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2022/0081 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in preparation of the 19th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP19)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in preparation of the 19th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, in connection with envisaged amendments to 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 Convention[1].

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 2 to 3 years to review the Convention's implementation. Most notably, for the purposes of this proposal, the CoP considers and adopts proposals to amend the lists of endangered species of animals and plants included in Appendices I and II to the Convention.

2.3. The envisaged decisions of the Conference of the Parties

During its 19th meeting (CoP19) from 14 to 25 November 2022, the Conference of the Parties is to decide on proposals to amend the CITES Appendices (the '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.

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

In accordance with Article XV(1) of the Convention, any Party may propose amendments to Appendix I or II for consideration at CoP19. The text of the proposed amendment is to be communicated to the Secretariat of the Convention at least 150 days before the meeting, i.e. by 17 June 2022.

In addition, in accordance with Article XVI of the Convention, any Party may submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction, for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade. While such a submission can be made at any

[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.

time, paragraph 3 of Resolution Conf. 9.25 (Rev. CoP18) of the Conference of the Parties to CITES recommends that a Party intending to include a species in Appendix III inform the Secretariat of its intention at least 3 months before a meeting of the Conference of the Parties. This is to ensure its entry into force on the same date as amendments to Appendices I and II adopted at the meeting.

If adopted, the listing proposals are liable to affect EU rules, as they would entail amendments to relevant Union legislation, in particular the Annex to Council Regulation (EC) No 338/97[2], where changes to the Appendices of the Convention need to be reflected. This would result in the establishment of restrictions to trade from, into and within the EU for the species concerned by these changes. The submission under Article XVI of the Convention has similar legal effects.

Experts from EU Member States and from the Commission have been considering different taxonomic groups to identify species that are threatened due to international trade and as such could meet the criteria for inclusion in one of the CITES Appendices, with a view to proposals and submissions by the Union for listing these species at or on the occasion of CoP19. As a result of these considerations, 12 draft proposals for inclusion of species in CITES Appendix I or II are referred to in the proposed Council Decision.

One species (*Cuora galbinifrons*) is proposed for transfer from CITES Appendix II to Appendix I, in line with the conclusion of the CITES Animals Committee that the species meets the criteria for inclusion in Appendix I,[3] as defined in paragraph 1 of CITES Article II, namely that the species is threatened with extinction and is affected by trade.

Another eleven proposals suggest that individual species or groups of species (listed at a higher taxonomic rank) should be newly included in CITES Appendix II, in line with the criteria in paragraph 2 of Article II of the Convention and with the additional guidance in CoP Resolution 9.24 (Rev. CoP17). In each case this assessment is based on the scientific literature and on other sources of scientific information, which include categorisation of the species according to the Red List of Threatened Species compiled by the International Union for Conservation of Nature (IUCN) and, where available, trade data obtained from the CITES Trade Database, as well as country-specific information on the conservation status of the species and existing protection measures.

These draft listing proposals have been considered by meetings of the Group of Experts of the Member States' CITES management authorities and by an ad hoc meeting of representatives of the Member States' scientific authorities for CITES. In accordance with CoP Resolution 9.24 (Rev. CoP17), the Commission has also consulted with the range states of the species being considered for listing. The Commission sought their views on a possible listing under the Convention, encouraged them to share relevant scientific information and, where range states were supportive of a listing proposal, invited them to join the EU in submitting the proposal to the Secretariat. Dedicated meetings with EU stakeholders and with third-country representatives on the potential EU listing proposals are planned for the spring of 2022.

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[2] Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, p. 1-134.

[3] Point 20.3.8 in the summary record of the 28th meeting of the Committee, held in 2015, at https://cites.org/sites/default/files/eng/com/ac/28/E-AC28-SumRec.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. The concept 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'[4].

4.1.2. Application to the present case

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

The amendments to CITES Appendix I and II on which the CoP is due to decide constitute acts having legal effects. Because they are an integral part of the Convention, the amended Appendices will be binding under international law.

While a notification relating to Appendix III does not require a decision by the CoP, it is appropriate to include it in the present decision for reasons of consistency, given that amendments to Appendix III also affect Council Regulation (EC) No 338/97.

Amendments to the Appendices do not supplement or amend the Convention's institutional framework.

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(3) and (4) first subparagraph.

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[4] 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.

4.3. Conclusion

The legal basis of the proposed decision should be Articles 192(1) and 207 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 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 2015[5], having 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 Appendices I and II to the Convention.

(3) In addition, pursuant to Article XVI of the Convention, any Party may submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction, for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

(4) The Conference of the Parties to the Convention, during its 19th meeting from 14 to 25 November 2022, will decide on proposals to amend CITES Appendix I and II. Parties must submit such proposals to the Secretariat of the Convention by 17 June 2022.

(5) Submissions of species for inclusion in Appendix III, which do not require a decision by the Conference of the Parties, are nonetheless to be made at least 3 months before one of its meetings.

(6) It is appropriate to establish the position to be taken on the Union's behalf with regard to listing proposals to be submitted to the Conference of the Parties, as the amendments to the Appendices will be binding on the Union.

(7) The proposed position to be taken on listing proposals for consideration by the Conference of the Parties is based on an expert analysis of their merits, in accordance with the criteria established in the Convention and in the light of the best available scientific evidence. This evidence supports the specific listings that are proposed with the present Decision, to ensure that trade in the species concerned does not threaten their survival in the wild.

[5] OJ L 75, 19.3.2015, p. 1-3.

HAS ADOPTED THIS DECISION:

Article 1

The proposals to be made by the Union for amendments to the CITES Appendices, to be made at or on the occasion of the 19th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, are set out in Annex 1.

Article 2

The submission for inclusion in CITES Appendix III to be made by the Union on the occasion of the 19th 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 Annex 2.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President