



**Brussels, 3 March 2021
(OR. en)**

6714/21

LIMITE

**PECHE 70
N 27**

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Note Verbale to Norway (No 02/21, 26 February 2021)

Delegations will find attached the abovementioned document, as received from the European Commission services.



EUROPEAN UNION

DELEGATION OF THE EUROPEAN UNION TO NORWAY

No 02/21

The Delegation of the European Union presents its compliments to the Royal Norwegian Ministry of Foreign Affairs and has the honour to refer to the most recent Notes Verbales of the Royal Norwegian Ministry of Foreign Affairs:

- Note Verbale of 8 February 2021 informing of the Norwegian position regarding EU fishing opportunities for Arctic cod;
- Note Verbale of 8 February 2021 informing of the Norwegian position on harvesting snow crab;
- Note Verbale No 20/2020 informing of the adoption on 18 December 2020 of fisheries regulations establishing catch limits for fishing for cod and other species in waters of Svalbard in 2021 and the by-catch limit for haddock in those waters; and
- Note Verbale No 18/2020 informing of the new regulation concerning amendments to the regulation on electronic reporting from foreign fishing vessels that entered into force on 1 November 2020.

The European Union has, as a well-established practice, for a number of years informed Norway during bilateral consultations about its intentions to set a unilateral European Union quota for cod in waters of ICES subarea 1 and division 2b. That quota was then adopted through Council Regulations fixing the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters. The geographical area covered by the fishing opportunities for cod includes Svalbard waters.

The European Union would like to recall that Arctic cod and other stocks occur in areas both within and beyond the jurisdiction of the Coastal States. Therefore, in accordance with Article 63(2) of UNCLOS, there is an international obligation for the Coastal States, including Norway, and States fishing in the adjacent area to seek, either directly or through appropriate subregional or regional organisations, to agree upon the measures necessary for the conservation of these stocks. The approach of setting a TAC and quantities to be fished by other States without involving those States fishing in Svalbard waters and in the NEAFC Regulatory Area is contrary to the above provision of UNCLOS.

The European Union has been informed that Norway, through the above-mentioned ministerial regulation of 18 December 2020, established limits for fishing cod in Svalbard waters that apply to the European Union and the United Kingdom. The European Union

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regrets that Norway took a decision negatively affecting rights of the European Union in Svalbard and has done so without prior consultation with the European Union.

The limit that Norway fixed in its national legislation for the European Union is significantly lower compared to the fishing opportunities established by the European Union for its vessels. At the same time, the Norwegian regulation allows Norwegian and Russian vessels to fish Arctic cod in the waters of Svalbard within the framework of the quotas set for vessels by these countries, without fixing any further limit.

The European Union recalls that there is no agreed specific Arctic cod allocation for the waters around Svalbard, which could be used as a limit applied equally for fishing opportunities of the 46 High Contracting Parties of the Treaty of Paris. Therefore, the European Union considers that the catch limits set by Norway in its national legislation have been established on a purely arbitrary basis. This discretionary approach is confirmed by the non-paper delivered by Norway on 21 January 2021. The same applies regarding the by-catch limit of 14% for haddock which establishes rules to some of the Parties of the Treaty of Paris (the limit applies to vessels flying the flag of Member States of the European Union, the Faroe Islands and the United Kingdom), but not to the others (notably Norway).

The consistent position of the European Union on the status of the archipelago of Svalbard pursuant to the Treaty of Paris of 1920 with regard to fisheries, the applicability of the relevant provisions of the said Treaty to fishing activities within the territorial sea, the continental shelf and the Fisheries Protection Zone around Svalbard, and the conditions and limits placed upon Norway's entitlement to take measures for the conservation of the fisheries resources within these maritime zones under the said Treaty, has been expressed many times since 1977, in Note Verbale No 5/17 of 24 February 2017, in Note Verbale No 8/18 of 19 March 2018, in Note Verbale No 30/19 of 21 October 2019 and for the last time in Note Verbale No 06/20 of 20 July 2020.

The European Union refers to Article 2 of the Treaty of Paris, according to which the right of Norway to establish measures for any Party of the Treaty of Paris is conditional upon such measures always being applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour whatsoever, direct or indirect to the advantage of any one of them. Therefore, as has been stated on numerous occasions in the past, the acceptance by the European Union of fishery regulations proposed by Norway pertaining to conservation of the maritime zones around Svalbard is conditional on the regulations being applied in a non-discriminatory manner, based on scientific advice and respected by all interested Parties.

As regards the references made by Norway to UNCLOS, the European Union would like to refer to Articles 237 and 311 thereof, which ensures that the Treaty of Paris and in particular its requirement of equal treatment continues to be the applicable legal framework for the maritime zones of Svalbard.

The measure adopted by Norway on 18 December 2020 grants effectively unlimited access to resources around Svalbard to operators from two High Contracting Parties of the Treaty of Paris (i.e., Norway itself and Russia), while at the same time limiting the access of the operators of the European Union, comprising 22 out of the 46 High Contracting Parties of the Treaty of Paris. Therefore, the European Union considers that Norway has acted in a discriminatory manner, in breach of Article 2 of the Treaty of Paris.

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Moreover, the European Union points out that due to other discriminatory actions taken by Norway contrary to the Treaty of Paris, fishing vessels from the European Union have not been able to take part in the fishery for snow crab in the waters around Svalbard, although Norwegian vessels continue that fishery. This issue has been raised with Norway in the Notes Verbales mentioned above. The European Union confirms its views that authorisations issued by the Union are in line with the legal framework applicable to Svalbard waters, as expressed in Note Verbales No 5/17 of 24 February 2017, No 8/18 of 19 March 2018, No 30/19 of 21 October 2019 and No 06/20 of 20 July 2020. By failing to recognise fishing authorisations of EU vessels to undertake fishing activities for snow crab, while granting authorisations to Norwegian vessels to fish for this stock, Norway has breached Article 2 of the Treaty of Paris. The European Union reiterates that vessels with EU fishing authorisations have full rights, in accordance with the Treaty of Paris, to undertake fishing activities for snow crab.

The European Union also underlines that Norway has not respected the Treaty of Paris when establishing effort allocations for the shrimp fishery in Svalbard waters, as this would exclude fishing activity of vessels of certain Member States of the European Union that are Contracting Parties to the Treaty of Paris. This constitutes an unequal treatment in violation of Article 2 of that Treaty.

Furthermore, the European Union would like to refer to the decision of the Norwegian authorities to amend the regulation on electronic reporting from foreign fishing vessels, introducing as of 1 November 2020 an obligation for vessels carrying out fishing activities in the Fisheries Protection Zone around Svalbard to send a message when starting the fishing activity. The European Union considers that these new reporting requirements are of discriminatory nature, since the information on the catch area is described as a mandatory element only for vessels flying the flag of a Member State of the European Union, while that data is optional for vessels flying the Icelandic, Norwegian or Faroese flags.

The European Union concludes that above actions by Norway indicate a systematic and intentional discriminatory approach directed towards vessels flying the flag of Member States of the European Union and towards the European Union and as such constitute a serious breach of obligations undertaken by Norway under the Treaty of Paris, in particular its Article 2. The European Union believes that both sides have an interest in the full and correct implementation of the Treaty of Paris.

The European Union restates its position expressed in Notes Verbales No 26/04 of 20 July 2004 and No 32/09 of 4 September 2009 that, under the Treaty of Paris of 1920, Norway has no right to take or enforce discriminatory measures to restrict access to the waters around Svalbard with respect to vessels flying the flag of a Member State of the European Union operating in these waters. The European Union expresses its great concern regarding the intentions of Norwegian authorities to arrest and prosecute vessels of EU Member States due to their fishing activities carried out in line with the EU fishing opportunities, which are based on EU legitimate fishing rights in Svalbard waters. The European Union would like to state that such actions would be unlawful and would be considered as internationally wrongful acts.

The European Union calls upon Norway to withdraw or amend without delay the above decisions, which are unlawful in so far as they are discriminatory in respect of vessels flying the flag of a Member State of the European Union. Moreover, the European Union requests Norway to refrain from any such wrongful actions in the future. The European Union reserves its rights to adopt internal measures with regard to vessels flying the flag of a Member State of the European Union in Svalbard waters. While the European Union counts on good cooperation with Norway, including in the area of a sustainable management of fisheries resources and good governance of the seas, it also stands ready to take all necessary remedial countermeasures in respect of Norway in order to safeguard legitimate fishery-related rights and interests of the European Union, which have been unlawfully curtailed.

The Delegation of the European Union to Norway avails itself of this opportunity to renew to the Royal Norwegian Ministry of Foreign Affairs the assurances of its highest consideration.

Oslo, 26 February 2021



To the Royal Norwegian Ministry of Foreign Affairs

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