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2017/0210 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, with regard to proposals from various parties to the Convention on the conservation of migratory species of wild animals for amendments to the Appendices of the Convention at the twelfth meeting of the Conference of the Parties

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Conference of the Parties of the Convention on the conservation of migratory species of wild animals in connection with the envisaged adoption of a decision concerning amendments of the appendices of the Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the conservation of migratory species of wild animals

The Convention on the conservation of migratory species of wild animals ('the Agreement') aims to conserve terrestrial, marine and avian migratory species throughout their range. It is an intergovernmental treaty, concluded under the aegis of the United Nations Environment Programme, concerned with the conservation of wildlife and habitats on a global scale. The Agreement entered into force on 1 November, 1983. Currently there are 124 Parties to the Agreement. The European Union is a party to the Agreement since 1 November, 1983.[1] All Member States are parties to the Agreement.

2.2. The Conference of the Parties

The Conference of the Parties is the principal decision-making body of the Agreement. Its functions are enumerated in Article VII of the Agreement, including powers to assess the conservation status of migratory species and, subsequently, to amend Appendices to the Agreement. It meets every three years. Decisions at a meeting of the Conference of the Parties require a two-thirds majority of the Parties present and voting, except where otherwise provided for by this Agreement.

The mandate for the Union's position concerning amendments of the appendices is given by a decision of the Council based on a proposal from the Commission. The EU common positions concerning other draft decisions and resolutions are agreed in prior meetings of the relevant Council working party or at on-the-spot EU coordination meetings.

2.3. The envisaged act of the Conference of the Parties

On 23-28 October, 2017 during its twelfth meeting in Manila, the Philippines, the Conference of the Parties is to adopt a decision regarding amendments of the appendices of the Agreement ('the envisaged act').

In accordance with Article XI of the Agreement, proposals for amendment may be made by any Party. An amendment to the Appendices enters into force for all Parties ninety days after

[1] Council Decision 82/461/EEC of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals, OJ L 210, 24.6.1982, p. 10.

the meeting of the Conference of the Parties at which it is adopted, except for those Parties which make a reservation.

The purpose of the envisaged act is to amend Appendix I and Appendix II of the Agreement, as provided for in Article XI of the Agreement. Amendments are adopted by a two-thirds majority of Parties present and voting.

The envisaged act shall become binding on the parties in accordance with Article III of the Agreement, which provides that Appendix I shall list migratory species which are endangered and that Parties that are Range States of the species concerned shall endeavour to take various conservation measures and shall prohibit the taking of animals belonging to such species.

Article IV to the Agreement stipulates that Appendix II shall list migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international cooperation that could be achieved by an international agreement. If the circumstances so warrant, a migratory species may be listed both in Appendix I and Appendix II.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The twelfth meeting of the Conference of the Parties to the Agreement will take place in Manila (the Philippines) from 23 to 28 October 2017. For this meeting, the Union proposed to amend Appendix II to the Agreement to add the bird species *Lanius excubitor excubitor* and *Lanius minor.*

Other Parties to the Convention have submitted proposals to amend Appendices I and II to the Convention for the species *Pan paniscus, Pan troglodytes, Equus africanus, Equus ferus przewalskii, Lasiurus cinereus, Lasiurus borealis, Lasiurus blossevillii, Lasiurus ega, Panthera leo, Panthera pardus, Ursus arctos isabellinus, Pusa caspica, Gazella bennettii, Giraffa camelopardalis, Fregata andrewsi, Aquila nipalensis, Gyps bengalensis, Gyps indicus, Gyps tenuirostris, Sarcogyps calvus, Gyps africanus, Gyps coprotheres, Gyps rueppelli, Necrosyrtes monachus, Trigonoceps occipitalis, Torgos tracheliotos, Anous minutus worcesteri, Emberiza, sulphurata, Rhincodon typus, Squatina squatina, Rhinobatos rhinobatos, Carcharhinus obscurus, Prionace glauca* and *Rhynchobatus australiae.*

The Union should support all proposals because they are science-based and in line with the Union's commitment to international cooperation for the protection of biodiversity. This should include promoting to consider how to make best use of available scientific information so that both biological features and fisheries biological reference points can be taken into consideration.

It is therefore necessary for the Council to take a decision for the purpose of establishing the position to be adopted on behalf of the Union with a view to the twelfth meeting of the Conference of the Parties with regard to proposals for amendment.

The proposals for amendment will not require a change of existing Union law.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The notion of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'.[2]

4.1.2. Application to the present case

The Conference of the Parties is a body set up by an agreement, namely the Convention on the conservation of migratory species of wild animals. The twelfth meeting of the Conference of the Parties to the Convention will take place in Manila (the Philippines) from 23 to 28 October 2017. For this meeting, the Union proposed to amend Appendix II to the Convention to add the bird species *Lanius excubitor excubitor* and *Lanius minor.*

The act which the Conference of the Parties is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article III of the Convention on the conservation of migratory species of wild animals. The envisaged act does not supplement or amend the institutional framework of the agreement.

The procedural legal basis for the proposed decision, therefore, is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is adopted on behalf of the Union. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to environment.

The substantive legal basis of the proposed decision, therefore, is Article 192(1).

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[2] Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention on the conservation of migratory species of wild animals ('the Agreement') was concluded by the Union by Council Decision 82/461/EEC of 24 June 1982[3] and entered into force on 1 November 1983;

(2) Pursuant to Article XI of the Agreement, the Conference of the Parties may adopt a decision to amend the appendices of the Agreement;

(3) The Conference of the Parties, during its twelfth meeting on 23-28 October 2017, is to adopt a decision on amending Appendix I and Appendix II of the Agreement;

(4) It is appropriate to establish the position to be adopted on behalf of the Union in the Conference of the Parties, as the decision will be binding upon the Union;

(5) The Union should support all proposals because they are science-based, in line with the Union's commitment to international cooperation for the protection of biodiversity in accordance with Article 5 of the UN Convention on Biological Diversity and decisions taken at the Conference of the Parties under that Convention, in particular with the global target agreed at the Tenth meeting: "By 2020 the extinction of known threatened species has been prevented and their conservation status, particularly of those most in decline, has been improved and sustained", and will not require a change of existing Union law;

(6) The mammals *Pan paniscus, Equus africanus, Equus ferus przewalski, Ursus arctos isabellinus* and *Pusa caspica* do not occur in the EU. Hence adding these species to Appendix I to the Convention would not require any change in Union law;

[3] OJ L 210, 19.7.1982, p. 10.

(7) The mammals Pan troglodytes, Equus africanus, Lasiurus cinereus, Lasiurus borealis, Lasiurus blossevillii, Lasiurus ega, Panthera leo, Panthera pardus, Gazella bennettii and Giraffa camelopardalis do not occur in the EU. Hence adding these species to Appendix II would not require any change in Union law;

(8) The birds Fregata andrewsi, Gyps bengalensis, Gyps indicus, Gyps tenuirostris, Sacrogyps calvus, Gyps coprotheres, Necrosyrtes monachus, Trigonoceps occipitalis, Anous minutus worcesteri and Emberiza sulphurata do not occur in the EU except for overseas territories which fall outside the scope of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. Hence adding these species to Appendix I and II to the Convention would not require any change in Union law;

(9) The birds *Aquila nipalensis, Gyps africanus, Gyps rueppelli* and *Torgos tracheliotos* are covered by Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds[4]. Hence adding these species to Appendix I and Appendix II of the Convention would not require any change in EU law;

(10) The fish species *Rhincodon typus, Squatina squatina, Rhinobatos rhinobatos, Carcharinus obscurus, Prionace glauca* and *Rhynchobatus australiae* fall under the Common Fisheries Policy which offers the appropriate instruments for the EU to contribute to managing their protection;

(11) Furthermore, the fishing and retention of species *Squatina squatina* and *Rhinobatos rhinobatos* are prohibited under Council Regulation 2017/127[5] and their Mediterranean populations are strictly protected (retention ban) by GFCM[6];

(12) Furthermore, the species *Rhincodon typus* is listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Annex B of the EU Wildlife Trade Regulation[7] and currently regulated by the Indian Ocean Tuna Commission (IOTC), the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC);

(13) The Union should promote efforts to consider how to make best use of all available and relevant scientific information and to improve the framework of cooperation between relevant multilateral and regional instruments through advocating consistency and complementarity;

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4 OJ L20, 26.1.2010, p. 7.

5 Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 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.

6 General Fisheries Commission for the Mediterranean Recommendation GFCM/36/2012/3 on fisheries management measures for conservation of sharks and rays in the GFCM area.

7 Commission Regulation (EU) No 1320/2014 of 1 December 2014 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein EU, OJ L 361, 17.12.2014, p. 1.

(14) In this spirit also noting the importance of Ocean Governance objectives in line with the Joint Communication on International Ocean Governance[8];

(15) To the extent that the Convention on the conservation of migratory species of wild animals falls both within the competence of the Union and the competence of the Member States, the Commission and the Member States should cooperate closely for the adoption of the amendments to the Appendices of the Convention, aiming for unity in the international representation of the Union.

(16) In the Conference of the Parties, the Union is to be represented by the Commission in accordance with Article 17(1) TEU. The Member States are to support the position of the Union in accordance with Article 4(3) TEU.

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, in the twelfth meeting of the Conference of the Parties shall be the following:

(1) to support the addition to Appendix I of the following species:

(a) Pan paniscus

(b) Equus africanus

(c) Equus ferus przewalski

(d) Ursus arctos isabellinus

(e) Pusa caspica

(f) Fregata andrewsi

(g) Aquila nipalensis

(h) Gyps bengalensis

(i) Gyps indicus

(j) Gyps tenuirostris

(k) Sacrogyps calvus

(l) Gyps africanus

[8] Joint communication: International ocean governance agenda for the future of our oceans (JOIN(2016) 49).

(m) *Gyps coprotheres*

(n) *Gyps rueppelli*

(o) *Necrosyrtes monachus*

(p) *Trigonoceps occipitalis*

(q) *Torgos tracheliotos*

(r) *Anous minutus worcesteri*

(s) *Emberiza sulphurata*

(t) *Rhincodon typus*

(u) *Squatina squatina*

(v) *Rhinobatos rhinobatos*

(2) to support the addition to Appendix II of the following species:

(a) *Pan troglodytes*

(b) *Equus africanus*

(c) *Lasiurus cinereus*

(d) *Lasiurus borealis*

(e) *Lasiurus blossevillii*

(f) *Lasiurus ega*

(g) *Panthera leo*

(h) *Panthera pardus*

(i) *Gazella bennettii*

(j) *Giraffa camelopardalis*

(k) *Aquila nipalensis*

(l) *Gyps bengalensis*

(m) *Gyps indicus*

(n) *Gyps tenuirostris*

(o) *Sacrogyps calvus*

(p) *Gyps africanus*

(q) *Gyps coprotheres*

(r) *Gyps rueppelli*

(s) *Necrosyrtes monachus*

(t) *Trigonoceps occipitalis*

(u) *Torgos tracheliotos*

(v) *Anous minutus worcesteri*

(w) *Emberiza sulphurata*

(x) *Lanius excubitor excubitor*

(y) *Lanius minor*

(z) *Rhincodon typus*

(aa) *Squatina squatina*

(bb) *Rhinobatos rhinobatos*

(cc) *Carcharinus obscurus*

(dd) *Prionace glauca*

(ee) *Rhynchobatus australiae*

Article 2

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

For the Council
The President