



EUROPEAN COMMISSION

Brussels, 12.03.2018

C(2018) 1418 final

Subject: Position of the European Commission concerning a call to act from the Republic of Latvia pursuant to Article 265 TFEU

Dear Minister,

On 12 January 2018 we received your letter No 1-8.1/253-DV dated 22 December 2017 pursuant to Article 265 of the Treaty on the Functioning of the European Union with regard to safeguarding the Union's fishing rights and interests in the Svalbard fishing area.

Enclosed you will find the Commission position in reply to your letter.

The position concludes that the Commission has not failed to act on its duties, but it has acted, and continues to do so. In fulfilling its tasks the Commission chooses the most appropriate ways and steps in order best to safeguard the Union's fishing rights and interests in the Svalbard fishing area, including steps regarding the Commission talks and other means to settle the differences with Norway. In this respect it also takes into account of the relations with Norway as well as the Treaty of Paris and its multilateral nature.

The Commission is of the opinion that it has done its utmost to find an appropriate, constructive bilateral solution to the snow crab disagreement with Norway. The Commission has engaged in this matter in different ways and at different levels, both directly with Norway, as well as within the Council context and with Latvia.

The issues at stake around Svalbard go well beyond fisheries and the spill-over risk is an important element that had to be taken into account at every step of the way. The Commission, in its role of representing the EU as the only interlocutor for fisheries matters with third countries has been working at each stage of the process in close cooperation with the Council and the Member States. Every step has been prepared and

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established by consulting all Member States at Council level and keeping them informed regularly.

So far, the Commission's efforts to find a solution to this dispute were not successful, partly because of the narrow margins of manoeuvre defined by Member States at the Council, and partly because of the attachment of Norway on one single solution. The Commission will continue to work towards finding an appropriate arrangement with Norway regarding snow crab, while continuing to defend and to pursue the Union's position on fisheries around Svalbard as well as other pressing strategic interests in the relationship with Norway, and within the wider Arctic region.

Yours faithfully,
For the Commission

Karmenu VELLA
Member of the Commission

Annex: Position of the European Commission concerning a call to act from the Republic of Latvia pursuant to Article 265 TFEU

ANNEX

Position of the European Commission concerning a call to act from the Republic of Latvia pursuant to Article 265 TFEU

I. INTRODUCTION

1. On 12 January 2018, the Commission received a letter¹ from Latvia (Latvian reference 1-81/253/DV of 22.12.2017) calling it to act pursuant to Article 265 of the Treaty on the functioning of the European Union (TFEU) in order to safeguard the Union's fishing rights and interests in the Svalbard fishing area.
2. Latvia considers that, despite being under a Treaty obligation to ensure that Norway respects the rights of Member States which are contracting parties to the Treaty of Paris of 1920 to an equal and non-discriminatory access to fishing resources of the Svalbard Archipelago and the maritime zones pertaining to it, to date the Commission has not taken any effective measures or action to compel Norway to allow Union fishing vessels access to the snow crab fishery in Svalbard.
3. The legal bases invoked by Latvia to define the Commission's alleged failure to act in the specific context of the Svalbard snow crab fishery are Articles 17(1) of the Treaty on the European Union (TEU) read in conjunction with Articles 3(1) (d), 38 and 335 TFEU.
4. Latvia calls on the Commission to take the following measures:
 - "- arrange and participate in official talks with Norway in the first quarter of 2018 (by 31 March 2018) with the aim of securing the Union's fishing rights in the Svalbard fishing area and thereby enable Union vessels which have been awarded opportunities, in accordance with the Union's legal framework, to fish for snow crab in the Svalbard fishing area, to actually exercise those rights;
 - in the event that the Union's fishing rights in the Svalbard fishing area cannot be secured by 31 March 2018, bring international judicial proceedings against Norway."
5. The position of the Commission in the sense of Article 265 TFEU is defined below regarding the alleged failure to act claimed by Latvia and the specific actions required in the invitation to act addressed to the Commission.

¹ Latvia's letter to Commission pursuant to Article 265 TFEU, reference Ares (2018)215659 of 12 January 2018.

II. PRELIMINARY REMARKS AND LEGAL CONTEXT

6. In respect of the particular actions required in Latvia's address to the Commission it is first necessary to describe the broader international environment which is relevant for the choice of appropriate means in dealing with the differences with Norway.
7. The issue of the legal status of the maritime zones around the Archipelago of Spitzbergen (currently called Svalbard) pursuant to the 1920 Treaty of Paris is particularly complex and controversial. According to Article 1 of the Treaty, Norway has 'full and absolute sovereignty' over the territories of Svalbard and their territorial waters (4 nautical miles as at the time of the conclusion of that Treaty), but must, pursuant to Articles 2 and 3, grant companies and nationals of the other Contracting Parties equal rights for fishing and hunting or undertaking any kind of maritime, industrial, mining or trade in the territories of Svalbard and their territorial waters. Further, the Treaty of Paris provides that Norway is entitled to take conservation measures with the proviso that 'these measures shall always be applicable equally to nationals of the High Contracting Parties without any exception, privilege or favour whatsoever, direct or indirect to the advantage of any of them'.
8. There were 14 original High Contracting Parties: Denmark, France, Italy, Japan, the Netherlands, Norway, Sweden, the United Kingdom (including the dominions of Australia, Canada, New Zealand and South Africa, as well as India), and the United States. Currently, there are 46 parties to the treaty, among which 22 Member States of the EU, Latvia included as of 13 June 2016², but also 24 third countries, among which Afghanistan, Dominican Republic, Egypt, North Korea and Saudi Arabia. Union is not a Contracting Party.
9. Even though the EU is not a Contracting Party to the 1920 Treaty of Paris, it ensures coverage of the fishery-related rights and obligations thereof on grounds of exclusive EU competence for the conservation of marine biological resources pursuant to Article 3(1)(d) TFEU and EU institutions are bound to defend fishery-related interests and legal positions in this area.
10. Three main positions are competing regarding the interpretation and application of the 1920 Treaty of Paris, in particular with regards to the extent of the equal access provisions of that Treaty:
 - (1) Given its full and absolute sovereignty over the territories of Svalbard granted by the Treaty, Norway considers itself solely entitled to exert rights outside the

² Contrary to what is claimed in paragraph 11 of the letter from Latvia of 12 January 2018, no Union authorisation was sought by or given to Latvia for its accession to this Treaty, in view of the fisheries related part covered by Union exclusive competence. By no means, the Commissioner letter of 18 October 2016 can be read as a mandate to accede to this Treaty, especially since at that date Latvia had already acceded to this Treaty months before.

territorial seas, in the 200 nautical miles zone and also on the continental shelf around the Archipelago. Its views regarding the specific provisions of the Treaty of Paris on equal access to fishing, hunting and mining are that these remain confined to the territories of these islands and the territorial waters surrounding them.

(2) The opposite view, defended mainly by Russia, favours a literal reading of the 1920 Paris Treaty according to which Norway's sovereignty was granted only with respect to the territory of the Archipelago and the adjacent waters up to 4 nautical miles. Norway cannot avail itself of territorial jurisdiction beyond these boundaries and is thus barred from following subsequent developments in the fields of the International Law of the Sea such as the concepts of the continental shelf and/or the Exclusive Economic Zone. The waters outside the territorial waters in question form part of the high seas.

(3) The EU's consistent position on the interpretation of the fisheries-related aspects of the Treaty is that Norway is entitled to fisheries jurisdiction within the maritime zones³ around Svalbard as part of its sovereignty over the Archipelago, but its jurisdiction remains qualified by the equal access provisions of Treaty. Consequently, the EU accepts both Norwegian conservation measures, which are applied in a non-discriminatory manner, based on science and respected by all interested parties, as well as associated Norwegian enforcement measures. By contrast, the EU is a persistent objector to Norwegian measures restricting access introducing quantitative restrictions and/or catch quotas reserved to certain parties besides any other types of measures affording a preferential treatment on the basis of nationality as well as to Norwegian action to enforce such measures.

11. None of these positions has been put to a test in international dispute-settlement but all parties concerned have consistently acted as persistent objectors in order to maintain their respective legal positions.
12. Given significant divergences between the possible interpretations of the 1920 Paris Treaty, the EU has in fact been quite successful so far in defending its fisheries-related rights and interests in Svalbard, using instruments such as informal talks and practical arrangements with Norway, as well as Notes Verbales where needed to prevent acquiescence in international law with legally contestable Norwegian positions on the side of the EU. Where the EU protests by way of Notes Verbales against Norwegian conservation measures, it adopts autonomous conservation measures for EU vessels in the waters in question in line with conservation obligations under the International Law of the Sea. Such measures are internal auto-limitations which cannot be opposed to third parties at international level.
13. Having regard to the abovementioned position and the practice in place for the purpose of defending the Union fisheries-related rights, it is to be recalled that the

³ These include according to the current notions of international law of the sea the territorial waters up to 12 nautical miles, the exclusive economic zone up to 200 nautical miles and the continental shelf pertaining to Svalbard.

Commission is not the only Union institution which has a role to play with regard to Svalbard.

14. Even if the Commission is certainly the institution that has the task to ensure compliance with international agreements,⁴ the formulation of the EU position on Svalbard fisheries-related matters also involves other institutions of the Union, as described below. The EU position is to be conveyed to Norway by the Commission as external representative, and as guardian of the Treaties, pursuant to Article 17 TEU and to issue *Notes Verbales* in order to safeguard the EU's consistent position and interests.
15. The Notes Verbales addressed to Norway are generally co-ordinated with the Member States with the relevant Council Working Party before they are sent out. In rare occasions and only for reasons of urgency, the Council has been informed ex-post.
16. The EU position expressed in the Notes Verbales in respect of Svalbard remains strictly confined to fisheries matters. In this sense, care has always been taken not to encroach on matters of relevance under the 1920 Treaty of Paris, which may fall within the competence of Member States. At the same time, it is clear that there are risks of spill-over effects beyond fisheries. Therefore, when defining the Union position on Svalbard fisheries-related matters, the Commission has consistently ensured not to undermine in any way the prospects for the Member States which are contracting parties to the 1920 Treaty of Paris to take full advantage of the rights under that Treaty in areas falling under their competence.
17. In a configuration as complex both at international and at Union internal level, it should be clear that the obligations incumbent on the Commission for the purpose of defending the EU's fisheries rights and interests in Svalbard remain by large obligations of conduct (due diligence), as opposed to obligations to achieve specific results.⁵

III. THE SNOW CRAB DISPUTE IN SVALBARD: KEY ACTIONS CARRIED OUT SO FAR BY THE COMMISSION

18. The current dispute with Norway over snow crab fishing on the Svalbard continental shelf seems more difficult than past fisheries-related disputes in the same waters, possibly due to Norway's fears that this may become a precedent for oil- and/or gas-drilling on the continental shelf.
19. Access to the snow crab fishery in Svalbard by EU vessels was discussed with the Council and the Member States throughout 2016 as an alternative to the snow crab fishery conducted by EU vessels in a part of the Barents Sea outside the

⁴ Case C-204/07 P *C.A.S. v Commission*, EU:C:2008:446, paragraph 95 and Order in *Mugraby v Council and Commission*, C-581/11P, EU:C:2012:466, paragraph 68.

⁵ In French, obligations de moyens vs. obligations de résultats.

200-mile zones (the so-called "Loophole"). This latter fishery needed to be halted when Norway and Russia asserted their rights on sedentary species on their respective continental shelves. As an alternative, the Member States having an interest in the snow crab fishery proposed to use the non-discriminatory access provisions of the Treaty of Paris of 1920 to continue the fishery in the area of Svalbard.

20. In line with the EU's consistent position on the interpretation of that Treaty, those Member States which are contracting parties are entitled to equal access to fishing resources on the maritime zones of Svalbard, including to sedentary species such as snow crab on the Archipelago's continental shelf.
21. It is noted that Latvia acceded to the 1920 Treaty of Paris on 13 June 2016 and on that basis has been actively requesting that several of its vessels be allowed to take part in the snow crab fishery in Svalbard.
22. In this connection, correspondence between Commission services and Latvia in 2016⁶ shows that Latvia was reminded on several occasions about both the need to respect the Union's prerogative to deal with this matter on the basis of its exclusive competence over conservation of marine biological resources, as well as the international law requirements regarding conservation and cooperation which imposed on the EU due regard obligations vis-à-vis Norway. The same correspondence reminded Latvia about the diverging views of Norway on the Paris Treaty and its application to the fishery concerned and announced that the EU would follow strictly the existing process in order to invoke the equal access fishing rights derived from the 1920 Paris Treaty (i.e. objecting to any discriminatory Norwegian measures by way of notes verbale and designing autonomous conservation measures while at the same time attempting to find an ad hoc arrangement with Norway concerning snow crab).
23. A first step was to contest Norwegian Regulation No 1836 of 19 December 2014 prohibiting to fish for snow crab on the entire Norwegian continental shelf (which in the Norwegian view includes Svalbard) except for those Norwegian vessels that had been granted an exception to the prohibition. This was done by sending the Note Verbale No 23/2016 of 1 November 2016, reminding Norway about the equal access rights of the Contracting Parties to the 1920 Treaty of Paris and requesting it not to interfere with the legitimate activities of EU vessels.
24. It was then necessary to adopt appropriate conservation measures autonomously in order to ensure that fishing by Union fishing vessels around Svalbard is carried out at sustainable levels. For this purpose, Council Regulation (EU) No

⁶ See for example Commission services letters to Latvia of 1 February 2016, of 10 February 2016, of 17 June 2016, of 24 October 2016 and of 7 November 2016.

2017/127⁷ limited to 20 the fishing authorisations that may be granted by Member States to Union fishing vessels for snow crab in Svalbard.

25. As in the past, this Regulation makes clear by way of a footnote that *"The allocation of fishing opportunities available to the Union in the zone of Svalbard is without prejudice to the rights and obligations deriving from the Treaty of Paris of 1920."* This reminder is appropriate since a provision of EU law cannot have by itself any binding effects and/or create enforceable obligations upon third countries.
26. The restriction on the EU's snow crab fisheries in Svalbard for 2017 was actually an auto limitation by the EU, since after rejecting the discriminatory Norwegian conservation measures applicable in this fishery, without prejudice to the merits of this conservation measure, there was a risk of this becoming an unlimited fishery open for all EU vessels (so-called Olympic fishery). Recital 35 of this Regulation reveals clearly this objective: *"In order to ensure that the exploitation of snow crab within the area of Svalbard is made consistent with such non-discriminatory management rules as may be set out by Norway, which enjoys sovereignty and jurisdiction in the area within the limits of the said Treaty, it is appropriate to fix the number of vessels that are authorised to conduct such fishery."*
27. Moreover, both before and after adoption of the Fishing Opportunities Regulation, the Commission reminded extensively Member States of the legal and practical uncertainties surrounding this fishery due to the diverging views of Norway and asked them to duly inform their operators envisaging such activities of the risks involved.
28. Specifically Latvia was made fully aware that in the absence of a practical arrangement with Norway for this specific fishery in Svalbard, there may be no guarantees of undisturbed exercise of fishing rights by Union fishing vessels.
29. The Commission letter to the Republic of Latvia of 21 December 2016⁸ had for purpose exactly this warning as it appears clearly from the following: *"Let me take this opportunity to remind you that Norway consistently interprets the Treaty of Paris as applicable only to the land and the territorial sea of the Svalbard Archipelago and, therefore, Norway disputes the equal access rights of the Contracting Parties to exploit fishery resources in the sea areas around Svalbard. In its recent notes verbale, the Union objected to any such interpretation and it urged the Norwegian authorities to give instructions to ensure that authorities charged with at-sea controls and enforcement desist from interfering with legitimate fishing activities conducted by European Union vessels. To date,*

⁷ Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 24, 28.1.2017, p. 1).

⁸ See Commission letter to the Republic of Latvia of 21 December 2016.

however, we have not received any reply from the Norwegian authorities, so we cannot be sure that interferences with Norwegian control authorities will not occur. I would also like to remind you that according to international fishery rules, it is the task of the flag state to render assistance to its vessels when needed."

30. The Norwegian government issued a Note Verbale on 9 January 2017 and Member States were informed thereof in the Council Working Party meeting of 12 January 2017.
31. All these actions cannot be interpreted in the sense that the Commission had authorised Latvian vessels to engage in this fishing activity and assumed the legal risks associated with disregarding Norwegian Regulation No 1836. Such interpretation is a misrepresentation of facts. Authorising and advising fishing vessels on conduct of fishing activities is always the task of the flag Member State, as is recalled repeatedly in the correspondence with Latvia. The Commission insisted that Latvia informs *"the captains of the vessels of both the content of this letter as well as the risk that possible interferences by Norwegian control authorities cannot be entirely ruled out."*
32. Despite these warnings, the Latvian vessel "Senator" engaged in fishing for snow crab in the Svalbard zone.
33. On 16 January 2017, the Latvian fishing vessel 'Senator' was arrested on grounds of fishing for snow crab on the Norwegian Continental Shelf without the express consent of Norway and in contradiction with Norwegian Regulation No 1836 of 19 December 2014.
34. Immediately after the arrest of the vessel "Senator", the Commission undertook the demarches in such a case vis-à-vis Norway and even more. On 24 January 2017 Commissioner Vella had a bilateral meeting with the Norwegian Minister for Fisheries, Per Sandberg, in the margins of the "Arctic Frontiers Conference" held in Tromsø, Norway. On that occasion the Commissioner called for the swift release of the vessel and expressed the hope to find common grounds in the snow crab dispute, as the EU and Norway did in similar situations in the past, in order to avoid an escalation of the problem.
35. Norway formally informed Latvia of its position leading to the arrest of the vessel "Senator" by Note Verbale of 8 February 2017. The Commission formally protested against the arrest of the Latvian vessel "Senator" by Note Verbale No 5/2017 of 24 February 2017, calling for its immediate release and removal of any proceedings and penalties against the fishing vessel.
36. At the same time, the Commission actively pursued the avenue of finding a practical arrangement with Norway that would allow the resumption of fishing activities for snow crab without giving up the EU's interpretation of the Treaty of Paris. The key actions that the Commission undertook in 2017 in order to find a solution with Norway are summarised below.

37. Commission services held four meetings with their Norwegian counterparts (in March, in April, in June and in September). In addition, there has been a constant dialogue between the Commission and the Council about developments in the talks with Norway. The snow crab issue was discussed in the Council Working Party on Internal and External Fisheries Policy on 2 February, 16 February, 23 February, 2 March, 16 March, 23 March, 6 April, 8 June, and on 6 July. Member States, including Latvia, have been informed and consulted at all times.
38. Norway kept on insisting on a quota exchange, offering to the EU 500 tonnes of snow crab for the entire Norwegian continental shelf. On substance the EU was seeking an arrangement for the Svalbard Area on the basis of equal rights of fishing, rather than a solution for the entire Norwegian continental shelf on the basis of a quota exchange. It became more and more obvious that concluding a practical arrangement for Svalbard without being seen as implicitly but necessarily abandoning the EU's interpretation of the 1920 Treaty of Paris would be extremely difficult and time consuming.
39. On 23 October during a Technical Meeting, organised by Commission services to prepare the fisheries consultations with Norway for 2018 under the EU-Norway agreement, Member States were also informed of the state of play concerning snow crab.
40. The annual consultations with Norway for the quota exchanges under the EU-Norway agreement were further prepared on 9 November during a meeting of the Council Working Party on Internal and External Fisheries Policy. During these discussions, only one Member State could be in favour of a quota exchange concerning snow crab. The other Member States that did intervene, including Latvia, did not want to accept the offer. The final preparations took place during the Working Party meeting of 23 November. On snow crab, Member States reiterated their position. There was therefore no mandate for the Commission to accept the Norwegian offer for snow-crab in the context of the EU-Norway fisheries agreement.
41. During the annual consultations with Norway, from 27 November to 1 December, the Norwegian Delegation reiterated the offer of 500 tons of snow crab on the entire continental shelf. As an outcome of the EU coordination on the spot, all Member States that commented on the offer were opposed to the quota transfer, including Latvia. No Member State supported the idea of a quota transfer and they did not want to link the snow crab issue to the annual consultations. Consequently the Norwegian offer was not taken up.
42. Towards the end of 2017, Norway has also taken the issue to a diplomatic level. On 13 November, the Norwegian Ambassador to the EU met with representatives from President Juncker's cabinet, from High Representative Vice President Mogherini's cabinet and the cabinet of Mr. Vella. The Norwegian Ambassador handed over a memo presenting Norway position regarding the snow crab. The Memo was circulated to Delegations by the General Secretariat of the Council

with Working Document WK 12624/2017 ADD 1 of 17 November 2017. The Memo indicates that *"the self-licensing of EU vessels for the harvesting of snow crab on Norway's continental shelf in 2017 was in violation of UNCLOS. A repetition of this in the 2018 TAC regulation, which is to be adopted in December this year, will imply an end to the current dialogue with the EU on access to snow crab for EU vessels"*.

43. Important to mention that the Norwegian memo also underlines: *"Many of the EU-vessels that have been licensed by the EU/Member States are well-known for previous IUU-fishing. Several of them have been arrested in Norway and elsewhere a number of times over the years. Several have changed names and flags frequently, a typical behaviour for IUU vessels. The Latvian flagged vessel Senator was convicted in Norway's Supreme Court for IUU-fishing under a different name many years ago. The vessel is black-listed since 1998, and can never qualify for a license in Norway. Senator was also arrested in 2016, and the registered owner and captain accepted a fine. The Latvian flagged Dubna was arrested and fined twice in Norway in 2016. Currently there are two criminal cases pending before Norwegian Courts, involving snow crab harvesting by EU vessels. One concerns Senator after it was arrested again in January 2017, and the other relates to [...]. In accordance with the regular system for fisheries cases, the vessels are free to leave after posting a reasonable financial guarantee, awaiting trial if they do not accept the fines. The registered owner of Senator has chosen not to post such a guarantee and therefore the vessel is still at harbour in Norway whilst the ship owner has appealed the conviction handed down by the court. The crew has never had any restrictions placed on them by Norwegian authorities."*
44. From the latter it can be concluded that the vessel "Senator" could already have left port a long time ago if only the financial guarantee had been paid.
45. The Commission's proposal for the 2018 fishing opportunities Regulation⁹ maintained the 2017 provisions on snow crab, namely a recital asserting our interpretation of the Svalbard Treaty and a provision limiting to 20 the number of fishing authorisations that Member States may grant to EU vessels for that fishery.
46. The reasoning behind this proposal was that, in the absence of an ad-hoc arrangement with Norway regarding the snow crab fishery in Svalbard, not maintaining the provisions regarding this fishery in the Fishing Opportunities Regulation for 2018 could undermine at international level the EU's position defending equal access to fishing rights for Union vessels in all maritime areas around Svalbard, including the continental shelf. Moreover, the risk of an Olympic fishery for EU vessels was also a consideration to be addressed for 2018.

⁹ COM(2017)645final.

47. At the same time, via the Non-Paper transmitted to Delegations with Council Document 15261/17 PECHE 495 of 8 December 2017, the Commission once again drew Member States' attention to both the fact that fishing for snow crab in the waters around Svalbard was a most sensitive and internationally contested issue and to the risks entailed for EU fishing vessels. Member States were requested to warn their operators of these risks before issuing fishing authorisations for the snow crab fishery.
48. Following the Agriculture and Fisheries Council of 11-12 December, the Council decided to roll-over the 2017 provisions on snow crab, as proposed by the Commission.
49. Immediately thereafter, the Norwegian Fisheries Minister publicly announced that this means the end of the talks on snow crab.¹⁰ In the same vein, Norway has also reacted to the inclusion of fishing authorisations for snow crab in the 2018 fishing opportunities regulation via the Note Verbale of 30 December 2017 by way of which it reiterates its protest and position on the matter, arguing that any license issued for the snow crab fishery without Norway's consent is without legal effect and that it will continue to enforce applicable domestic law.
50. On Thursday 18 January 2018 the Commissioner responsible for fisheries, Mr. Vella, intervened during the Plenary Session of the European Parliament in Strasbourg on the occasion of a Major Interpellation on the EU-Norway dispute on snow crab fisheries in Svalbard (reference O-000077/2017), where the Commissioner informed the Parliament of the current situation and the steps taken by the Commission in order to unblock the current situation while still maintaining our good working relations with Norway as a key partner for fisheries.
51. Taking into account this latest Note Verbale from Norway, the Commission services have sent yet another letter to all Member States concerned, including Latvia,¹¹ emphasising that the position of Norwegian authorities on this matter is unlikely to change in the near future and for this reason Member States should duly inform their operators, before issuing the fishing authorisations, of the highly probable use of force by Norway against EU vessels trying to engage in this fishery.
52. At the same time, the Commission has prepared its response to Norway by way of a Note Verbale dated 1 March 2018 (to be sent out soon) in which it firmly rejects the qualification as illegal of the fishing authorisations limit for snow crab set out in the fishing opportunities Regulation for 2018, reiterating Union's position on the matter as expressed consistently since 1977 and for the last time in Note Verbale No 5/17 of 24 February 2017. The Note verbale also urges Norway to

¹⁰ NKR 14.12.2017 - Norge bryter forhandlingene med EU om snøkrabbe (The Norwegian Broadcasting Corporation - Norway breaks up the negotiations with the EU about snow crab).

¹¹ Commission services letter to Latvia of 2 February 2018.

instruct its fisheries control authorities to desist from interfering with legitimate fishing activities by Union vessels within the maritime zones of Svalbard.

IV. WAY FORWARD

53. Despite the current stalemate of discussions with Norway, the Commission will continue to look for solutions to this dispute with Norwegian authorities, based on dialogue and constructive approach, rather than confrontation. At the same time, given the high stakes beyond fisheries, the Commission will try to ensure that whatever solution is found, it is consistent with the Union's position on Svalbard.
54. The most recent Note Verbale extends the invitation to Norway to renew the dialogue with the EU in order to arrive, like many times in the past, to a mutually satisfactory arrangement allowing the resumption by Union fishing vessels of fishing activities in the area. It is also clear, considering recent Norwegian reactions, that it is at present unlikely that in the immediate future a solution will be found and precautions must be taken to avoid escalation of the disagreement to the expense of pressing strategic interests in the relationship with Norway, as well as in the Arctic region.
55. As regards the suggestion in the Latvian letter to bring international judicial proceedings against Norway, and leaving aside any substantive considerations, there are clear procedural impediments, which the letter does not take into account.
56. Firstly, it should be noted that the 1920 Treaty of Paris does not provide for a dispute-settlement mechanism. The dispute settlement mechanisms provided for by the United Nations Convention on Law of the Sea (UNCLOS) are not applicable since the issues are not about the interpretation and application UNCLOS, but rather about the interpretation and application of the 1920 Treaty of Paris.
57. Secondly, international arbitration is subject to finding an agreement with Norway, which is currently highly unlikely in the prevailing circumstances.
58. Thirdly, the default dispute-settlement mechanism that remains is the International Court of Justice. Yet, the EU has no legal standing before this Court.¹² In addition, whilst a number of Member States are a Party to the 1920 Treaty of Paris, the European Union is not. Nevertheless the Union has exclusive competence regarding the conservation of marine biological resources.
59. In any event, initiation of international proceedings in a multilateral context could have significant implications. The Treaty of Paris involves 46 Contracting Parties, each with different interpretations of its provisions. Such a step would also risk

¹² Note also that, as regards the International Court of Justice, Latvia has not made a declaration accepting its compulsory jurisdiction, while Norway has made such declaration on condition of reciprocity.

affecting the Union's bilateral relations with Norway beyond the fisheries issues at stake.

60. Finally, if there is a general principle in international law of peaceful settlement of disputes, there is no obligation under EU or international law to bring judicial proceedings, as international law provides for different ways to settle disputes, not all of them of judicial nature.

V. CONCLUSION

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61. In conclusion the Commission has not failed to act on its duties, but it has acted, and continues to do so. In fulfilling its tasks the Commission chooses the most appropriate ways and steps in order to best safeguard the Union's fishing rights and interests in the Svalbard fishing area, including steps regarding Commission talks and other means to settle the differences with Norway. In this respect it also takes into account Union's relations with Norway and the multilateral nature of Treaty of Paris.
62. The Commission is of the opinion that it has done its utmost to find an appropriate, non-confrontational bilateral solution to the snow crab disagreement with Norway. As the above account shows it has engaged in this matter at different ways and levels, including directly with Norway, within the Council context and with Latvia.
63. The issues at stake around Svalbard go beyond fisheries interest and the spill-over risks is an important element that had to be taken into account at every step of the way. The Commission, in its role of representing the EU as the only interlocutor for fisheries matters with third countries, has been working at each stage of the process in close cooperation with the Council and the Member States. Every step has been prepared and established by consulting all Member States at Council level and keeping them informed regularly.
64. So far the Commission's efforts to find a solution to this dispute were not successful, partly because of the narrow margins of manoeuvre defined by Member States, partly because of the attachment of Norway to one single solution. The Commission will continue to work towards finding an appropriate arrangement with Norway regarding snow crab, while continuing to defend and to pursue the Union's position on the fisheries around Svalbard as well as other pressing strategic interests in the relationship with Norway, as well as in the Arctic region.