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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats with a view to the meeting of the Standing Committee of the Convention

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal for a Council Decision concerns the proposal to be presented on behalf of the Union for amendment of Appendix II and Appendix III of the Convention on the conservation of European wildlife and natural habitats (Bern Convention) with respect to the wolf (*Canis lupus*), as well as the position to be taken on the Union's behalf on that proposal in the meeting of the Standing Committee of the Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the conservation of European wildlife and natural habitats

The 1979 Convention on the conservation of European wildlife and natural habitats (Bern Convention) ("the Convention") aims to conserve European wild flora and fauna and their natural habitats, especially those whose conservation requires the co-operation of several States. It is an intergovernmental treaty, concluded under the aegis of the Council of Europe. The Convention entered into force on 1 June 1982. The European Union is a Contracting Party to this Convention since 1 September 1982¹. As from April 2024, there will be 50² Contracting Parties to the Convention, including all EU Member States.

2.2. The Standing Committee

The Standing Committee is the decision-making organ of the Convention, having powers to assess the conservation status of species³ and, subsequently, to review their listing in the Appendices of the Convention. Its functions are enumerated in Articles 13-15 of the Convention, including concerning potential amendments to the text of the Convention or its Appendices.

It meets at least every two years and whenever a majority of the Contracting Parties so requests. It has been the practice in the past 40 years for the Standing Committee to meet at the end of each calendar year. The next ordinary meeting of the Standing Committee (44th meeting) will take place on 2-6 December 2024.

If the Council adopts the proposed decision, the Union could request and obtain an exceptional meeting of the Standing Committee pursuant to Article 13(4) of the Convention and Rule 1B of the Rules of Procedure of the Standing Committee, since it holds the required majority of Parties. The meeting could take place at the end of the first semester of 2024 and should be convened at least six weeks before the date fixed for the opening of the meeting.

2.3. The envisaged acts of the Standing Committee

The purpose of the proposed decision is to propose, on behalf of the Union, an amendment to Appendix II and Appendix III of the Convention, namely the lowering of the level of protection of the wolf (*Canis lupus*) species by moving it from Appendix II (strictly protected fauna species) to Appendix III (protected fauna species).

¹ Council Decision 82/72/EEC of 3 December 1981 on the conclusion on behalf of the Community of the Convention on the Conservation of European Wildlife and Natural Habitats, OJ L 38, 10.2.1982, p. 1.

² On 5th September 2023, Belarus notified it denounces the Bern Convention. In application of Article 23.2 of the Convention, the denunciation will become effective as of 1st April 2024.

³ Article 14.1 of the Bern Convention: ".... keep under review the provisions of this Convention, including its appendices, and examine any modifications necessary".

It is proposed that the Union submits the amendment proposal in view of the 44th meeting of the Standing Committee, or of any earlier exceptional meeting that the Union may request. In line with Article 17 of the Convention, the deadline for submitting amendment proposals is at least two months prior to the date of the Standing Committee meeting.

In accordance with Article 17 of the Convention, an amendment to the Appendices requires adoption by a two-thirds majority of the Contracting Parties. Unless one-third of the Contracting Parties have notified objections, an amendment enters into force three months after the adoption date, for those Contracting Parties which have not notified objections.

The Union's position with respect to proposing amendments to the Appendices to the Convention (and adopting them in the Standing Committee) is established by a decision of the Council, based on a proposal from the Commission, pursuant to Article 218(9) TFEU, since such amendments will have legal effects on the Union.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1. The current legal status of the wolf (*Canis lupus*) under the Bern Convention

The initial listing of animal species in Appendix II or III was based on the available scientific data at the time of negotiation of the Convention in 1979 and the lists of mammals, birds, amphibians, and reptiles threatened in Europe, drawn up by the European Committee for the Conservation of Nature and Natural Resources under the Council of Europe⁴. Article 1(2) of the Convention provides that “*particular emphasis is given to endangered and vulnerable species*”⁵.

The wolf (*Canis lupus*) species has been listed in Appendix II of the Convention (strictly protected species) since its entry into force in 1982. Twelve individual Parties (nine of which are EU Member States) have availed themselves of the possibility to file reservations pursuant to Article 22 with respect to the listing of the wolf species at the time of signature or ratification of the treaty (Bulgaria, Czechia, Finland, Latvia, Lithuania, North Macedonia, Poland, Slovenia, Slovakia, Spain, Turkey and Ukraine). More specifically as regards EU Member States, Finland, Latvia, Poland, Czechia, Slovakia, Slovenia and Bulgaria entered full reservations against any protection for the wolf species, whereas Lithuania and Spain entered a reservation against strict protection of the wolf pursuant to Appendix II, but committed to the protection pursuant to Appendix III, allowing for the sustainable management of the wolf.

Since 2006, Switzerland has proposed on three occasions (2006, 2018 and 2022) the downlisting of the wolf species and therefore all wolf populations covered by the Convention from Appendix II to Appendix III of the Convention. These proposals were not adopted by the Standing Committee, due to insufficient support among the Contracting Parties.

The European Parliament, in its resolution of 24 November 2022 on the protection of livestock farming and large carnivores in Europe⁶, welcomed the fact that the item ‘Proposal for amendment: Downlisting of the wolf (*Canis lupus*) from Appendix II to Appendix III of the Convention’ had been included on the agenda of the 42nd meeting of the Standing Committee of the Bern Convention and emphasised that the conservation status of the wolf at

⁴ See Explanatory report to the Convention on the conservation of European wildlife and natural habitats (<https://rm.coe.int/16800ca431>)

⁵ Article 1(2) of the Bern Convention (<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=104>)

⁶ European Parliament resolution 2022/2952(RSP) (https://www.europarl.europa.eu/doceo/document/TA-9-2022-0423_EN.html)

pan-European level justifies a mitigation of the protection status and consequently the adoption of the proposed amendment.

3.2. Considerations for proposing to move the wolf (*Canis lupus*) species from Appendix II (strictly protected fauna species) to Appendix III (protected fauna species) of the Convention

The Bern Convention does not set out explicitly which criteria govern the listing in Appendix II or III. Recommendation No. 56 (1997)⁷ of the Standing Committee of the Convention provides guidelines for listings under Appendices I and II of the Convention. These guidelines recommend that Contracting Parties take into account the following when proposing amendments of Appendix II:

“1. Threat. Account will be taken of the category of threat, the vulnerability of the species to changes in its habitat, its particular link with a threatened habitat, the trends and variations in population level and its vulnerability to a possible non sustainable use. Account will be taken of whether the species is declining in the central area of its distribution, or it is only threatened in the border of its range.

*2. Ecological role. Account will be taken of the ecological role of the species, such as their position or role in the food chain (i.e. raptors, insectivorous species such as bats), their structural role in ecosystems (i.e. corals, heathlands) or the fact that endangered species or endangered ecosystems may be highly dependent on them (i.e. marine phanerogams like *Posidonia oceanica*) or risk to become threatened by their exploitation (like the mollusc *Lithophaga lithophaga*).“*

Article 2 of the Convention refers to the objective of achieving a population level “*which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements (...)*”.

Current trends in the conservation status of the wolf in Europe

After a long history of deliberate persecution which led to its extinction in most European countries, the combination of a number of ecological, social and legislative changes (legal protection, land abandonment, natural reforestation, increase in wild ungulates populations, changes of public attitudes towards this species) allowed the wolf to survive and then to undergo a rapid population recovery at the end of the 20th century and in particular in the past ten to twenty years. A comparison between the distribution maps of the species from 2000⁸, 2005⁹ and 2016¹⁰ testifies of the considerable expansion of the range reached by the nine mainly trans-boundary wolf sub-populations in Europe. Today, the species is present in all mainland European countries, some hosting large populations of over 1 000 individuals.

In September 2022, an update of the wolf conservation status, developed by the Large Carnivore Initiative for Europe (LCIE) for the Bern Convention¹¹, showed the total number of wolves in the EU was likely to be in the order of 19 000 (compared to about 14 300 in 2016) and the number of wolves in Europe (excluding Belarus and the Russian Federation) was

⁷ Recommendation No. 56 (1997) of the Standing Committee to the Convention (<https://rm.coe.int/168074680c>)

⁸ Action Plan for the conservation of the wolves (*Canis lupus*) in Europe, Council of Europe, 2000 - T-PVS(2000)23 (<https://rm.coe.int/1680746b76>)

⁹ Report on the conservation status and threats for wolf (*Canis lupus*) in Europe, Council of Europe, 2005, T-PVS/Inf (2005) 16 ([Microsoft Word - inf16e_2005 Conservation Threats Wolf.doc \(coe.int\)](https://rm.coe.int/inf16e_2005_Conservation_Threats_Wolf.doc%28coe.int%29))

¹⁰ Assessment of the conservation status of the Wolf (*Canis lupus*) in Europe, Council of Europe, 2022, T-PVS/Inf(2022)45 (<https://rm.coe.int/inf45e-2022-wolf-assessment-bern-convention-2791-5979-4182-1-2/1680a7fa47>)

¹¹ Assessment of the conservation status of the Wolf (*Canis lupus*) in Europe, Council of Europe, 2022, T-PVS/Inf(2022)45 (<https://rm.coe.int/inf45e-2022-wolf-assessment-bern-convention-2791-5979-4182-1-2/1680a7fa47>)

likely to exceed 21 500 (compared to about 17 000 in 2016)¹². According to the LCIE study, 19 out of 34 countries reported increasing wolf numbers and only 3 countries reported decreasing numbers, all in the Dinaric/Balkan region¹³. As for the EU, in 17 of the 24 EU Member States with wolves, their populations were increasing, and for the other 7 they were either stable or fluctuating. LCIE therefore considered that wolves were not declining in any EU Member State.

The LCIE assessment for the Bern Convention from 2022 also updated the IUCN Red List criteria assessments dating back from 2018¹⁴. LCIE considered that the wolf qualified as “Least Concern” at both the European and EU 27 levels, similarly to the Red List assessment from 2018. The LCIE 2022 assessment concludes that *“the magnitude of the numbers and the changes in the last decades allow the conclusion that wolf numbers in Europe have increased during the last decade and the overall positive trends appears to be stable or increasing. The conservation status at European scale is undeniably positive and the species can be classified as “Least Concern” in the IUCN Red List system when the assessment is made at the continental scale.”*

Regarding the nine wolf sub-populations in Europe, LCIE noted that they were increasing everywhere on the continent, except the Iberian sub-population which was stable and the Dinaric/Balkan sub-population for which the trend was unknown. The LCIE 2022 assessment concluded that three sub-populations qualify as “Least Concern”, five belong to the category “Near Threatened” and one – the Scandinavian sub-population – belongs to the category “Vulnerable”. This is a further improvement compared to the 2018 Red List assessment, according to which three sub-populations – Scandinavian, Central European and Western-Central Alps – were assessed as ‘Vulnerable’ due to the limited size of their population.

At the EU level, the latest assessment of the conservation status of the wolf¹⁵ based on the reports submitted in 2019 by the Member States in the framework of Article 17 of the Habitats Directive covered the period 2013-2018. The wolf was reported to be present in 21 EU countries, with an overall EU population at that time estimated at around 11 000-17 000 (best value: 13 492 wolves). The reporting showed that the species was in a favourable conservation status in 18 out of 39 national parts of biogeographical regions where the species was present. Even where the conservation status was, at that point in time, still unfavourable in several national parts of biogeographical regions, Member States’ reports under Article 17 of the Habitats Directive submitted in 2019 also indicated that the population size, the habitat of the species and the range of the species were generally showing a stable or positive trend in all the biogeographical regions, confirming that the species was continuing to recolonise parts of its natural range. Expanding wolf population size, habitat and range, while being positive developments, do not automatically translate into a favourable conservation status assessment at the relevant geographical level (national or EU biogeographic) as other elements, such as sufficiently large populations and range (reference values), normal population structure and good future prospects, also need to be factored in. At the level of the EU biogeographical regions the assessment showed that the species was in unfavourable-inadequate conservation status in 6 EU biogeographical regions and in favourable status in one, the Alpine biogeographical region.

¹² Assessment of the conservation status of the Wolf (*Canis lupus*) in Europe, Council of Europe, 2022, T-PVS/Inf(2022)45 (<https://rm.coe.int/inf45e-2022-wolf-assessment-bern-convention-2791-5979-4182-1-2/1680a7fa47>)

¹³ Bosnia and Herzegovina, Montenegro and North Macedonia

¹⁴ IUCN Red List assessment of the wolf, 2018 ([Canis lupus](https://www.iucnredlist.org/species/Canis_lupus) (Grey Wolf) ([iucnredlist.org](https://www.iucnredlist.org)))

¹⁵ <https://nature-art17.eionet.europa.eu/article17/species/summary/?period=5&group=Mammals&subject=Canis+lupus®ion>

In 2023, an in-depth analysis of the status of the wolf in the EU¹⁶ reviewed the available scientific data on the species, the data reported by national authorities from EU Member States as well as relevant data gathered from a targeted data collection exercise. The result of this analysis confirms the upward trend in population size as well as the ongoing expansion of the wolf's range. A total of about 20 300 wolves have been estimated in the EU in 2023¹⁷. This estimation is higher than the about 19 000 wolves estimated in September 2022 by LCIE and higher than the population estimated at around 11 000-17 000 reported under Article 17 of the Habitats Directive for the period 2013-2018. It is also higher than an earlier estimation from 2012 that concluded on the presence of 11 193 wolves in the EU¹⁸. The in-depth analysis concludes that the populations are increasing in most EU Member States. Data from 10 EU Member States with available monitoring results covering recent years show that in all but one of these Member States the population increases are significant over the last two to three years¹⁹. Moreover, in 2023, breeding packs have been detected in all 24 EU Member States with wolf populations, except Luxembourg.

The successful recovery of wolf populations and the wolf's range across the European continent in the past decades also testify of the strong adaptability of the species. Wolves' capacity to recolonise regions through quick population expansions starting with low numbers is clearly recorded and also testifies that the species is resilient²⁰. LCIE noted that the prospects were reported as positive²¹, with further expansion expected for practically all nine sub-populations.

Threats and legal protection status

Threats to wolves are multiple and diverse in nature. The most frequently reported pressure by EU Member States²² for the period (2013-2018) is "illegal shooting/killing". This pressure and the pressure "Poisoning of animals", reported in fourth place, are both linked to the problem of wolf poaching. The "impact of roads, paths, railroads and related infrastructure" is in second place, covering both the direct mortality caused by traffic accidents and for the fragmentation they can produce across populations. The "Interactions with agricultural activities" and "Hunting" are also reported as frequent pressures. New emerging threats include border fences and wolf-dog hybridisation.

Some of these pressures are directly addressed by the prohibitions of deliberate killing and disturbance, and deliberate damage or destruction of breeding and resting sites of strictly protected species under Appendix II, as set out in Article 6 of the Convention.

¹⁶ Blanco and Sundseth (2023), The situation of the wolf (*Canis lupus*) in the European Union – an In-depth Analysis. A report of The N2K Group for DG Environment, European Commission <http://data.europa.eu/doi/10.2779/187513>

¹⁷ Blanco and Sundseth (2023), The situation of the wolf (*Canis lupus*) in the European Union – an In-depth Analysis. A report of The N2K Group for DG Environment, European Commission <http://data.europa.eu/doi/10.2779/187513>

¹⁸ Boitani et al. 2015. Key actions for Large Carnivore populations in Europe, Institute of Applied Ecology (Rome, Italy) <https://circabc.europa.eu/ui/group/3f466d71-92a7-49eb-9c63-6cb0fadf29dc/library/7858bea4-148d-461d-9ad0-e8736da91b5a/details>

¹⁹ Table 2.4.2. Wolf trends in recent years in some EU Member States, Blanco and Sundseth (2023), The situation of the wolf (*Canis lupus*) in the European Union – an In-depth Analysis. A report of The N2K Group for DG Environment, European Commission <http://data.europa.eu/doi/10.2779/187513>

²⁰ See examples of the rapid expansion (both in population size and in range) in France (<https://www.loupfrance.fr/suivi-du-loup/situation-du-loup-en-france/>) and in Germany (<https://www.dbb-wolf.de/wolf-occurrence/confirmed-territories/map-of-territories>).

²¹ Assessment of the conservation status of the Wolf (*Canis lupus*) in Europe, Council of Europe, 2022, T-PVS/Inf(2022)45 (<https://rm.coe.int/inf45e-2022-wolf-assessment-bern-convention-2791-5979-4182-1-2/1680a7fa47>) and Reporting under Article 17 of the Habitats Directive

²² <https://nature-art17.eionet.europa.eu/article17/species/summary/?period=5&group=Mammals&subject=Canis+lupus®ion>

Whereas species listed in Appendix III are not subject to these prohibitions, they are subject to species protection pursuant to Article 7 of the Convention and to the general obligation of Article 2.

Article 7(1) of the Convention provides that Contracting Parties “*shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species listed in Appendix III*”. Pursuant to Article 7(2) of the Convention, “[a]ny exploitation [of these species] shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2”. Article 7(3) of the Convention specifies that such protection includes “(a) closed seasons and/or other procedures regulating the exploitation; (ii) the temporary or local prohibition of exploitation to restore satisfactory population levels; (iii) the regulation of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals”.

According to the Explanatory Report²³ to the Convention on the Conservation of European Wildlife and Natural Habitats, Article 7 “*obliges the Contracting Parties to ensure the protection of the fauna listed in Appendix III. Nevertheless, considering that these species may all, in varying degrees, be legitimately subject to exploitation in a particular State, the Convention does not exclude the possibility for each Contracting Party to authorise such exploitation on condition that this affects only those species not threatened on its territory and that such exploitation does not jeopardise the animal population concerned. In so doing, the Contracting Party must supervise the exploitation and, if necessary, impose stricter measures. The article has been drafted in this way in order to provide States with flexibility with regard to species that may from time to time not be directly threatened. In carrying out this provision Contracting Parties must, in accordance with Article 2, have regard for sub-species and varieties which are at risk locally, without being threatened at European level.*”

Therefore, the above-mentioned pressures concerning hunting and poaching should also be addressed by measures taken in accordance with Article 7 of the Convention (through the regulation of hunting and enforcement against poaching). The main difference between both regimes in relation to these threats is that the protection regime for species listed in Appendix III maintains more flexibility concerning the appropriate measures the Contracting Parties shall put in place. It should be emphasized that those appropriate measures should still ensure the protection of the species and keep it out of danger, as required by Article 7(1) and (2) of the Convention. Therefore, the Commission submits that as long as Article 7 of the Convention is complied with in terms of appropriate measures taken by Parties, the threats to the wolf such as hunting and poaching would remain sufficiently addressed after moving the species to Appendix III of the Convention. In addition, under Article 8 of the Convention, the prohibition of certain capture and killing methods specified in Appendix IV to the Convention is applicable to species listed in both Appendix II and Appendix III of the Convention.

Other threats, such as direct mortality caused by traffic accidents, are neither addressed by measures required under the strict protection regime applicable to species listed in Appendix II, nor by measures required under the protection regime applicable to species listed in Appendix III.

Moreover, as provided for in the Bern Convention Recommendation No. 163 (2012) of the Standing Committee, adopted on 30 November 2012, on the management of expanding populations of large carnivores in Europe, Contracting Parties to the Bern Convention are

²³ Explanatory Report to the Convention on the Conservation of European Wildlife and Natural Habitats <https://rm.coe.int/16800ca431>

encouraged to collaborate as appropriate with other states sharing the same populations, with the objective to maintain them healthy and at favourable conservation status. Such cooperation, involving coexistence and protection measures, remains necessary and relevant if the wolf species is listed in Appendix III of the Convention.

3.3. Socio-economic considerations

The continued expansion of the wolf range and its recolonisation of new territories have led to increasing conflicts with human activities, notably concerning livestock damages caused by the wolf. Depredation has reached important levels, affecting more and more regions, both within EU Member States and non-EU Bern Contracting Parties. Wolf depredation of livestock is the main driver of conflicts with humans, alongside the range and population expansion of the species. The financial and social costs associated with the expansion of the wolf range and its recolonisation of new territories have been progressively increasing and will remain important for the prevention and compensation of livestock damage due to the presence of the wolf.

Data collected on incident density in the in-depth analysis of the status of the wolf from 2023 indicate that damages caused by the wolf are increasing in the EU. In particular, according to the latest available data from Member States²⁴ wolves are estimated to kill yearly at least 65,500 heads of livestock in the EU, 73% of them are sheep and goats, 19% cattle and 6% horses and donkeys bred for meat. Semi-domestic reindeer are also killed in Finland (1,261 in 2022) and in Sweden (unknown figure). These figures are higher than those shown in the 2022 LCIE study of 53,530 heads of livestock killed yearly in the EU²⁵; however, the significant change might partly depend on the different choices made on compensation– and thus registration – of losses for wolf depredation in 2022.

While these data are not directly comparable it appears that, in general, damage to livestock has increased as the wolf population has grown, which confirms the importance to invest in effective prevention measures. Increased damage to livestock has also resulted in lowered acceptance of the species in some regions in the EU. While the impact of the wolf on livestock is small at EU level and overall damage to livestock appears as tolerable at country level, its concentration at a local level may reveal strong pressure on certain areas, with emotional consequences for livestock owners and indirect economic losses which are difficult to quantify. In some areas, recurrent damage to livestock can represent an additional challenge for pastoralism, the cultural heritage and the way of living of rural communities, that requires dedicated support for effective prevention measures²⁶. Indeed, extensive livestock farming is essential for the maintenance and conservation of high-diversity agricultural ecosystems, such as permanent grassland. In addition, pastoralism is a traditional activity, part of our social heritage and a key to the economy of mountainous and marginal rural areas.

This proposal will create additional flexibility to the Parties to the Bern Convention on how to deal with increased damages and potential socio-economic conflicts associated with the wolf

²⁴ Aggregated data from Member States collected in 2023, concerning different years depending on the Member State between 2017 and 2022.

²⁵ Aggregated data from Member States collected in 2023, concerning different years depending on the Member State between 2017 to 2021.

²⁶ Blanco and Sundseth (2023), The situation of the wolf (*Canis lupus*) in the European Union – an In-depth Analysis. A report of The N2K Group for DG Environment, European Commission <http://data.europa.eu/doi/10.2779/187513>

in some areas, while keeping the objective to reach favourable conservation status for all wolf populations in the EU.

3.4. Conclusion

It seems justified to propose amending the Appendices of the Bern Convention by moving the wolf (*Canis lupus*) species from Appendix II (strictly protected fauna species) to Appendix III (protected fauna species) of the Convention. Such a move seems appropriate in view notably of current trends of the population status and the protection level provided by the species protection regime pursuant to Appendix III in connection with Articles 2, 7 and 8 of the Convention.

Such a proposal corresponds largely to the position that the European Parliament expressed in its resolution of 24 November 2022²⁷.

Once the amendment of the Appendices of the Bern Convention (moving the wolf species from Appendix II to Appendix III) enters into force, the Union would be allowed to modify the corresponding Annexes of the Habitats Directive in order to reflect the lower protection level for the wolf species in its internal legal order.

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 a Convention, 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 concept 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*’²⁸.

4.1.2. Application to the present case

The Standing Committee is a body set up by the Convention.

The acts which the Standing Committee is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 6 and 7 of the Convention. The envisaged acts do not supplement or amend the institutional framework of the Convention.

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 taken on the Union's behalf. 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

²⁷ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0423_EN.html

²⁸ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64

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.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the acts of the Standing Committee would amend Appendices II and III of the Convention, it would be appropriate to publish them in the *Official Journal of the European Union*, if they are adopted.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats with a view to the meeting of the Standing Committee of the Convention

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 European wildlife and natural habitats (Bern Convention) ('the Convention') was concluded by the Union by Council Decision 82/72/EEC²⁹ and entered into force on 1 September 1982.
- (2) Pursuant to Article 17 of the Convention, the Standing Committee may adopt a decision to amend the Appendices of the Convention.
- (3) In line with Article 17 of the Convention, the deadline for submitting amendment proposals is at least two months prior to the Standing Committee meeting. The Union may, as a Party to the Convention, propose amendments to those Appendices.
- (4) In view of Recommendation No. 56 (1997) of the Standing Committee concerning guidelines to be taken into account while making proposals for amendment of Appendices I and II of the Convention and while adopting amendments³⁰, relevant considerations for listing species in the Appendices of the Convention include ecological and scientific factors, such as conservation status, populations trends and threats.
- (5) Article 2 sets out the objective of the Convention of achieving a population level “which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements (...)” and sets the broader context for measures taken by the Parties to the Convention. This objective can be taken into account when proposing an amendment to the Appendices of the Bern Convention.
- (6) The conservation status of the wolf has shown a positive trend since the last decades. The wolf has successfully recovered across the Continent with a significant expansion of the species’ range and its population having reached important levels, with

²⁹ OJ L 38, 10.2.1982, p. 1.

³⁰ Recommendation No. 56 (1997) concerning guidelines to be taken into account while making proposals for amendment of Appendices I and II of the Convention and while adopting amendments (available at <https://rm.coe.int/168074680c>).

estimated population levels for the EU having nearly doubled in 10 years (from 11 193 in 2012, in the range of 11 000-17 000 in 2019 to 20 300 in 2023). The populations are equally reported as continuously increasing across the Continent³¹. In spite of remaining threats to the wolf species, the successful recovery of its populations and increased range across the European continent in the past decades testify of the strong adaptability and resilience of the species.

- (7) At the same time, the continued expansion of the wolf's range in Europe and its recolonisation of new territories have led to increasing socio-economic challenges with regard to coexistence with human activities, notably due to livestock damages that have reached important levels, affecting more and more regions and EU Member States and beyond.
- (8) The most recent data on the population size from the 2022 assessment of the status of the wolf developed by the Large Carnivore Initiative for Europe (LCIE) for the Bern Convention and from the in-depth analysis of the status of the wolf in the European Union from 2023 provide adequate evidence in support of adapting the protection status of the wolf (*Canis lupus*) under the Convention.
- (9) Therefore, it is appropriate to adapt the protection level of the wolf species. The wolf species should be subject to the species protection resulting from a listing in Appendix III in connection with Article 7 of the Convention.
- (10) This adaptation of the protection level would add flexibility to address the increasing socio-economic challenges relating to the wolf linked to the continued expansion of the wolf's range in Europe and its recolonisation of new territories.
- (11) As provided for in the Bern Convention Recommendation No. 163 (2012) of the Standing Committee, adopted on 30 November 2012, on the management of expanding populations of large carnivores in Europe, Contracting Parties to the Bern Convention are encouraged to collaborate as appropriate with other states sharing the same populations, with the objective to maintain them healthy and at favourable conservation status. Such cooperation, involving coexistence and protection measures, remains necessary and relevant if the wolf species is listed in Appendix III of the Convention.
- (12) Therefore, in view of the 44th meeting of the Standing Committee to the Convention in 2024, or of any earlier exceptional meeting that the Union may request, the Union should submit a proposal for amending Appendix II and Appendix III to the Convention by removing the wolf (*Canis lupus*) from Appendix II and listing it under its Appendix III.
- (13) It is appropriate to also establish the position to be taken on the Union's behalf at the meeting of the Standing Committee, as the decisions amending the Appendices to the Convention will be binding on the Union.
- (14) The proposal should be communicated to the Secretariat for consideration at the next meeting of the Standing Committee of the Convention or of any earlier exceptional meeting that the Union may request.

31

Assessment of the conservation status of the Wolf (*Canis lupus*) in Europe, Council of Europe, 2022, T-PVS/Inf(2022)45 (<https://rm.coe.int/inf45e-2022-wolf-assessment-bern-convention-2791-5979-4182-1-2/1680a7fa47>) and Blanco and Sundseth (2023), The situation of the wolf (*Canis lupus*) in the European Union – an In-depth Analysis. A report of The N2K Group for DG Environment, European Commission <http://data.europa.eu/doi/10.2779/187513>

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to submit to the Standing Committee to the Convention, on behalf of the Union, a proposal to move the wolf (*Canis lupus*) species from Appendix II on “Strictly protected fauna species” to Appendix III on “Protected fauna species”.
2. The Commission shall communicate this proposal to the Secretariat of the Convention.

Article 2

The position to be taken on the Union's behalf in the Standing Committee to the Bern Convention shall be to support removing the wolf (*Canis lupus*) from Appendix II and adding it to Appendix III of the Convention.

Article 3

Refinement of the positions referred to in Articles 1 and 2 may be agreed to, in the light of developments in the Standing Committee, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*