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European Union

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Note Verbale to Norway (No 21/23, 26 October 2023)

Delegations will find in annex the signed version of the abovementioned Note Verbale, as received from the European Commission services.



EUROPEAN UNION

DELEGATION TO NORWAY

No. 21/23

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 Note Verbale of 19 June 2023 of the Royal Norwegian Ministry of Foreign Affairs.

The European Union, through Council Regulation (EU) 2023/194¹, has set a limit of 20 fishing authorisations, which may be issued to Union fishing vessels for the harvesting of snow crab with pots around Svalbard in 2023, without prejudice to the rights and obligations deriving from the 1920 Treaty of Paris.

The European Union's consistent position on the status of the archipelago of Spitsbergen (Svalbard) pursuant to the Treaty of 9 February 1920 relating to Spitsbergen ('the 1920 Treaty of Paris') 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. Most recently, the European Union's position has been highlighted by way of Notes Verbales No 02/21 of 26 February 2021, 08/21 of 28 June 2021 and 17/22 of 1 August 2022.

The European Union would like to reiterate its views on the status of the continental shelf of Svalbard, namely that the continental shelf is, like all the other maritime zones generated by the Svalbard archipelago, subject to the provisions of the 1920 Treaty of Paris. The European Union protests about the discriminatory treatment of the European Union and its Member States by Norway in respect of Svalbard waters and its continental shelf, as set out below and in the previous Notes Verbales.

The access to various resources, including living sedentary species, such as snow crab, on the continental shelf of the archipelago is open to the nationals of all the Parties to the 1920 Treaty of Paris under conditions of equality. The European Union would also like to restate its position that, under the 1920 Treaty of Paris, Norway has no right to take discriminatory measures to restrict access to these resources of Svalbard or to enforce such measures in respect to vessels flying the flag of a Member State of the European Union operating in all maritime zones of Svalbard.

¹ Council Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks.

As stated consistently by the European Union, **the recognition 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.**

In that respect, the European Union regrets that Norway has set a cod access quota for the EU for Svalbard waters at 12 415 tonnes, while the EU Arctic cod quota, corresponding to its share, is 16 529 tonnes. For some other Parties of 1920 Treaty of Paris (e.g. Norway itself and Russia), Norway has allowed them to fish in Svalbard waters their full cod quotas as determined by those Parties. Such decision by Norway is discriminatory and contravenes Articles 2 and 3 of the 1920 Treaty of Paris. The European Union calls on Norway to ensure that the European Union, like the other Parties referred above, can fish its full cod quota in Svalbard waters. **The European Union also reminds Norway that the non-discriminatory access to Svalbard waters and its continental shelf may not and shall not be subject to any compensation to Norway.**

The European Union expresses its concern about the significant potential negative effects on fish stocks and fisheries, but also with regard to access to the fishing grounds, of intended deep-sea mining announced by Norway, including on the continental shelf of the archipelago of Spitsbergen (Svalbard). The European Union notes that the area proposed to be opened for deep-sea mining also includes the extended continental shelf and the superjacent international waters. In addition to the international commitments undertaken by Norway to preserve the marine environment, the European Union also refers to Article 78 of UNCLOS, under which the exercise of rights over the continental shelf of the archipelago of Spitsbergen by Norway or any Party to the 1920 Treaty of Paris must not infringe or result in any unjustifiable interference with EU fishing rights in international waters. Norway is invited to engage on this important issue.

The European Union moreover protests against the interpretation given to the 1920 Treaty of Paris by the Supreme Court of Norway in its recent judgement in the SIA North Star Ltd. Case². As stated in the European Union's Note Verbale No. 08/21 of 28 June 2021 it is recalled that the acts and conduct of the Supreme Court of Norway as an organ of the state of Norway, are, according to a well-established rule of international law, to be regarded as acts and conduct of that State. As set out in this and in previous Notes Verbales, the European Union strongly disagrees with the incoherent interpretation and the decisions of the Supreme Court of Norway, in that judgement, according to which Articles 2 and 3 of the 1920 Treaty of Paris would apply only in the territorial waters of the archipelago, and not beyond. This judgment can therefore in no way, be regarded as reflecting a correct interpretation of the 1920 Treaty of Paris at the international level. Consequently, the European Union reserves the right to qualify this judgement as an internationally wrongful act attributable to Norway.

² Judgement of the Norwegian Supreme Court of 20 March 2023, HR-2023-491-P, (sak nr. 22-134375SIV-IHRET)
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The European Union considers that cooperation with Norway in the area of marine biological resources is essential to ensure the sustainable management of those resources and good governance of the seas. The European Union regrets several decisions taken by Norway, in particular not to allow EU vessels to fish for snow crab and to reduce EU access quota for cod below EU historic rights, that do not contribute to that cooperation. The European Union underlines its willingness for dialogue with Norway on those issues and calls upon Norway to engage with the EU with a view of resolving them swiftly.

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

Oslo, 26 October 2023



To the Royal Norwegian Ministry of Foreign Affairs

OSLO

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