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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 321 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be adopted, on behalf of the European Union, with regard to the submission of proposals for amendments to the Appendices to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) with a view to the 13th meeting of the Conference of the Parties

Delegations will find attached document COM(2019) 321 final.

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EUROPEAN
COMMISSION

Brussels, 5.7.2019
COM(2019) 321 final

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Proposal for a

COUNCIL DECISION

establishing the position to be adopted, on behalf of the European Union, with regard to the submission of proposals for amendments to the Appendices to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) with a view to the 13th meeting of the Conference of the Parties

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 Convention on the Conservation of Migratory Species of Wild Animals (CMS) in connection with submitting proposals for decisions of the 13th meeting of the Conference of the Parties to amend the appendices of the Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the Conservation of Migratory Species of Wild Animals (CMS)

The Convention on the Conservation of Migratory Species of Wild Animals ('the Agreement') aims to conserve terrestrial, marine and avian migratory species throughout their range. It is an intergovernmental treaty, concluded under the aegis of the United Nations Environment Programme, concerned with the conservation of wildlife and habitats on a global scale. The migratory species to be conserved are listed in Appendices I (endangered species) and II (species to be the subjects of agreements) to the Agreement. The Agreement entered into force on 1 November 1983.

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

2.2. The Conference of the Parties

The Conference of the Parties is the decision-making body of the Agreement with powers to assess the conservation status of migratory species and, subsequently, to amend Appendices I and II to the Agreement. In accordance with Article XI of the Agreement, proposals for amendment may be made by any Party, and shall be adopted by a two-thirds majority of Parties present and voting.

The thirteenth meeting of the Conference of the Parties will take place in Gandhinagar (India) from 15 to 22 February 2020. The deadline for submitting proposals for amendment has been fixed by the Secretariat of the Agreement, in line with Article XI (3), to be 19 September 2019. It is therefore necessary for the Council to take a decision for the purpose of establishing the position to be adopted on behalf of the Union with a view to the thirteenth meeting of the Conference of the Parties with regard to submitting proposals for amendment.

Before the thirteenth meeting of the Conference of the Parties, the Secretariat of the Agreement may communicate proposals made by other Parties to amend Appendices I and II to the Agreement, which may require a further decision establishing the position to be adopted on behalf of the Union with regard to those proposals.

2.3. The envisaged act of the Conference of the Parties

For the thirteenth meeting of the Conference of the Parties, it is proposed that the Union submit proposals to amend Appendix I to the Agreement to increase the protection of one bird species (*Tetrax tetrax*) and to amend Appendix II to the Agreement to increase the protection of the same species of bird (*Tetrax tetrax*) and also of two species of shark (*Galeorhinus galeus* and *Sphyrna zygaena*), throughout their distribution range, including outside the Union.

[1] Council Decision 82/461/EEC of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals, OJ L 210, 24.6.1982, p. 10.

If adopted, the envisaged act will become binding on the parties in accordance with Article XI of the Agreement, which provides that an amendment to the Appendices enters into force for all Parties ninety days after the meeting of the Conference of the Parties at which it is adopted, except for those Parties which make a reservation.

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

The Union proposals to amend the appendices are based on the following considerations: (1) the inclusion of such species is scientifically sound; (2) such an inclusion is consistent with the EU legislation; and (3) the Union is committed to international cooperation for the protection of biodiversity.

The proposal is consistent with the Seventh Environmental Action Programme[2] and the EU biodiversity strategy to 2020[3], especially Target 6: help avert global biodiversity loss. This proposal would not require any change in Union law, as it concerns species which already benefit from appropriate protection under Union law, notably the Birds Directive[4] and the EU Common Fisheries Policy[5].

The proposal does not create any new monitoring or reporting requirements. All implementation planning and monitoring would be part of the regular planning and reporting activities under the Agreement. Furthermore, there are no budgetary implications.

An informal exchange of preliminary views with the Member States has taken place through a written consultation of the Member State members of the Co-ordination Group for Biodiversity and Nature (CGBN) and the Expert Group on the Birds and the Habitats Directives (NADEG).

The position to be taken on the Union's behalf should therefore be to authorise the Commission to submit the above-mentioned proposals to the Secretariat of the Agreement.

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

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2 Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' OJ L 354, 28.12.2013, p. 171.

3 COM(2011) 244 final "Our life insurance, our natural capital: an EU biodiversity strategy to 2020".

4 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.4.1979, pg. 1.

5 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, OJ L 354, 28.12.2013, p.22

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*'[6].

4.1.2. Application to the present case

The Conference of the Parties is a body set up by an agreement, namely the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

The act which the Conference of the Parties is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article XI of the Convention on the Conservation of Migratory Species of Wild Animals.

The envisaged act does 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 act relate to environment.

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

4.3. Conclusion

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

[6] 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.

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention on the Conservation of Migratory Species of Wild Animals ('the Agreement') was concluded by the Union by Council Decision 82/461/EEC[7] and entered into force on 1 November 1983.

(2) Pursuant to Article XI of the Agreement, the Conference of the Parties can adopt amendments to Appendices I and II to the Agreement.

(3) The Conference of the Parties, during its thirteenth meeting on 15 to 22 February 2020, may adopt such amendments. The Secretariat of the Convention has informed the Parties to the Convention that any proposals for amendment are to be communicated, in accordance with Article XI(3) of the Agreement, by 19 September 2019. The Union may, as a Party to the Convention, make such proposals.

(4) It is appropriate to establish the position to be taken on the Union's behalf with regard to the submission of proposals to amend the Appendices to the Agreement, as such amendments will be binding on the Union.

(5) The inclusion of the species *Tetrax tetrax* in Appendix I to the Agreement and the species *Tetrax tetrax*, *Galeorhinus galeus* and *Sphyrna zygaena* in Appendix II would be scientifically sound and in line with Union legislation as well as the Union's commitment to international cooperation for the protection of biodiversity. The Commission should therefore be authorised to propose amendments to that effect.

(6) The Commission should communicate those proposals to the Secretariat of the Agreement,

HAS ADOPTED THIS DECISION:

[7] Council Decision 82/461/EEC of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals, (OJ L 210, 24.6.1982, p. 10).

Article 1

1. With a view to the thirteenth meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals ('the Agreement'), the Commission is hereby authorised to submit, on behalf of the Union, a proposal for the following amendments:

   (a) an amendment to Appendix I to the Agreement to include the species *Tetrax tetrax*;

   (b) amendments to Appendix II to the Agreement to include the species *Tetrax tetrax*, *Galeorhinus galeus* and *Sphyrna zygaena*.

2. The Commission shall communicate the proposals referred to in paragraph 1 to the Secretariat of the Convention.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President