaged Recommendation during its 26th regular session/meeting on 26 June 2023.
- (5) The envisaged Decision of the OSPAR Commission extends the conservation scope of the existing NACES MPA and indicates the geographical coordinates (latitude/longitude) of its boundaries.

³ OJ L 104, 3.4.1998, p. 2.

⁴ The Union position was contained in Council Decision (EU) 2021/1796 of 28 September 2021 on the position to be taken on behalf of the European Union within the Commission established by the Convention for the Protection of the Marine Environment of the North-East Atlantic as regards a decision on the establishment of the North Atlantic Current and Evlanov Seamount Marine Protected Area (NACES MPA) and a recommendation on the management of the NACES MPA (OJ L 361, 12.10.2021, p.46).

- (6) The envisaged Recommendation of the OSPAR Commission aims to guide Contracting Parties in their actions and in the adoption of measures to achieve the revised conservation objectives, according to the extended conservation scope of the envisaged Decision, set out in the Annex to the Recommendation.
- (7) There is a close link between the two envisaged OSPAR Commission acts and, it is therefore appropriate to cover them by the same position of the Union.
- (8) It is appropriate to establish the position to be taken on the Union's behalf in the OSPAR Commission, as the Decision to be taken by the OSPAR Commission will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 26th session/meeting of the OSPAR Commission shall be to support the adoption of a Decision amending Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area extending its conservation scope, and to support the adoption of a Recommendation amending OSPAR Recommendation 2021/01 on the management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area extending its conservation objectives.

Article 2

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the 26th meeting of the OSPAR Commission, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President