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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

[mandatory element]

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Pursuant to Regulation (EU) No 1380/2013¹, (the Common Fisheries Policy Basic Regulation) Union fishing vessels have equal access to Union waters and resources subject to the rules of the Common Fisheries Policy. As from the end of the transition period, the Common Fisheries Policy will no longer apply to the United Kingdom. The United Kingdom waters (territorial sea and adjacent exclusive economic zone) will then no longer be part of the Union waters.

To guarantee the sustainability of fisheries and in light of the importance of fisheries for the economic livelihood of many communities, it is important to keep open the possibility of arrangements for continued reciprocal access by Union and United Kingdom vessels to each other's waters, after 31 December 2020 until a fisheries agreement with the United Kingdom has been concluded. The purpose of this Regulation is to create the appropriate legal framework for such access.

As provided in the United Nations Convention on the Law of the Sea of 10 December 1982 ('UNCLOS') and in the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 ('UNFSA'), the management of certain shared, straddling and highly migratory fish stocks requires the cooperation of all the countries in whose waters the stock occurs (the coastal States) and the countries whose fleets exploit that stock (the fishing States). This cooperation may be established in the framework of ad hoc arrangements among the countries having an interest in the fishery.

Fishing opportunities for the year 2021 have to be agreed, also by the United Kingdom. These arrangements will provide the basis for stability of fishing activities and will have to be established in full respect of the requirements set out in Articles 61 and 62 of UNCLOS. These arrangements should aim to ensure sustainable exploitation of marine living resources and stability within both Union waters and United Kingdom waters.

Regulation (EU) 2017/2403² (SMEFF Regulation) sets out the rules for fishing operations carried out by Union fishing vessels in waters of a third country and for third country vessels in Union waters.

For fishing operations carried out by Union fishing vessels in waters of a third country, the SMEFF provides that a flag Member State may grant direct authorisations to the operator and establishes the conditions and procedures for the granting of such authorisations. Given the number of Union fishing vessels that carry out fishing activities in the waters of the United Kingdom, these conditions and procedures could lead to considerable delays and an increased

¹ Regulation 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. 22–61).

² 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).

administrative burden in case the United Kingdom authorises EU vessels to fish in the waters of the United Kingdom. It is necessary to establish specific conditions and procedures to facilitate the authorisation of Union fishing vessels by the United Kingdom for the operation of fishing activities in United Kingdom waters. These conditions and procedures should be equivalent to the authorisation requirements that the SMEFF lays down for third country vessels carrying out fishing activities in Union waters.

The specific rules provided for in this proposal should apply from the day following the end of the transition period. The granting of authorisations is subject to the principle of "reciprocity", *i.e.* on condition that the United Kingdom extends access rights for EU vessels to conduct fishing activities in United Kingdom waters on a basis satisfactory to the Union. Consequently, authorisations will only be granted if and to the extent that the United Kingdom provides authorisations for Union vessels to make use of fishing opportunities allocated to them.

- **Consistency with existing policy provisions in the policy area**

N/A

- **Consistency with other Union policies**

N/A

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 43(2) of the Treaty on the Functioning of the European Union.

- **Subsidiarity**

The CFP and its control is an area of exclusive EU competence pursuant to Article 3(d) of the Treaty and therefore the subsidiarity principle does not apply.

The proposed act would amend Union Regulation (EU) No 2017/2403, so as to provide a legal basis in Union law providing for the possibility for United Kingdom vessels to carry out fishing activities in Union waters and for introducing simplified and more efficient authorisation procedures for vessels wishing to fish in United Kingdom waters. Action is therefore indispensable at Union level and the result could not be achieved through action at Member State level due to the exclusive competence of the Union.

- **Proportionality**

The proposal complies with the proportionality principle. The proposed Regulation is considered proportionate as it aims to ensure that the status quo in terms of access by Union fishing vessels in United Kingdom waters can be ensured by laying down reciprocal authorisation conditions. In doing so major disruptions and delays in the authorisation procedures will be avoided.

- **Choice of the instrument**

This act is an amendment of a Regulation.

- **Transmission of this proposal to national parliaments**

Draft legislative acts, including proposals from the Commission, sent to the European Parliament and to the Council must be forwarded to national parliaments in accordance with

the Protocol (No 1) on the role of national Parliaments in the European Union, annexed to the Treaties.

According to Article 4 of the Protocol, an eight-week period must elapse between a draft legislative act being made available to national parliaments and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure.

However, exceptions are possible under Article 4 in cases of urgency, the reasons for which must be stated in the act or position of the Council.

In view of the necessity to provide for procedures for authorising sustainable fishing operations in United Kingdom and Union waters, at the latest by the day following that on which Union law ceases to apply to and in the United Kingdom, and given the necessity to provide for procedures for authorising sustainable fishing operations in the United Kingdom and Union waters on the basis of reciprocity at the latest by that day, in order to avoid an abrupt discontinuation of fishing operations in those waters, the adoption of this proposal by the European Parliament and the Council has to be considered as a case of urgency. Therefore, it is considered to be appropriate to rely on an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This is not applicable due to the exceptional, temporary and one-off nature of the event necessitating this proposal which does not relate to the objectives of existing legislation.

- **Stakeholder consultations**

The challenges arising from the United Kingdom's withdrawal from the Union and possible solutions have been raised by various fisheries stakeholders and Member States representatives. All operators, stakeholders and concerned Member States have emphasised the need to secure reciprocal sustainable fishing activities.

- **Collection and use of expertise**

N/A

- **Impact assessment**

An impact assessment is not needed, due to the exceptional nature of the situation and limited needs of the period during which the change of status of the United Kingdom is implemented. No materially and legally different policy options are available other than the one proposed.

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

This proposal has no consequence for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications arising from the proposal.

5. OTHER ELEMENTS

N/A

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amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union.
- (2) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('Withdrawal Agreement') contains arrangements for the application of provisions of Union law to and in the United Kingdom beyond the date the Treaties cease to apply to and in the United Kingdom. The Common Fisheries Policy (CFP) will apply to and in the United Kingdom during the transition period in accordance with that agreement and will cease to apply on 31 December 2020.
- (3) When the CFP will cease to apply to and in the United Kingdom, the United Kingdom waters (territorial sea and adjacent exclusive economic zone) will no longer be part of the Union waters. Consequently, in the absence of a fisheries agreement with the United Kingdom, Union and United Kingdom vessels risk not having the possibility to use fully the fishing opportunities that may be available for the year 2021.
- (4) To guarantee the sustainability of fisheries, and in light of the importance of fisheries for the economic livelihood of many communities in the Union and the United Kingdom, the possibility of arrangements for continued reciprocal access by Union and United Kingdom vessels to each other's waters after 31 December 2020 should be maintained. This Regulation should therefore create the appropriate legal framework for such reciprocal access.
- (5) The territorial scope of this Regulation and any reference to the United Kingdom therein does not include Gibraltar.

³ OJ C , , p. .

- (6) Fishing opportunities for the year 2021 are to be established by the Union and the United Kingdom in full respect of the requirements set out in Article 61 and 62 of the United Nations Convention on the Law of the Sea⁴. To ensure sustainable exploitation of marine living resources and stability within Union waters and United Kingdom waters, the quota allocations and shares for the Member States and the United Kingdom are to be set in accordance with the respective applicable law of the Union and of the United Kingdom.
- (7) In light of the long-standing fishing patterns of United Kingdom vessels in Union waters and vice versa, and in order to obtain reciprocal access to waters, the Union should provide for a mechanism for United Kingdom vessels to access Union waters by means of authorisations, in order to be able to fish the quota shares that will be allocated to the United Kingdom, under the same conditions that apply to Union vessels. Such fishing authorisations should only be granted if and to the extent that the United Kingdom continues to provide authorisations for Union vessels to continue fishing within United Kingdom waters.
- (8) Regulation (EU) 2017/2403 of the European Parliament and of the Council⁵ sets out the rules for issuing and managing fishing authorisations for Union vessels in waters under the sovereignty or jurisdiction of a third country and for third country fishing vessels conducting fishing operations in Union waters.
- (9) In particular, that Regulation lays down rules for fishing operations carried out by Union fishing vessels in waters of a third country outside the framework of an agreement, and provides that a flag Member State may grant direct authorisations and establishes the conditions and procedures for the granting of such authorisations. Taking into account the number of Union fishing vessels that carry out fishing activities in waters of the United Kingdom, these conditions and procedures would lead to considerable delays and an increased administrative burden in the absence of a withdrawal agreement or a fisheries agreement. It is therefore necessary to provide for specific conditions and procedures to facilitate the issuing of authorisations to Union fishing vessels by the United Kingdom for the operation of fishing activities in United Kingdom waters.
- (10) It is necessary to derogate from the rules that apply to third country fishing vessels and provide for specific conditions and procedures allowing for the issuing of authorisations to United Kingdom fishing vessels by the Union for the operation of fishing activities in Union waters.
- (11) Regulation (EU) 2017/2403 should therefore be amended accordingly.
- (12) In accordance with Article 4(3) of Regulation (EEC, Euratom) No 1182/71 of the Council⁶, the cessation of application of acts fixed at a given date occurs on the expiry of the last hour of the day falling on that date. This Regulation should therefore apply as from 1 January 2021.
- (13) As the transition period provided for in the Withdrawal Agreement ends on 31 December 2020, in the absence of an agreement covering fisheries concluded with the

⁴ United Nations Convention on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 3).

⁵ 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).

⁶ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

United Kingdom, this Regulation should enter into force as a matter of urgency and should apply from 1 January 2021. As a contingency measure, it should apply until the earliest of the following dates: 31 December 2021 or the date on which an agreement governing fisheries between the Union and the United Kingdom enters into force or provisionally applies.

- (14) In view of the need to have this Regulation adopted before the day on which Union law ceases to apply to and in the United Kingdom pursuant to Articles 126 and 127 of the Withdrawal Agreement, and given the necessity to provide for procedures for authorising sustainable fishing operations in the United Kingdom and Union waters on the basis of reciprocity at the latest by that day, to avoid an abrupt discontinuation of fishing operations, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (15) In order to enable both Union and United Kingdom operators to continue to fish, fishing authorisations for activities in Union waters should only be granted to United Kingdom vessels if and in so far as the Commission considers that the United Kingdom grants access rights to Union vessels to conduct fishing operations in United Kingdom waters on a reciprocal basis,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2017/2403

Regulation (EU) 2017/2403 is amended as follows:

- (1) in Chapter II of Title II, the following Section 4 is added:

"Section 4

Authorisations for Union fishing vessels in United Kingdom waters

Article 18a

Scope

By way of derogation from Section 3, this Section shall apply to fishing operations carried out by Union fishing vessels in United Kingdom waters.

Article 18b

Definition

For the purposes of this Section, 'United Kingdom waters' means the waters under the sovereignty or jurisdiction of the United Kingdom established in accordance with international law.

Article 18c

Procedure for obtaining a fishing authorisation from the United Kingdom.

1. A flag Member State that has verified that the conditions set out in Article 5 are complied with shall send the Commission the corresponding application or list of applications for the authorisation by the United Kingdom.

2. Each application or list of applications shall contain the information requested by the United Kingdom for the issuing of the authorisation, in the required format, as communicated by the United Kingdom to the Commission.
3. The Commission shall provide the Member States with the information and format referred to in paragraph 2. The Commission may send a request to the flag Member State for any additional information necessary for verifying compliance with the conditions referred to in paragraphs 1 and 2.
4. If, upon receipt of the application or any additional information requested pursuant to paragraph 3, the Commission finds that the conditions set out in paragraph 1 and 2 are met, it shall forward the application to the United Kingdom without delay.
5. As soon as the United Kingdom informs the Commission that it has decided to issue or refuse an authorisation to a Union vessel, the Commission shall immediately inform the flag Member State accordingly.
6. A flag Member State may only issue a fishing authorisation for fishing operations in United Kingdom waters after having been informed that the United Kingdom has decided to issue an authorisation to the relevant Union vessel.
7. Fishing operations shall not commence until both the flag Member State and the United Kingdom have issued a fishing authorisation.
8. Where the United Kingdom informs the Commission that it has decided to suspend or withdraw a fishing authorisation for a Union fishing vessel, the Commission shall immediately inform the flag Member State accordingly. The Member State shall suspend or withdraw its fishing authorisation for fishing operations in United Kingdom waters accordingly.
9. Where the United Kingdom informs the flag Member State directly that it has decided to issue, refuse, suspend or withdraw a fishing authorisation for a Union fishing vessel, the flag Member State shall immediately inform the Commission accordingly. The Member State shall suspend or withdraw its fishing authorisation for fishing operations in United Kingdom waters accordingly.

Article 18d

Monitoring

The Commission shall monitor the issuing of fishing authorisations by the United Kingdom for fishing operations carried out by Union fishing vessels in United Kingdom waters.";

- (2) The following Title IIIa is inserted between Title III and Title IV:

"TITLE IIIa

"FISHING OPERATIONS BY UNITED KINGDOM FISHING VESSELS IN UNION WATERS

Article 38a

Scope

By way of derogation from Title III, this Title shall apply to fishing operations carried out by United Kingdom fishing vessels in Union waters.

Article 38b

Fishing operations by United Kingdom vessels

United Kingdom fishing vessels may carry out fishing operations in Union waters, in accordance with the conditions set out in applicable Union legislation, provided Union vessels are granted access to carry out fishing operations in the United Kingdom waters on a reciprocal basis.

Article 38c

General principles

1. A United Kingdom fishing vessel shall not engage in fishing operations in Union waters unless it has been issued with a fishing authorisation by the Commission. It shall only be issued with such an authorisation if it fulfils the eligibility criteria set out in paragraph 2.
2. The Commission may issue a fishing authorisation to United Kingdom vessels if:
 - (a) the fishing vessel has a valid fishing licence issued by the United Kingdom authority;
 - (b) the fishing vessel is listed by the United Kingdom in a fleet register accessible to the Commission;
 - (c) the fishing vessel and any associated support vessel apply the relevant IMO ship identification number scheme insofar as is required under Union law;
 - (d) the fishing vessel is not included in an IUU vessel list adopted by an RFMO and/or by the Union pursuant to the IUU Regulation;
 - (e) the United Kingdom is not listed as non-cooperating pursuant to the IUU Regulation or as allowing non-sustainable fishing opportunities pursuant to Regulation (EU) No 1026/2012;
 - (f) fishing opportunities are available to the United Kingdom.
3. A United Kingdom vessel authorised to fish in Union waters shall comply with the rules governing the fishing operations of Union vessels in the fishing area in which it operates.

Article 38d

Procedure for obtaining fishing authorisations

1. The United Kingdom shall send the Commission the application or list of applications for authorisations for its fishing vessels.
2. The Commission may ask the United Kingdom for additional information necessary for verifying that the conditions provided for in Article 38c(2) are met.
3. When it is established that the conditions provided for in Article 38b and Article 38c(2) are met, the Commission may issue a fishing authorisation and inform the United Kingdom and the Member States concerned accordingly without delay.

Article 38e

Management of fishing authorisations

1. If any of the conditions set out in Article 38b and Article 38c(2) are no longer met, the Commission shall take the appropriate action, including amending or withdrawing the authorisation, and inform the United Kingdom and the Member States concerned accordingly.

2. The Commission may refuse to issue authorisations or suspend or withdraw any authorisation issued to a United Kingdom fishing vessel in any of the following cases:
 - (a) where a fundamental change of circumstances has occurred, in particular concerning reciprocal access for Union vessels to the United Kingdom waters;
 - (b) in the event of a serious threat to the sustainable exploitation, management and conservation of marine biological resources;
 - (c) where it is essential in order to prevent or suppress IUU fishing;
 - (d) where the Commission deems it appropriate on the basis of its findings resulting from its monitoring activities pursuant to Article 18d;
 - (e) where the United Kingdom unduly refuses or revokes the authorisation of Union vessels to United Kingdom waters.
3. The Commission shall immediately inform the United Kingdom in the event that it refuses, suspends or withdraws the authorisation in accordance with paragraph 2.

Article 38f

Closure of fishing operations

1. Where fishing opportunities granted to the United Kingdom are deemed to have been exhausted, the Commission shall immediately notify the United Kingdom and the competent inspection authorities of the Member States thereof. With a view to ensuring the continuation of fishing operations of non-exhausted fishing opportunities which may also affect the exhausted opportunities, the Commission shall request the United Kingdom to communicate to it technical measures preventing any negative impact on the exhausted fishing opportunities.
2. From the date of the notification referred to in paragraph 1, the fishing authorisations issued to vessels flying the flag of the United Kingdom shall be considered to be suspended for the fishing operations concerned and the vessels shall no longer be authorised to engage in those fishing operations.
3. Fishing authorisations shall be considered to be withdrawn where a suspension of fishing authorisations in accordance with paragraph 2 concerns all the operations for which they have been granted.

Article 38g

Overfishing of quotas in Union waters

When the Commission establishes that the United Kingdom has exceeded the quotas it has been allocated for a stock or group of stocks, the Commission shall operate deductions from other quotas allocated to the United Kingdom. The Commission shall endeavour to ensure that the amount of the deduction is consistent with deductions imposed on Member States in similar circumstances.

Article 38h

Control and enforcement

1. A United Kingdom vessel authorised to fish in Union waters shall comply with the control rules governing the fishing operations of Union vessels in the fishing area in which it operates.
2. A United Kingdom vessel authorised to fish in Union waters shall provide to the Commission or the body designated by it, and, where relevant, to the coastal Member

State, the data which Union vessels are required to send to the flag Member State under the Control Regulation.

3. The Commission, or the body designated by it, shall send the data received in accordance with paragraph 2 to the coastal Member State.
4. A United Kingdom vessel authorised to fish in Union waters shall provide upon request to the Commission or the body designated by it the observer reports produced under applicable observer programmes.
5. A coastal Member State shall record any infringements committed by United Kingdom fishing vessels, including the related sanctions, in the national register provided for in Article 93 of the Control Regulation.”.

Article 2

Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the day following that on which Union law ceases to apply to and in the United Kingdom pursuant to Articles 126 and 127 of the Withdrawal Agreement, until the earliest of the following dates:

- (1) 31 December 2021;
- (2) the date on which an agreement governing fisheries between the Union and the United Kingdom enters into force or provisionally applies.

However, this Regulation shall not apply if the agreement referred to in point (2) of the second paragraph enters into force or provisionally applies by the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President