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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 534 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Convention on the Protection of the Marine Environment of the Baltic Sea Area ('Helsinki Convention') on the Adoption of a Recommendation for Amending Annex III Part II of that Convention

Delegations will find attached document COM(2021) 534 final.

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Brussels, 3.9.2021
COM(2021) 534 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Convention on the Protection of the Marine Environment of the Baltic Sea Area ('Helsinki Convention') on the Adoption of a Recommendation for Amending Annex III Part II of that Convention

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 Baltic Marine Environment Protection Commission in connection with the envisaged adoption of a Recommendation for amending Annex III Part II of the Helsinki Convention

2. CONTEXT OF THE PROPOSAL

2.1. The Helsinki Convention

The Convention on the Protection of the Marine Environment of the Baltic Sea Area ('the Convention') aims to protect the marine environment of the Baltic Sea from all sources of pollution, from industrialisation and other human activities. It entered into force on 3 May 1980. The Convention was amended in 1992.

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

2.2. The Baltic Marine Environment Protection Commission (HELCOM)

The Baltic Marine Environment Protection Commission - also known as the Helsinki Commission (HELCOM) – is made up of representatives of each of the 10 Contracting Parties[2] to the Convention. It meets at regular intervals, and at any time due to special circumstances. Its duties include supervising the implementation of the Convention and reviewing the condition of the maritime area, the effectiveness of the measures being adopted, the priorities and the need for any additional or different measures.

According to Article 23 of the Convention, each Contracting Party has one vote in the Commission. The EU is entitled to a number of votes equal to the number of its Member States, which are Contracting Parties to the Convention. The EU shall not exercise its right to vote when its Member States exercise theirs and conversely.

According to Article 19(5) of the Convention, the Commission shall take its decisions by unanimous vote of the Contracting Parties, unless otherwise provided.

2.3. The envisaged act of the Baltic Marine Environment Protection Commission

On 20 October 2021, during the 2021 HELCOM Ministerial Meeting, the Baltic Marine Environment Protection Commission is to adopt a Recommendation for amending Annex III Part II of the Helsinki Convention ('the envisaged act').

The purpose of the amendment is to modernise the requirements of Annex III Part II of the Convention, by including recent developments in scientific knowledge on good agricultural practices and a new glossary of terms, taking into account the existing EU legislation, and to add a new paragraph on nutrient recycling based on the outcomes of Brussels 2018 Ministerial Meeting of the Commission held under EU chairmanship.

The adoption of the envisaged act opens the tacit acceptance procedure of Article 32 of the Convention in order to amend Annex III Part II of that Convention. The amendment of the Annex III Part II of the Convention will be binding on the Union.

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1 OJ L 73, 16.3.1994, p. 19 –19.

2 Denmark, Estonia, the European Union, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation and Sweden.

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

The need for protection of marine biodiversity and ecosystems in the Baltic Sea, including in the maritime areas beyond national jurisdiction, has been repeatedly recognised.

The amendment of Annex III, Part II, of the Helsinki Convention on "Prevention of Pollution from Agriculture" aims at modernising the Convention's requirements. In particular, item 3 on manure storage and item 6 on application of organic manures were adapted to include recent developments in scientific knowledge on good agricultural practices. Moreover, a new paragraph on nutrient recycling is introduced to reflect the commitments made in this regard at the HELCOM 2018 Declaration under EU Chairmanship, as well as a new glossary of terms, taking into account the existing EU legislation.

In view of the HELCOM Ministerial Meeting in October 2021, a Union position is necessary because the envisaged Recommendation opens the tacit acceptance procedure of Article 32 of the Convention on the Protection of the Marine Environment of the Baltic Sea Area in order to amend Annex III Part II of that Convention. The amendment of the Annex III Part II of the Convention will be binding on the Union. Since the amendment of the Annex will modernise requirements regarding the protection of the Baltic Sea, modify EU international commitments and ambitions and improve the protection of the environment, it is proposed that the Union supports the adoption of the Recommendation.

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*'[3].

4.1.2. Application to the present case

The Baltic Marine Environment Protection Commission is a body set up by an agreement, namely the Convention on the Protection of the Marine Environment of the Baltic Sea Area.

The act which the Baltic Marine Environment Protection Commission is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because it opens the tacit acceptance procedure of Article 32 of the Convention in order to amend its Annex III Part II.

The envisaged act does not supplement or amend the institutional framework of the Convention.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

[3] 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 Article 192(1), 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 Convention on the Protection of the Marine Environment of the Baltic Sea Area as revised in 1992 ('the Agreement') was concluded by the Union by Council Decision 94/157/EC[4].

(2) Pursuant to Article 32 of the Agreement, the Baltic Marine Environment Protection Commission may adopt amendments to annexes of the Agreement.

(3) The Baltic Marine Environment Protection Commission, during the 2021 Ministerial meeting on 20 October 2021, is to adopt a Recommendation for amending Annex III Part II of the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Baltic Marine Environment Protection Commission, as amendments to the Annexes recommended by the Commission are adopted by the tacit acceptance procedure provided for in Article 32 of the Agreement. The amendment of the Annex III Part II of the Agreement will be binding on the Union.

(5) Since the envisaged amendment of the Annex III Part II will modernise requirements regarding the protection of the Baltic Sea, modify EU international commitments and ambitions and improve the protection of the environment, it is proposed that the Union supports the adoption of the Recommendation.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 2021 Ministerial meeting of the Baltic Marine Environment Protection Commission shall be to support the adoption of the Recommendation for amending Annex III Part II of the Helsinki Convention.

[4] OJ L 73, 16.3.1994, p. 19–19.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President