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2025/0333 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 24th meeting of the Conference of the Parties to the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution and its Protocols

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision on the position to be taken on the Union's behalf at the 24th 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 planned adoption of the following decisions:

- decision amending Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean;
- decision reviewing the areas included in the Specially Protected Areas of Mediterranean Importance (SPAMI) List and updating the regional action plans and strategies adopted under the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean;
- decision revising the reporting format for Articles 6, 7, 11 and 15 of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities;
- decision updating the rules of procedure of the Barcelona Convention Compliance Committee.

2. CONTEXT OF THE PROPOSAL

2.1. Barcelona Convention and its Protocols concerning Specially Protected Areas and Biological Diversity in the Mediterranean and for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities

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

The *Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean* (the 'SPA/BD Protocol') is a legal framework under the Barcelona Convention aimed at conserving marine and coastal biodiversity in the Mediterranean region

The *Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities* (the 'LBS Protocol') is a legal framework under the Barcelona Convention aimed at taking all appropriate measures to prevent, abate, combat and eliminate pollution from rivers, coastal establishments, outfalls or any other land-based sources and activities.

The European Union is a party to the Barcelona Convention as well as the above protocols.

2.2. 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 18(2)(iii) of the Barcelona Convention, the Meeting of the Contracting Parties can amend any of the protocols (according to the procedure set out in Article 23 of the Barcelona Convention) as required.

Pursuant 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.

Pursuant to Article 22 of the Barcelona Convention, amendments to a protocol shall be adopted by a three-fourths majority vote of the contracting parties to the protocol concerned.

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

At the 24th Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, on 2-5 December 2025, several decisions are expected to be adopted, including decisionsregarding the amendment of Annexes II and III of the SPA/BD Protocol; the update of regional action plans and strategies adopted under that same Protocol including the endorsement of the Post-2020 Strategic Action Programme for the Conservation of Biological Diversity and Sustainable Management of Natural Resources in the Mediterranean region (SAPBIO); the revision of the Reporting Format for the LBS Protocol and the update of the Rules of Procedure of the Barcelona Convention Compliance Committee ('the envisaged acts').

The purpose of the first envisaged act is to amend Annexes II and III of the SPA/BD Protocol, to include three species of cartilaginous fishes and six species of sponges in Annex II establishing the "List of endangered or threatened species", and to move four cartilaginous fishes from Annex III establishing the "List of species whose exploitation is regulated" to Annex II of the Protocol.

The purpose of the second envisaged act is, first, the ordinary periodic and extraordinary review of the areas included in the SPAMI List and, second, an update the regional action plans and strategies[1] adopted under the SPA/BD Protocol, taking into account the Post-2020 Strategic Action Programme for the Conservation of Biological Diversity and Sustainable Management of Natural Resources in the Mediterranean Region.

The purpose of the third envisaged act is to revise the Reporting Format for Articles 6, 7, 11, and 15 of the LBS Protocol, that has been previously established in accordance with Article 26 of the Barcelona Convention, as reporting on the implementation of the Convention and its Protocols is mandatory. The new reporting format is to be adopted following the adoption of a series of regional management plans by the 22nd and 23rd Conference of the Parties in December 2021 and December 2023[2], respectively.

[1] Namely (i) the Action Plan for the Conservation of the Coralligenous and Other Calcareous Bio-concretions in the Mediterranean Sea, (ii) the Action Plan for the Conservation of Mediterranean Marine Turtles, (iii) the Action Plan for the Conservation of Cartilaginous Fishes (Chondrichthyans) in the Mediterranean Sea, and (iv) the Regional Strategy for the Conservation of Monk Seal in the Mediterranean Sea.

[2] Namely the Mediterranean Regional Plans for the management of 1) Urban Wastewater Treatment 2) Sewage Sludge; 3) Marine Litter; 4) Agriculture; 5) Aquaculture; and 6) Urban Stormwater.

The purpose of the fourth envisaged act is to update the Rules of Procedure of the Barcelona Convention Compliance Committee, to align them with the revised Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.

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

The need to protect marine biodiversity and ecosystems in the Mediterranean Sea has been repeatedly recognised by the Union and is currently a requirement under the Marine Strategy Framework Directive (MSFD, Directive 2008/56/EC).

The amendments to Annexes II and II to the SPA/BD Protocol reflect the critical situation of the concerned species following the preceptive analysis.

Updating four regional action plans for the Conservation of various species or groups of species in the Mediterranean[3] was mandated by the 22nd Conference of the Parties in December 2021. The progress on implementing the previous plans was assessed and after consultations, updates to the action plans were proposed as well as a timetable for implementing them.

A template is needed in order to report on the implementation of the new regional management plans adopted at the 22nd and 23rd Conference of the Parties in December 2021 and December 2023, respectively. This template is being proposed for adoption at the 24th Conference of the Parties.

In view of the 24th Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, a Union position is necessary on the envisaged acts since they will amend the annexes to the SPA/BD and LBS Protocols. Moreover, the updated regional action plans implement the SPA/BD Protocol.

These amendments will therefore be binding on the Union pursuant to Article 29 of the Barcelona Convention. Given that the amendments to the annexes will update requirements on protecting the Mediterranean Sea, and will thus change the Union's international commitments and ambitions to better protect the marine environment, it is proposed that the Union support the adoption of the envisaged acts.

The update of the Rules of Procedure of the Barcelona Convention Compliance Committee aligns them with the 'Procedures and Mechanisms on Compliance' adopted by the 23 Conference of the Parties in 2023[4] and they aim to improve the effectiveness and functioning of the Compliance Committee. Therefore, the Union should support them.

The revised reporting format of the LBS Protocol will facilitate the work of the Barcelona Secretariat and of the contracting parties by standardising the information to be reported including its structure. Therefore, the Union should support them.

[3] Namely coralligenous and other calcareous bio-concretions, marine turtles, cartilaginous fishes (Chondrichthyans), and monk seal.

[4] Decision IG.26/1 on Compliance and Reporting (https://wedocs.unep.org/bitstream/handle/20.500.11822/44714/23ig26_22_2601_eng.pdf)

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*'[5].

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, namely the Barcelona Convention.

The acts which the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols is called upon to adopt constitutes acts having legal effects.

Regarding the first envisaged act, the amendments to the annexes of the SPA/BD Protocol will be binding under international law in accordance with Article 23(1) and (2) of the Barcelona Convention. Pursuant to Article 23(1) of the Barcelona Convention, the annexes to the Convention and to the Protocols form an integral part of the Convention or the relevant Protocol. Pursuant to Article 23(2) of the Barcelona Convention, any amendment to the annexes of a Protocol enters into force and thus becomes binding on the parties not having submitted a notification in accordance with Article 23(2)(iv) after expiry of the time-period referred to in that provision.

Regarding the second envisaged act, this decision concerns the ordinary periodic and extraordinary review of the areas included in the SPAMI List and an update of the regional action plans and strategies[6] adopted under the SPA/BD Protocol. The inclusion of areas in the SPAMI List, under Article 9(5) of the SPA/BD Protocol, obligates proposing parties to implement specific protection measures and requires contracting parties to adhere to established rules, giving the decision legal effects per Article 218(9) TFEU. Moreover, Article 12(1) of the SPA/BD Protocol mandates cooperative measures for protecting flora and fauna listed in the Protocol's Annexes, with Action Plans and Regional Strategies serving as implementations of these obligations. While not legally binding, these Action Plans and Strategies, adopted by consensus among all SPA/BD Protocol parties, are significant for interpreting protective obligations and entail follow-up and reporting procedures, thus having legal effects under international law in accordance with Article 218(9) TFEU.

Regarding the third envisaged act, which concerns the revision of reporting formats established in accordance with Article 26 of the Barcelona Convention, Article 26(2) of the

[5] 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.

[6] Namely (i) the Action Plan for the Conservation of the Coralligenous and Other Calcareous Bio-concretions in the Mediterranean Sea, (ii) the Action Plan for the Conservation of Mediterranean Marine Turtles, (iii) the Action Plan for the Conservation of Cartilaginous Fishes (Chondrichthyans) in the Mediterranean Sea, and (iv) the Regional Strategy for the Conservation of Monk Seal in the Mediterranean Sea.

Barcelona Convention provides that "*The reports shall be submitted in such form and at such intervals as the Meetings of Contracting Parties may determine*". This wording "*shall be submitted in such form*" entails an obligation for the contracting parties to report using the reporting format established by the Meeting of the Parties, and so the reporting format established by the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols is legally binding on the contracting parties pursuant to Article 26(2) of the Convention.

Regarding the fourth envisaged act, the Compliance Committee on the provisions of the Barcelona Convention and its Protocols issues interpretations of the provisions of the Convention and its Protocols. In view of the fact that the recommendations of the Compliance Committee thus may affect the interpretation of the relevant provisions of the Convention, they are capable of decisively influencing the content of Union law. This means that the recommendations of the Compliance Committee have legal effects within the meaning of Article 218(9) TFEU. These changes to the Rules of Procedure of the Compliance Committee therefore have legal effects within the meaning of Article 218(9) TFEU, because they affect the decision-making procedure of an international body which has the power to take decisions with legal effects.

The envisaged acts do 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.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to protecting the 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.

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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) read in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention for the Protection of the Mediterranean Sea against Pollution, subsequently renamed Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean ('the Barcelona Convention') was concluded by the Union by Council Decision 77/585/EEC[7] of 25 July 1977 and entered into force on 12 February 1978.

(2) The Protocol concerning specially protected areas and biological diversity in the Mediterranean and the annexes thereto was concluded by the Union by Council Decision 1999/800/EC[8] ('the SPA/BD Protocol') and entered into force on 12 December 1999. The Protocol for the protection of the Mediterranean Sea against pollution from land-based sources and the annexes thereto ('the LBS Protocol') was concluded by the Union by Council Decision 1999/801/EC[9] and entered into force on 11 May 2008.

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

(4) Pursuant to Article 10 of the Barcelona Convention in conjunction with Articles 4, 5, 6, 8, 9, 11 and 12 of the SPA/BD Protocol, the Meeting of the Contracting Parties may adopt decisions on regional action plans and strategies under the SPA/BD Protocol.

(5) Pursuant to Article 26(2) of the Barcelona Convention, the Meeting of the Contracting Parties may determine the format in which the contracting parties shall submit reports to the organisation.

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7 OJ L 240, 19.9.1977

8 Council Decision 1999/800/EC of 22 October 1999, OJ L 322, 14.12.1999, p. 1.

9 Council Decision 1999/801/EC of 22 October 1999, OJ L 322, 14.12.1999, p. 18..

(6) Pursuant to Articles 18 and 27 of the Barcelona Convention, in conjunction with Decision IG 17/2 of the Meeting of the Contracting Parties on Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols, as amended, the Meeting of the Contracting Parties may adopt the Rules of Procedure of the Compliance Committee.

(7) The Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, during its twenty-fourth session/meeting taking place from 2 to 5 December 2025, is to adopt amendments to Annexes II and III of the SPA/BD Protocol; updated regional action plans and strategies developed under the SPA/BD Protocol; a revised Reporting Format for the implementation of the LBS Protocol and updated Rules of Procedure of the Compliance Committee.

(8) The envisaged acts of the Meeting of the Contracting Parties will have legal effects.

(9) It is therefore necessary to establish the position to be taken on the Union's behalf in the Meeting of the Contracting Parties.

(10) Since the envisaged amendments of the Annexes will update requirements regarding the protection of the Mediterranean Sea, affect the Union international commitments and improve the protection of the environment, it is proposed that the Union supports the adoption of the corresponding Barcelona Decision.

(11) Since the updated regional action plans and strategies adopted under the SPA/BD Protocol will implement the protocol by better protecting the marine environment and supports the implementation of Union policy in the Mediterranean Sea, it is proposed that the Union supports the adoption of the corresponding Barcelona Decision.

(12) Since the revised Reporting Format of the LBS Protocol will facilitate the work of the Barcelona Secretariat and of the contracting parties by simplifying and standardising the information to be reported including its structure, it is proposed that the Union supports the adoption of the corresponding Barcelona Decision.

(13) Since the purpose of the updated Rules of Procedure of the Barcelona Convention Compliance Committee is to align them with the 'Procedures and Mechanisms on Compliance' adopted by the 23rd Conference of the Parties of 2023 and they aim to improve the effectiveness and functioning of the Compliance Committee, it is proposed that the Union supports the adoption of the corresponding Barcelona Decision.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 24th Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (2-5 December 2025) shall be to support the adoption of the following measures:

(a) amendments to Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean;

(b) updated regional action plans and strategies developed under the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, and the review of the areas included in the SPAMI list;

(c) revised reporting format for implementing the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities;

(d) updated rules of procedure for the Barcelona Convention Compliance Committee.

Article 2

Minor technical changes to the position referred to in Article 1 may be agreed upon and without a further decision of the Council.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President