



**ROYAL NORWEGIAN
MINISTRY OF FOREIGN AFFAIRS**

The Royal Ministry of Foreign Affairs presents its compliments to the Delegation of the European Union and has the honour to refer to the latter's Note Verbale No. 02/21 dated 26 February 2021 which gives rise to the need for certain clarifications and contains statements that require corrections both as regards facts and law.

In Council Regulation (EU) 2021/92 of 28 January 2021, the EU has unilaterally set a fishing quota for cod in the Norwegian Fisheries Protection Zone around Svalbard that is considerably larger than the quota set for the EU by Norway. Moreover, prior to that, the EU has, without consultation with the coastal State, apportioned fishing opportunities in the same area to the United Kingdom of Great Britain and Northern Ireland (UK).

The EU has no right under international law to establish quotas in maritime areas under Norwegian jurisdiction, in contravention of Norwegian regulations. The EU has been informed that, in accordance with applicable laws, vessels fishing illegally in Norwegian waters will be arrested and prosecuted.

Only the coastal State can legally establish fishing quotas in maritime areas under its jurisdiction. The establishment of 200-mile zones in the 1970s demanded adjustments to previous fishing patterns. From then on, access to such zones required prior agreement with the coastal State. However, without any compensation, nor any obligation to do so, and maintaining its right to establish an exclusive economic zone, Norway has set annual quotas for the EU in the Fisheries Protection Zone around Svalbard based on fishing patterns predating the establishment of the zone in 1977. Any internal reallocation of such quotas that may have been made thereafter by the EU among its member States does not bind Norway.

After the expiry on 1 January 2021 of the transitional period following the UK's withdrawal from the EU, fishing by UK flagged vessels during the reference period (prior to 1977) no longer forms part of the basis for calculating the quota set for the EU.

As a consequence, after a corresponding deduction, the quota set for the EU in 2021 is 17 885 tonnes. This is based on fishing patterns of the now 27 EU Member States in the years preceding 1977. This is consistent with the

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approach taken when the EU has expanded with new Member States that originally had been allocated a quota based on their fisheries activity prior to the establishment of the Fisheries Protection Zone around Svalbard. Thus, Norway increased the allocation to the EU with the share of the German Democratic Republic (GDR) after the reunification of Germany in 1990, as the GDR had been allocated a quota. A similar approach was followed when Poland joined the EU in 2004.

The basis for establishing the quota set for the EU has thus remained the same as in previous years. What has changed is that the UK no longer is a member of the EU. The calculation was explained to the EU Commission in December 2020 and described in detail in the Ministry's Note Verbale of 8 February 2021.

The Delegation's Note Verbale of 26 February 2021 further alleges that Norway's allocation of fishing opportunities in the Fisheries Protection Zone around Svalbard is discriminatory to the benefit of Norwegian and Russian fishers. That is not the case. For shared stocks that straddle between Norwegian and Russian maritime areas, Norway and the Russian Federation jointly determine quotas for the totality of the stocks' distribution area, granting each other's vessels reciprocal zonal access. All catches are then counted against the total quota, irrespective of where the catch has been taken. Claims that this practice amounts to discrimination against EU flagged vessels were rejected by the Norwegian Supreme Court in 2006, see further details in the enclosed annex to this Note Verbale.

Norway has not sought to draw unilateral fisheries benefits from the withdrawal of the UK from the EU. This withdrawal has led to major changes in the negotiating structure for the management of fisheries in several areas. In order to avoid disruptions, Norway made attempts last year to initiate discussions on fisheries arrangements for 2021 with the EU notably for the North Sea and the Skagerrak. It welcomes that such arrangements have been concluded in March 2021. As regards the Fisheries Protection Zone around Svalbard, Norway's position has been firm and consistent. The EU cannot expect that Norway would accept reneging on its legal positions under international law due to provisions found in the Trade and Cooperation Agreement between the EU and the UK.

Norway has noted the interest the EU has increasingly taken towards the Arctic, a region particularly exposed to the effects of climate change and environmental pressures, and its economic and security impact. In relation to this, it is noted that the criteria for admitting observers to the Arctic Council include recognition of Arctic States' sovereignty, sovereign rights and jurisdiction in the Arctic. Further, they include recognizing that an extensive legal framework applies to the Arctic Ocean including, notably, the Law of the Sea. This framework provides a solid foundation for responsible management of this ocean. The EU's unilateral establishment of fishing quotas in

Norwegian Arctic Waters is not in line with these basic principles for multilateral engagement and cooperation in the Arctic.

In an increasingly polarized and fragile world where sustainable management of resources comes under pressure it is paramount to defend a rules and values-based international order. Norway has expressed its full support to the objectives of the EU's European Green Deal of putting climate change, the loss of biodiversity and the protection of the environment at the heart of a renewed ambition to achieve sustainability. Norway has demonstrated its commitment to give priority to joint action in a number of key areas to promote these aims.

In order to promote these objectives, Norway's effective application and enforcement of domestic laws in compliance with international law, are key. However, the Delegation's Note Verbale of 26 February 2021 as well as Council Regulation (EU) 2021/92 contain elements that could be read or interpreted as supporting views that would undermine legal certainty and predictability, jeopardize effective environmental controls and responsible resource management, and in its logical conclusion, could give rise to potential foreign and security policy implications. Several statements pertaining to the interpretation of the applicable international legal framework are misleading. This is further detailed in the enclosed annex to this Note Verbale.

Norway and the EU have over the years developed a fruitful and mutually beneficial cooperation on fisheries based on respect for United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), responsible and sustainable management of marine resources, and the fight against illegal, unreported and unregulated fishing (IUU fishing). Norway remains highly committed to this legal framework and these values and wishes to continue its cooperation with the EU and its Member States on this basis.

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



Oslo, 4 May 2021



Annex: "Svalbard, the 200-mile Fisheries Protection Zone and Norway's fisheries regulations"

