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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) 668 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 the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore Protocol')

Delegations will find attached document COM(2021) 668 final.

Encl.: COM(2021) 668 final

EUROPEAN
COMMISSION

Brussels, 26.10.2021
COM(2021) 668 final

2021/0348 (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 the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore 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 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 in connection with the envisaged adoption of a decision amending the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore Protocol').

2. CONTEXT OF THE PROPOSAL

2.1. The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil

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 Offshore Protocol is one of the seven Protocols to the Barcelona Convention. It addresses all aspects of offshore oil and gas activities in the Mediterranean and includes measures to reduce pollution from all phases of offshore activities and to respond to offshore pollution incidents, including aspects concerning liability and compensation.

The European Union is a party to the Offshore Protocol[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 31 of the Offshore 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 ('the 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 Article 22 of the Barcelona Convention, amendments 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 Offshore Protocol which addresses all aspects of offshore oil and gas activities in the Mediterranean and includes measures to reduce pollution from all phases of offshore activities and to respond to offshore pollution incidents ('the envisaged act').

[1] OJ L 4, 9.1.2013, p. 13–14.

The proposed amendments aim at modifying Annexes I, II, III, IV and VII A to the Offshore Protocol, to align them with the significant regulatory, scientific and technical developments related to offshore activities that have been achieved at both regional and global levels, including relevant developments under the Mediterranean Action Plan-Barcelona Convention system.

The amendments to the Annexes to the Offshore 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 the Annexes to the Offshore Protocol will update the Annexes to the Offshore Protocol to reflect the significant regulatory, scientific and technical developments related to offshore activities that have been achieved at both regional and global levels, including relevant developments under the Mediterranean Action Plan-Barcelona Convention system, with particular focus on those developments related to the implementation of the ecosystem approach and sustainable consumption and production.

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 Offshore Protocol. These amendments 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's 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, namely the Barcelona Convention.

The envisaged act will amend the Annexes to one of the protocols to the Barcelona Convention, namely the Offshore Protocol, and 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, 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 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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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 the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore Protocol')

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular 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 Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore Protocol') was concluded by the Union by Council Decision 2013/5/EU[2] and entered into force on 29 March 2013.

(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 the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore Protocol').

(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 the Annexes to the Offshore Protocol that will be binding on the Union.

(5) Since the envisaged amendments of the Annexes 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 4, 9.1.2013, p. 13–14.

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 the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (the 'Offshore Protocol').

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President