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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union, in the forty second meeting of the Standing Committee of the Convention on the conservation of European wildlife and natural habitats

Delegations will find attached document COM(2022) 543 final.

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2022/0332 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union, in the forty second meeting of the Standing Committee of the Convention on the conservation of European wildlife and natural habitats

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in view of the forty second annual meeting of the Standing Committee of the Convention on the conservation of European wildlife and natural habitats, Strasbourg, France, 29 November - 2 December 2022. The position concerns the envisaged adoption by the Standing Committee of (1) a decision concerning an amendment to Appendix II and Appendix III to the Convention and (2) a decision concerning proposed amendments to the Rules of Procedure of the Standing Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the conservation of European wildlife and natural habitats

The 1979 Convention on the conservation of European wildlife and natural habitats (Bern Convention) ("the Agreement") aims to conserve European wild flora and fauna and their natural habitats, especially those whose conservation requires the co-operation of several States. It is an intergovernmental treaty, concluded under the aegis of the Council of Europe. The Agreement entered into force on 1 June 1982. The European Union is a Contracting Party to this Agreement since 1 September, 1982[1]. At present, there are 51 Contracting Parties to the Agreement, including all EU Member States.

2.2. The Standing Committee

The Standing Committee is the decision-making organ of the Convention having powers to assess the conservation status of species and, subsequently, to review the listing of them in the Appendices to the Convention. Its functions are enumerated in Articles 13-15 of the Agreement. It meets at least every two years and whenever a majority of the Contracting Parties so requests. It has become customary for the Standing Committee to meet every year.

The Union's position concerning amendments of the appendices as well as revision of the Standing Committee's Rules of procedures is established by a decision of the Council based on a proposal from the Commission.

2.3. The envisaged acts of the Standing Committee

At its forty second meeting, the Standing Committee is expected to adopt two decisions with legal effects on the European Union. The first one concerns an amendment to Appendix II and Appendix III to the Agreement and the second one consists of amendments to the Rules of procedures of the Standing Committee.

2.3.1 Amendment to Appendix II and Appendix III

In accordance with Article 17 of the Agreement, an amendment to the Appendices shall be adopted by two-thirds majority of the Contracting parties. It enters into force for all Parties three months after the adoption by the Standing Committee unless one-third of the Contracting Parties have notified objections. Any amendment enters into force for those Contracting Parties which have not notified objections. The purpose of the envisaged act is to

[1] Council Decision 82/72/EEC of 3 December 1981 on the conclusion on behalf of the Community of the Convention on the Conservation of European Wildlife and Natural Habitats, OJ L 38, 10.2.1982, p. 1.

amend Appendix II and Appendix III to the Agreement, as provided for in Article 17 of the Agreement.

2.3.2 Amendments to the Rules of Procedures of the Standing Committee

In line with Article 13.6 of the Agreement, the Standing Committee has drawn up its Rules of Procedure. According to Rule 21, the Rules of Procedure may be amended by a two-thirds majority of the votes cast by Contracting parties. The purpose of the envisaged act is to amend the Rules of Procedure.

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

3.1. Amendment to Appendix II and Appendix III

Switzerland has proposed an amendment of the appendices of the Agreement. The proposal envisages lowering the level of protection for the Wolf (*Canis lupus*) by moving it from Appendix II (strictly protected fauna species) to Appendix III (protected fauna species – regulation is possible). The listing of animal species under Appendix II or III is based on the available scientific data at the time of negotiation of the Agreement and the lists of mammals, birds, amphibians and reptiles threatened in Europe, drawn up by the European Committee for the Conservation of Nature and Natural Resources under the Council of Europe[2]. No criteria for further listing or delisting of species under the Appendices have been adopted under the Agreement.

Already in 2018 Switzerland had proposed a similar amendment, seeking to allow for the management and control of wolves without the need to issue derogations under Article 9 of the Convention. The main argument given in support of the proposal was that the number of wolves in Europe has increased substantially since the Convention entered into force and a strict level of protection is therefore unnecessary. At the 38th meeting of the Standing Committee, the Chair decided not to put the proposal to a vote, after noting that an important number of Parties were not ready to take a position on the matter. Switzerland announced they wished to return to the proposal once relevant reports would become available under both the Bern Convention (Reporting under Resolution No. 8 (2012) on the conservation status of species and habitats) and from the EU (Reporting under Articles 17 of the Habitats Directive[3].

The current proposal by Switzerland presents the same argumentation as the 2018 proposal. It is based on the positive evolution of the species across Europe and the alleged need for harmonisation of the protection status under the Convention, due to the existing reservations by some Contracting Parties with respect to the wolf's strict protection status. If adopted, the proposal would effectively lead to the lowest protection status of wolf populations across Europe, irrespective of their different conservation status and trends across the territory of the Parties and bio-geographic regions.

Since 2018, updated information on the conservation status of the species is available.

The most recent assessments according to IUCN Red List criteria date back to 2018. Out of the nine mainly trans-boundary wolf populations in the European Union and its neighbouring

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2 See Explanatory report to the Convention on the conservation of European wildlife and natura habitats (https://rm.coe.int/16800ca431)

3 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *Official Journal L 206 , 22/07/1992*

countries, only three are of 'least concern' while six are 'vulnerable' or 'near threatened'[4]. The Western-Central Alps population covering Switzerland and the Scandinavian population covering Norway are both 'vulnerable' in the IUCN Red List Assessment.

In addition, in 2020 the EU level assessment of conservation status for the wolf based on the reports submitted by the Member States, shows that the species is still in unfavourable-inadequate conservation status in 6 out of 7 EU biogeographical regions[5]. Although the population and range trends are generally improving, showing that the species is recolonising parts of its historical range, it has not yet achieved a favourable conservation status in most Member States and biogeographical regions[6]. The species remains subject to significant threats and pressures, including high levels of human-induced mortality (namely from poaching).

In 2021, the results of reporting under Resolution No. 8 (2012) of the Bern Convention became available as well[7]. Reporting on conservation status for the period 2013-2019 was in a testing phase and not all Contracting Parties have contributed to this exercise. Switzerland and Norway, range countries for transboundary wolf populations with EU member states, have sent their reports. In Switzerland, the wolf is reported in unfavourable-inadequate conservation status for the Continental biogeographical region, one of the country's two biogeographical regions. Norway reported an unknown conservation status of the species in both its biogeographical regions.

The European Union fully acknowledges the challenges of coexistence between people and wolves arising from their recovery in numbers and range. Those challenges require vigilance and a continuous monitoring of the situation. Based on the results of such monitoring, further actions including an evalution of the current framework for the conservation of wolves, may need to be considered. The European Union will assess the situation, taking into account the outcome of the upcoming meeting of the Standing Committee. At this stage, however, given the latest data presented above, the proposal of Switzerland to lower the protection status of the wolf across Europe is not justified from a scientific and conservation point of view. The proposal is also not in line with the current legal protection status of the species granted by Annex IV of the Habitats Directive. The main objective of both the Bern Convention and the Habitats Directive, to ensure the restoration and conservation of the species to a favourable conservation status, is not reached. The strict legal protection status appears necessary for supporting efforts to remove major threats to the species. The existing legal framework is allowing an ongoing recovery of the species and provides the Parties with the necessary tools to address specific problems, including the possibility to issue derogations under Article 9 of the Convention (and Article 16 of the Habitats Directive) in accordance with the required conditions[8].

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4 https://www.iucnredlist.org/species/3746/144226239

5 https://nature-art17.eionet.europa.eu/article17/species/summary/?period=5&group=Mammals&subject=Canis+lupus&region

6 In 2019, Member States reported the wolf to be in a favourable conservation status in 18 out of 39 national parts of biogeographical regions where the species was present.

7 Document T-PVS/PA(2020)03 – Reporting under Resolution No. 8 (2012) (https://rm.coe.int/reporting-under-resolution-no-8-2012-period-2013-2018-final-report/16809fad04) and the national summary dashboards presenting data reported by non-EU Contracting Parties to the Convention (https://www.coe.int/en/web/bern-convention/national-summary-dashboards)

8 https://op.europa.eu/en/publication-detail/-/publication/a17dbc76-2b51-11ec-bd8e-01aa75ed71a1/language-en/format-PDF/source-search

Switzerland's proposal would harmonise wolf protection under the Bern Convention by applying the lowest protection status everywhere. In light of the most recent conservation status assessments, it is advisable to enhance international cooperation among Parties sharing transboundary wolf populations, which could potentially lead to the lifting of existing reservations and better coordinated conservation and management efforts. It is to be noted that Switzerland and Norway have made no reservation, hence there is no inconsistency between the legal protection status of the wolf in those countries and the Member States with which they share wolf populations.

Therefore, based on the latest scientific data currently available and in accordance with the current EU legal framework, the European Union should oppose the proposal by Switzerland to move the Wolf (*Canis lupus*) from Appendix II on "Strictly protected fauna species" to Appendix III on "Protected fauna species" to the Agreement. It will, however, keep the evolution of the wolf population and the challenges for coexistence with people under review.

3.2. Amendments to the Rules of Procedures of the Standing Committee

In 2020 and 2021, due to the Covid-19 pandemic, the Standing Committee to the Agreement met through an online platform. The experience was positive but revealed the necessity to adapt the Agreement's existing rules, tools and decision-making processes to the new working methods and needs. The Secretariat, in cooperation with the Bureau to the Bern Convention, proposed several amendments to the Rules of Procedures of the Standing Committee (document **TPVS/Inf(2022)29)**, set up in line with Article 13.6 of the Agreement.

In addition to minor editorial changes suggested for more preciseness and consistency of language, the proposed amendments concern:

- **Rule 1 – Meetings**: introduction of the possibility for remote virtual meetings and the organisation of voting through electronic means;
- **Rule 2 – Convocation**: shortening of the period of notice for convening a Standing Committee meeting to six weeks (from two months);
- **Rule 6 – Documentation**: clarification on the use of information technology for compiling and sending meeting documents to Contracting Parties, including for the needs of a written procedure or a simplified written procedure (silent procedure);
- **Rule 7 – Quorum**: clarification on what constitutes a quorum (more than half of the Contracting Parties);
- **Rule 8 – Voting**: Clarifications on the modalities of voting and voting through a written procedure;
- **Rule 11 – Chair**: Clarifications on the voting procedure and majority for the election of Bureau members, in case a third ballot is required;
- **Rule 19 – Bureau**: inclusion of a quorum requirement for Bureau deliberations and inclusion of provision 19 c) clarifying the Bureau's specific functions;

- **Appendix 1 on Rules applicable to on-the-spot appraisals**: Inclusion of a requirement for the Contracting Party and the complainant to agree on the expert appointed for the mission and on the terms of reference drawn for it as well as a requirement for the host country to bear the costs for local transportation, interpretation and translation of documents;

- **Appendix 2 – Rules applicable to mediation**: Inclusion of similar requirements as for the on-the-spot appraisals.

All the proposed amendments which concern the possibility of holding remote virtual meetings and written procedures are in line with practices in other Multilateral Environmental Agreements and are necessary to ensure the Agreements' working methods are adapted to virtual work.

The shortening of the period of notice for convening a Standing Committee meeting to six weeks is proposed to allow for more flexibility, should the need for an extraordinary Standing Committee meeting arise. As in practice the Agreement's main decision-making body meets once a year, the use of this provision is expected to be only exceptional.

The proposed amendments clarifying the functions of the Bureau, the responsibilities of host countries for on-the-spot enquiries and mediation visits and the required agreement on the terms of reference and expert selection derive from existing practices within the Agreement's functioning. These so-far unwritten rules have been implemented extensively and have been widely accepted by the Contracting Parties.

Therefore, the European Union should support all proposed amendments to the Rules of Procedure of the Standing Committee.

In view of the above, it is 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 forty-second meeting of the Standing Committee on both the proposal for amendment of the Agreement's Appendices and the proposlas for amendments to the Rules of Procedures of the Standing Committee. The proposals for amendment to the Rules of Procedures will not require a change of existing Union law.

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*'[9].

4.1.2. Application to the present case

The Standing Committee is a body set up by the Agreement.

The acts which the Standing Committee is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 6 of the Agreement. The envisaged acts do not supplement or amend the institutional framework of the agreement.

The procedural legal basis for the proposed decision, therefore, 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) TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the acts of the Standing Committee would amend Appendices II and III of the Agreement and the Rules of Procedures of the Standing Committee, it would be appropriate to publish them in the *Official Journal of the European Union,* if they are adopted.

[9] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61to 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 European wildlife and natural habitats (Bern Convention) ('the Agreement') was concluded by the Union by Council Decision 82/72/EEC[10] and entered into force on 1 September 1982.

(2) Pursuant to Article 17 of the Agreement, the Standing Committee may adopt a decision to amend the appendices to the Agreement.

(3) The Standing Committee, during its forty-second meeting on 29 November – 2 December, 2022, is to adopt a decision on amending Appendix II and Appendix III to the Agreement.

(4) Pursuant to Article 13.6 of the Agreement, the Standing Committee has drawn its Rules of Procedure and, in line with Rule 21, the Standing Committee can amend them.

(5) The Standing Committee, at its forty-second meeting on 29 November – 2 December, 2022, is also called to adopt amendments to its Rules of Procedures.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Standing Committee, as both decisions will be binding on the Union.

(7) Switzerland submitted a proposal to move the Wolf (*Canis lupus*) from Appendix II on "Strictly protected fauna species" to Appendix III on "Protected fauna species" of the Agreement.

(8) Based on current data, lowering the protection status of all wolf populations is not justified from a scientific and conservation point of view. The conservation status of the species remains divergent across the continent, with a favourable conservation

[10] OJ L 38, 10.2.1982, p. 1.

status assessment in only 18 out of 39 national parts of biogeographical regions in the EU. This is confirmed by the latest available scientific information on conservation status of the species, resulting from the reporting under Article 17 of the Habitats Directive and under Resolution No. 8 (2012) of the Bern Convention. Continuing threats to the species, including emerging ones such as border fences and wolf-dog hybridisation, also call for maintaining the strict protection status.

(9) Therefore, the Union should oppose the Swiss proposal.

(10) The Secretariat of the Agreement, in cooperation with the Bureau, proposed several amendments to the Rules of Procedures of the Standing Committee, in particular to adapt the Agreement's working methods and procedures to new virtual working methods and tools.

(11) The proposed amendments to the Rules of Procedure correspond to practices already in place in other Multilateral Environmental Agreements or to existing practices within the Agreement which are widely accepted.

(12) Therefore, the Union should support the proposed amendments to the Rules of Procedures.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the forty second meeting of the Standing Committee of the Convention on the conservation European wildlife and natural habitats, shall be the following:

(1) to oppose the proposal to move the Wolf (*Canis lupus*) from Appendix II on "Strictly protected fauna species" to Appendix III on "Protected fauna species";

(2) to support the proposed amendments to the Rules of Procedure of the Standing Committee contained in document TPVS/Inf(2022)29.

Article 2

In the light of developments at the fourty second meeting of the Standing Committee, refinement of the position referred to in Article 1.2 may be agreed to by the representatives of the Union in consultation with the Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President