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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	26 October 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 667 final
Subject:	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 Annexes I, II and IV to the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the 'LBS Protocol')

Delegations will find attached document COM(2021) 667 final.

Encl.: COM(2021) 667 final



Brussels, 26.10.2021
COM(2021) 667 final

2021/0347 (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 Annexes I, II and IV to the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the ‘LBS Protocol’)

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 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 Annexes I, II and IV to the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the 'LBS Protocol').

2. CONTEXT OF THE PROPOSAL

2.1. The Protocol 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 principal regional legally binding multilateral environmental agreement for the Mediterranean Sea.

The LBS 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 from land-based sources and activities, by reducing and phasing out substances that are toxic and persistent listed in the Protocol. The LBS Protocol entered into force in 1983.

The European Union is a party to the LBS Protocol (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.

According to Article 16 of the LBS 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 ('EU') 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 EU shall not exercise its right to vote when its Member States exercise theirs and conversely.

According to Article 22(3) of the Barcelona Convention, amendments to any protocol shall be adopted by a three-fourths majority vote of the Contracting Parties to such protocol.

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 Annexes I, II and IV to the LBS Protocol concerning the protection of the Mediterranean Sea against pollution from land-based sources and activities ('the envisaged act').

¹ OJ L 322, 14.12.1999, p. 18–31.

The purpose of the envisaged act is to take into account regulatory, scientific and technical developments related to land-based sources and activities that have been achieved at both global and regional levels, including relevant developments under the Mediterranean Action Plan Barcelona Convention system, with a particular focus on those developments related to the implementation of the ecosystem approach for achieving good environmental status of the Mediterranean Sea.

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

The amendments to Annexes I, II and IV to the LBS Protocol aim at taking into account the regulatory, scientific and technical developments related to land-based sources and activities that have been achieved at both global and regional level. In particular, the proposed amendments concern the updating of the sectors which are subject to elaboration of action plans and measures under Annex I of the Protocol; the updating of the categories of substances in Annex I of the Protocol; the strengthening of a number of new elements, e.g. noise and artificial light, all of which are to be considered during the authorisation process under Annex II of the Protocol. Amendments to Annex IV concern the application of sustainable consumption and production tools, particularly circular economy approaches in production processes.

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 Annexes to the LBS Protocol, which will be binding on the Union in accordance with Article 29 of the Barcelona Convention. Given that the amendments to the annexes will update requirements regarding the protection of the Mediterranean Sea, modify Union international commitments and ambitions and improve 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 annexes to one of the protocols to the Barcelona Convention, i.e. the LBS 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, i.e. 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 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.

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 Annexes I, II and IV to the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the ‘LBS Protocol’)

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 Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the ‘LBS Protocol’) was concluded by the Union by Council Decision 1999/801/EC² and entered into force on 11 May 2008.
- (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 Annexes I, II and IV to the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the ‘LBS Protocol’) to take into account regulatory, scientific and technical developments related to land-based sources and activities that have been achieved at both global and regional levels
- (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, because the Decision will adopt amendments to Annexes I, II and IV to the LBS Protocol that will be binding on the Union.
- (5) Since the envisaged amendments to Annexes I, II and IV will update requirements regarding the protection of the Mediterranean Sea, affect the 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 322, 14.12.1999, p. 18–31.

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 Annexes I, II and IV to the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the 'LBS Protocol').

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*