EUROPEAN
COMMISSION

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2021/0349 (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 designate the Mediterranean Sea, as a whole, as an emission control area for sulphur oxides ('MED SO_x ECA') pursuant to Annex VI of the International Convention for the Prevention of Pollution from Ships (the 'MARPOL Convention')

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be taken on the Union's behalf at 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 on a decision to submit, in 2022, to the seventy-eighth (78th) session of the International Maritime Organization ('IMO')'s Marine Environment Protection Committee ('MEPC 78') a proposal for designating the Mediterranean Sea, as a whole, as an emission control area for sulphur oxides ('Med SO_x ECA') as well as the date of entering into force of the related obligations.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention for the Protection of the Mediterranean Sea against Pollution

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

The Barcelona Convention aims to prevent, abate, combat and eliminate pollution in the Mediterranean Sea area and to enhance the protection of human health and of the marine environment in that area to contribute to its sustainable development.

The European Union is a party to the Barcelona Convention (amended)[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. The Contracting parties will meet in Antalya, Turkey between 7 and 10 December 2021.

According to Article 25 of the Barcelona Convention, the European 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.

According to Rule 43 of the Rules of Procedure to the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, unless otherwise provided by the Convention, the protocols or the financial terms of reference, substantive decisions, recommendations and resolutions shall be made by a two-thirds majority of the Contracting Parties present and voting.

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

According to Article 6 to the Barcelona Convention, the Contracting Parties shall take all measures in conformity with international law to prevent, abate, combat and, to the fullest possible extent, eliminate pollution of the Mediterranean Sea area caused by discharges from ships and to ensure the effective implementation in that area of the rules on controlling this type of pollution which are generally recognised at the international level.

[1] OJ L 322, 14.12.1999, p. 32–43.

According to Article 18(1)(vii) of the Barcelona Convention, the Meeting of the Contracting parties to that Convention may consider and undertake any action that may be required for the achievements of the purposes of the Convention and the Protocols.

The establishment of an emission control area for sulphur oxides would fulfil the above-mentioned objectives by introducing special requirements to reduce ship air pollutants emissions in the Mediterranean.

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

The need to protect marine biodiversity and ecosystems in the Mediterranean Sea, including in the maritime areas beyond national jurisdiction, has been repeatedly recognised.

The air pollutant emissions from ships have significant adverse effects on human health, as well as on the environment. One way to combat the challenge posed by ship emissions is to designate, in accordance with the Annex VI to International Convention for the Prevention of Pollution from Ships (the 'MARPOL Convention'), the Mediterranean Sea as an emission control area for sulphur oxides ('Med SO_x ECA'), where special requirements will be implemented to reduce ship emissions.

A Union position is necessary because of the legally binding effects of the envisaged proposal. Given that the proposal is in line with the Union's ambition to reduce pollution 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. 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 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 envisaged act will submit a proposal to the IMO's MEPC 78 in 2022 to designate the Mediterranean Sea as an emission control area for sulphur oxides ('MED SOx ECA'). Its adoption therefore 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.

[2] 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.

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 relate to the 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 Article 192(1) TFEU, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The amended Convention for the Protection of the Mediterranean Sea against Pollution (the 'Barcelona Convention') was concluded by the Union by Council Decision 1999/802/EC[3] and entered into force on 9 July 2004.

(2) Pursuant to Article 18(1)(vii) of the Barcelona Convention, the Meeting of the Contracting parties to the Barcelona Convention and its Protocols may consider and undertake any action that may be required for the achievements of the purposes of the Convention and the Protocols. In accordance with Rule 43 of the Rules of Procedure to that Meeting of the Contracting Parties, unless otherwise provided by the Convention, the protocols or the financial terms of reference, substantive decisions shall be made by a two-thirds majority of the Contracting Parties present and voting.

(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 to submit a proposal in 2022 to the seventy-eighth (78th) session of the International Maritime Organization ('IMO')'s Marine Environment Protection Committee ('MEPC 78'). This is a proposal to designate the Mediterranean Sea, as a whole, as an emission control area for sulphur oxides ('Med SO_x ECA') and will specify the date of its entry into force.

(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 envisaged Decision will submit a proposal to the IMO's MEPC 78, on behalf of an organisation to which the Union is a Party, to designate the Mediterranean Sea, as a whole, as an emission control area for sulphur oxides ('MED SO_x ECA'), and therefore its adoption constitutes an act having legal effects.

(5) Since the purpose of the envisaged Decision is to lead to the update of the requirements regarding the protection of the Mediterranean Sea, in line with the

[3] OJ L 322, 14.12.1999, p. 32–43.

Union's ambition to reduce pollution in the marine environment and protect human health, it is proposed that the Union support the adoption of the Decision.

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 to submit to the seventy-eighth (78th) session of the International Maritime Organization ('IMO')'s Marine Environment Protection Committee ('MEPC 78') a proposal for designating the Mediterranean Sea, as a whole, as an emission control area for sulphur oxides ('Med SO_x ECA') and its entering into force date.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President