EUROPEAN
COMMISSION

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2021/0346 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the 'Barcelona Convention') on the adoption of a Decision to amend the Annex to the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (the 'Dumping Protocol')

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal aims at establishing the position to be taken on the Union's behalf in the 22nd Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution (the 'Barcelona Convention') and its Protocols in connection with the envisaged adoption of a Decision amending the Annex to the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (the 'Dumping Protocol') .

2. CONTEXT OF THE PROPOSAL

2.1. The Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea

The Barcelona Convention and its seven Protocols adopted as part of the Mediterranean Action Plan constitute the principal regional legally binding multilateral environmental agreement for the Mediterranean Sea.

The Dumping Protocol is one of the seven Protocols of the Barcelona Convention. It aims to take all appropriate measures to prevent, abate and eliminate to the fullest extent possible pollution of the Mediterranean Sea by the dumping of wastes or other matter.

The European Union is a party to the Dumping Protocol[1].

2.2. The Meeting of the Contracting Parties to the Barcelona Convention and its Protocols

The Meeting of the Contracting Parties to the Barcelona Convention and its Protocols brings together Ministers and senior officials representing all Contracting Parties to the Barcelona Convention and its Protocols.

According to Article 15 of the Dumping Protocol, the provisions of the Barcelona Convention relating to any Protocol shall apply with respect to this Protocol.

According to Article 25 of the Barcelona Convention, the European Union ('the Union') shall exercise its right to vote with a number of votes equal to the number of its Member States, which are Contracting Parties to this Convention and to one or more protocols. The Union shall not exercise its right to vote when its Member States exercise theirs and conversely.

2.3. The envisaged act of the 22nd Meeting of the Contracting Parties to the Barcelona Convention and its Protocols

During its 22nd meeting on 7-10 December 2021, the Contracting Parties to the Barcelona Convention and its Protocols are to adopt a Decision amending the Annex to the Dumping Protocol concerning the protection of the Mediterranean Sea to the fullest extent from possible pollution by the dumping of wastes or other matter ('the envisaged act').

The purpose of the envisaged act is to amend the Annex of the Dumping Protocol on factors to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea taking into account Article 6 of the Protocol. These amendments take into consideration the provisions of the 1972 London Convention and its 1996 Protocol, both of which considered the global instruments regulating the dumping of wastes and other matter in

[1] OJ L 240, 19.9.1977, p. 1–2.

the sea, as well as the Marine Strategy Framework Directive (MSFD), where applicable and the ecosystem-based approach.

The amendments to the Annex to the Dumping Protocol will be binding on the Union in accordance with Article 29 of the Barcelona Convention.

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

The need for protection of marine biodiversity and ecosystems in the Mediterranean Sea has been repeatedly recognised.

The purpose of the envisaged act is to amend the Annex to the Dumping Protocol on factors to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea taking into account Article 6 of the Protocol. These amendments take into consideration the 1972 London Convention and its 1996 Protocol, seen as the global instruments regulating the dumping of wastes and other matter in the sea, and on the other, where applicable, of those of the Marine Strategy Framework Directive and its ecosystem-based approach.

In view of the 22nd meeting of the Contracting Parties to the Barcelona Convention and its Protocols, a Union position is necessary on the envisaged act since it will amend the Annex to the Dumping Protocol which will be binding on the Union in accordance with Article 29 of the Barcelona Convention. Given that the amendments to the Annex will update requirements regarding the protection of the Mediterranean Sea, modify Union international commitments and ambitions and improve the protection of the environment, it is proposed that the Union support the adoption of the envisaged act.

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.

4.1.2. Application to the present case

The Meeting of the Contracting Parties to the Barcelona Convention and its Protocols is a body set up by an agreement, i.e. the Barcelona Convention.

The envisaged act will amend the Annex to one of the protocols to the Barcelona Convention, i.e. the Dumping Protocol. Therefore its adoption constitutes an act having legal effects.

The envisaged act does not supplement or amend the institutional framework of the Barcelona Convention and its protocols.

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.

4.2.2. Application to the present case

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

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

4.3. Conclusion

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Protocol of the Convention for the Protection of the Mediterranean Sea against Pollution (the 'Barcelona Convention') for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (the 'Dumping Protocol') was concluded by the Union by Council Decision 77/585/EEC[2] and entered into force on 15 April 1978.

(2) Pursuant to Article 18 of the Barcelona Convention, the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols may adopt amendments to the protocols of the Convention.

(3) During their 22nd meeting on 7-10 December 2021, the Contracting Parties to the Barcelona Convention and its Protocols are to adopt a Decision amending the Annex to the Dumping Protocol on factors to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea taking into account Article 6 of the Protocol.

(4) It is necessary to establish the position to be taken on the Union's behalf in the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, as the Decision will adopt amendments to the Annex to the Dumping Protocol that will be binding on the Union.

(5) Since the envisaged amendments to the Annex will update requirements regarding the protection of the Mediterranean Sea, affect Union international commitments and ambitions and improve the protection of the environment, it is proposed that the Union support the adoption of the Decision.

[2] OJ L 240, 19.9.1977, p. 1–2.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 22nd Meeting of the Contracting Parties to the Barcelona Convention and its Protocols shall be to support the adoption of the Decision amending the Annex to the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (the 'Dumping Protocol').

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President