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2019/0083 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union at the 18th meeting of the
Conference of the Parties to the Convention on International Trade in Endangered
Species of Wild Fauna and Flora (CITES CoP18)**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP18) in connection with the envisaged adoption of decisions inter alia to amend the Appendices to the Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ('the Convention' or CITES) aims to protect wild animals and plants against over-exploitation through international trade. The Convention entered into force on 1 July 1975.

The European Union and all its Member States are Parties to the Convention¹.

2.2. The Conference of the Parties to the Convention

Established pursuant to Article XI of the Convention, the Conference of the Parties (CoP) is the governing body of the Convention. The CoP meets every two to three years to review the implementation of the Convention. Most notably, it considers and adopts proposals to amend the lists of species in Appendices I and II to the Convention. The CoP also considers discussion documents and reports from the Parties, the permanent committees, the Secretariat and working groups, and recommends measures to improve the effectiveness of the Convention's implementation.

As far as possible, the CoP decides on proposals for amendment of Appendices I and II by consensus. When the CoP does not reach consensus, the decisions are put to a vote and can be adopted by a two-thirds majority of representatives present and voting under Article XV(1)(b) of the Convention. Each Party has one vote, except regional economic integration organisations which, in the areas of their competence, have the 'right to vote with a number of votes equal to the number of their Member States which are Parties to the Convention' under Article XXI(5) of the Convention. The Union and the Member States exercise their voting rights alternately, depending on the subject matter of the decision to be taken. On decisions to amend the Appendices, voting rights are exercised by the Union, given that the CITES Appendices are transposed in relevant Union legislation.²

2.3. The envisaged decisions of the Conference of the Parties

Between 23 May and 3 June 2019, during its 18th meeting, the Conference of the Parties is to decide on 57 proposals to amend the CITES Appendices ('listing proposals'). The purpose of including particular (groups of) species in the Appendices is to monitor and regulate (Appendix II) or to generally prohibit (Appendix I) commercial trade in those species.

¹ Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), OJ L 75, 19.3.2015, p. 1-3.

² Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, p. 1, and relevant implementing acts.

As integral parts of the Convention, the Appendices are legally binding. Under Article XV(1)(c) of the Convention, amendments decided by the CoP become applicable 90 days after the closure of the CoP.

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

As a Party to the Convention, the Union is to take a position on each of the listing proposals as well as on the numerous other draft decisions on the agenda of the CoP. The listing proposals – including those which were submitted by the Union itself – as well as the other proposed CoP decisions have been reviewed by experts from the Commission and the Member States, including with regard to their potential impacts on relevant Union rules and policies. The position proposed by the Commission is based on these expert discussions, held in the context of relevant Commission expert groups.

The listing proposals as well as several of the other draft CoP decisions are liable to affect EU rules or alter their scope, mostly because they would entail amendments to relevant Union legislation and implementing rules. Changes to the Appendices of the Convention need to be reflected in the EU acquis, through corresponding changes to Council Regulation (EC) No 338/97 and, where relevant, implementing Regulations. This will result in the establishment or removal of restrictions to trade from, into and within the EU for the species concerned by these changes.

The Commission is in regular contact with stakeholders having an interest in matters covered by the Convention, such as environmental non-governmental organisations, representatives of business sectors engaged in trade or in the utilisation of wildlife products, and hunting or fishing organisations. On 29 January 2019, the Commission services held a specific consultation meeting with interested stakeholders to obtain their views on the issues under discussion for CITES CoP18. The input provided by stakeholders has been duly taken into consideration by the Commission when developing the proposed Council Decision.

Further analyses of CoP proposals are carried out by the CITES Secretariat and by experts from specialised organisations such as the International Union for Conservation of Nature (IUCN), TRAFFIC, and the FAO Expert Advisory Panel for assessment of CITES species listing amendment proposals. Most of these analyses were not available in time for the Commission's proposal; they should all be fully considered when the proposal is discussed with Member States in the Council.

Several working documents for CITES CoP18 were also not available early enough for the Commission to propose a Union position at the present time. The Commission therefore proposes that the position on those issues be established during the discussions in the Council working group, or during the CoP meeting for documents which become available only then.

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 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*’³.

4.1.2. *Application to the present case*

The Conference of the Parties is a body set up by an agreement, namely CITES.

Several of the acts which the CoP is called upon to adopt constitute acts having legal effects. The amended Appendices, being integral part of the Convention, will be binding under international law. Some of the other CoP decisions are capable of decisively influencing the content of EU legislation, in particular Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and Commission Implementing Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006. This is because both acts are closely aligned with relevant rules for implementing the Convention as decided by the CoP.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision 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 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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. *Application to the present case*

The envisaged CoP decisions pursue objectives and have components in the areas of 'environment' and 'trade'. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 192(1) and 207.

4.3. **Conclusion**

The legal basis of the proposed decision should be Articles 192(1) and 207 in conjunction with Article 218(9) TFEU.

³ 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.

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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 Articles 192(1) and 207(3) and (4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention on International Trade in Endangered Species of Wild Fauna and Flora ('the Convention') was concluded by the Union by Council Decision (EU) 2015/451 of 6 March 2015⁴ and entered into force on 1 July 1975.
- (2) Pursuant to Article XI(3) of the Convention, the Conference of the Parties may, inter alia, adopt decisions to amend the Appendices to the Convention .
- (3) The Conference of the Parties, during its 18th meeting from 23 May to 3 June 2019, is to adopt decisions on 57 proposals to amend the Appendices, as well as on numerous other matters of implementing and interpreting the Convention.

It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the amendments to the Appendices will be binding on the Union and several other decisions will be capable of decisively influencing the content of Union law, in particular Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and Commission Implementing Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006.

- (4) The proposed position to be taken on the different proposals before the Conference of the Parties is based on expert analysis of their merits, in the light of the best available scientific evidence, as well as on the extent of their alignment with relevant Union rules and policies.

⁴ OJ L 75, 19.3.2015, p. 1-3.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora is set out in the Annexes.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*