

Brussels, 17 December 2025  
(OR. en)

16625/25

LIMITE

ENV 1352

### 'I' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Request submitted by Stichting De Faunabescherming for internal review under Article 10 of Regulation (EC) 1367/2006 of the Directive (EU) 2025/1237 of the European Parliament and of the Council, of 17 June 2025, amending Council Directive 92/43/EEC as regards the protection status of wolves

- Approval of the reply
- Decision to use the written procedure

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1. On 12 September 2025, the Council received, from Stichting De Faunabescherming, a request for internal review under Article 10 of Regulation (EC) 1367/2006 of the Directive (EU) 2025/1237 of the European Parliament and of the Council of 17.6.2025 amending Council Directive 92/43/EEC as regards the protection status of the wolf.<sup>1</sup>
2. The Working Party on the Environment examined the draft reply through a written consultation<sup>2</sup>, with the deadline of 17 December 2025. No comments were made to the draft reply.

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<sup>1</sup> ST 16069/25.

<sup>2</sup> ST 16623/25.

3. In accordance with Article 10 of Regulation (EC) 1367/2006, the Council has to reply in written no later than 12 weeks after receipt of the request. The urgent adoption of the reply is justified by the need for having the reply adopted by the Council before 12 January 2026.
4. In view of the above, the Permanent Representatives Committee is invited to:
- recommend that the Council approve the reply to the request for internal review submitted by Stichting De Faunabescherming, as set out in the Annex to this note;
  - decide, in accordance with Article 12(1) of the Council's Rules of Procedure, that the Council uses the written procedure to approve the reply.

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**The Council’s reply to the request for internal review under Article 10 of Regulation (EC) 1367/2006 of the omitted adoption of an act pursuant to Article 19 of Council Directive 92/43/EEC<sup>3</sup> and of the Council’s reply of 8 July 2025**

1. This reply sets out the Council’s decision with regard to the request submitted by Stichting De Faunabescherming (hereafter “SDF”), received by the Council on 12 September 2025, for internal review under Article 10 of Regulation (EC) 1367/2006<sup>4</sup> on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to European Union institutions and bodies (the “Aarhus Regulation”) on the omitted adoption of an act pursuant to Article 19 of Council Directive 92/43/EEC<sup>5</sup> and of the Council’s reply of 8 July 2025 to SDF’s letter of 17 June 2025 (the “Request”).
2. It explains why, after careful consideration of your arguments, the Council considers that your Request is manifestly unfounded and, as regards the alleged omission, inadmissible.

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<sup>3</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, pp. 7–50.

<sup>4</sup> OJ L 264, 25.9.2006, pp. 13–19.

<sup>5</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, pp. 7–50.

## **I. CONTEXT**

3. On 7 March 2025, the Commission adopted a proposal for a Directive of the European Parliament and the Council amending Council Directive 92/43/EEC as regards the protection status of the wolf (*Canis lupus*)<sup>6</sup>. Following interinstitutional negotiations between the European Parliament and the Council, Directive (EU) 2025/1237 was adopted on 17 June 2025<sup>7</sup>.
4. By letter dated 17 June 2025, received on 23 June 2025, SDF called upon the Council to act pursuant to Article 265 TFEU on the basis of Article 19 of Council Directive 92/43/EEC (hereafter the ‘Habitats Directive’). The Council replied on 8 July 2025 explaining why SDF has no standing to make such a call.
5. In the Request received on 12 September 2025, SDF asked the Council to review on the basis of Article 10 of the Aarhus Regulation (i) its alleged omission to adopt an act pursuant to Article 19 of the Habitats Directive, and (ii) following SDF call of June 2025, the Council’s reply to that call. SDF, therefore, combined two different requests in one request. The Council will explain why, in any event, both requests are manifestly unfounded and why the request is also inadmissible as regards the alleged omission.

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<sup>6</sup> COM/2025/106 final.

<sup>7</sup> Directive (EU) 2025/1237 of the European Parliament and of the Council of 17 June 2025 amending Council Directive 92/43/EEC as regards the protection status of the wolf (*Canis lupus*), OJ L, 2025/1237, 24.6.2025.

## II. EXAMINATION OF THE REQUEST

*II.A. The Request to review the omitted adoption of an act under article 19 of the Habitats Directive is manifestly unfounded, since the Council has no obligation to adopt such an act and it was not even possible for the Council to adopt such an act, and inadmissible since the Council already replied to the SDF's call to act pursuant to Article 265 TFEU.*

6. For the reasons set out below, the Council considers that the request is as manifestly unfounded.
7. SDF argues that the Habitats Directive in its Article 19 provides for a specific procedure which should have been used to adopt the amendment in question and that, contrarily to what was observed by the Council (in its letter replying to SDF's call to act), the case at stake does not concern a secondary legal bases, but a mere delegation of power from the legislator to the Council. Furthermore SDF argues that since delegated acts can be object of a request for internal review pursuant to the Aarhus Regulation, also an act adopted pursuant to Article 19 of the Habitats Directive (and, conversely, the failure to adopt such an act) can be object of a request. SDF also argues that since the Council had an obligation to adopt an act pursuant to Article 19 of the Habitats Directive, it cannot "hide" behind the fact there is no Commission proposal to do so. The Council disagrees with those arguments.
8. Such a failure to adopt an act can only apply where there is an obligation to act and the Council is of the opinion that it was under no obligation to adopt an act pursuant to Article 19 of the Habitats Directive and that it was actually not even possible for the Council to adopt such an act.

9. First, as already expressed in its letter dated 8 July 2025, the Council observes that the procedure under Article 19 of the Habitats Directive can no longer be relied upon since it provides for the Habitats Directive to be modified through a procedure which differs from the one provided for in the relevant Treaty provision, namely currently Article 192 TFEU,<sup>8</sup> and the Court of Justice has ruled that the institutions cannot create secondary legal bases<sup>9</sup>. It would therefore not have been legally possible for the Council to adopt such an act. The alleged possible comparison with the lack of adoption of a delegated act does not change this and a pre-Lisbon secondary legal basis cannot be requalified as a post-Lisbon empowerment for a delegated act.
10. Second, as already explained in its reply of 8 July 2025, the Council reiterates that even if the procedure under Article 19 of the Habitats Directive could still be used, the Council can only adopt an act under that provision on the basis of a proposal from the Commission (and even in that case, the Council would not be obliged to adopt the act) and there is and never was such proposal. This is the clear wording of Article 19, paragraph 2 of the Habitats Directive, reading “*Such amendments as are necessary for adapting Annex IV to technical and scientific progress shall be adopted by the Council acting unanimously on a proposal from the Commission*”. (emphasis added). The only proposal which the Commission presented was a proposal to amend the Habitat Directive through the ordinary legislative procedure under Article 192 TFEU,<sup>10</sup> and the Council and the European Parliament correctly adopted that proposal. In the absence of such a Commission proposal, it was – and remains - therefore in any event impossible for the Council to adopt an act under Article 19 Habitats Directive.

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<sup>8</sup> Article 19 Habitats Directive also deviated from the applicable Treaty legal basis at the time of its adoption, namely Article 130s EC Treaty, by not providing for consultation of the European Parliament and the Economic and Social Committee.

<sup>9</sup> Judgment of the Court (Grand Chamber) of 1 March 2022 in Case C-275/20, *Commission v Council*, EU:C:2022:142, paragraph 32.

<sup>10</sup> COM(2025) 106 final.

11. Third, even if it would have been seized of such a proposal, the Council observes that there is no deadline nor obligation in Union law according to which the Council should have adopted an act pursuant to Article 19 of the Habitats Directive.
12. Furthermore, for the reasons set out below, the Council considers that the Request is also inadmissible as far as the review of the alleged omission is concerned, since the Council has already replied to the call to act by SDF in the context of the procedure pursuant to Article 265 TFEU.
13. Article 265 TFEU establishes the legal means to remedy any failure to act by a Union institution, body, office or agency where such failure constitutes a breach of Union law. The institution, body, office or agency at stake has two months from the moment in which it has been called upon to act to define its position, meaning it could acknowledge or not the concerns raised, which can include, for instance, the adoption of a measure different from that desired or considered necessary by the persons concerned<sup>11</sup>.
14. The institution can express in its position that it does not consider it failed to act and such a position brings to an end the procedure pursuant to Article 265 TFEU. Defining this position is a step in the pre-litigation phase during which the institution addresses the alleged failure to act. Since SDF explicitly made its call to act in the framework of Article 265 TFEU (see paragraph 3 of that call), it must accept the procedure and steps applicable under that provision. Allowing the review of such omission pursuant to the Aarhus Regulation when the omission has already been dealt within the procedure under Article 265 TFEU would circumvent Article 265 TFEU. For this reason, the Council considers that the request is inadmissible.

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<sup>11</sup> Judgment of 21 July 2016, *Nutria v Commission*, T-832/14, not published, EU:T:2016:428, paragraph 46; see also, to that effect, judgment of 1 April 1993, *Pesqueras Echebaster v Commission*, C-25/91, EU:C:1993:131, paragraph 12 and the case-law cited.

***II.B. The Request to review the Council's reply of 8 July 2025 is manifestly unfounded since SDF had no standing pursuant to Article 265 TFEU***

15. SDF argues that the Council erroneously observed in that reply that SDF has not standing pursuant to Article 265 TFEU. For this reason, the Council should review its reply and find that SDF had standing to make a call to act pursuant to Article 265 TFEU and then adopt an act pursuant to Article 19 of the Habitats Directive. Notably, SDF draws a parallel between the conditions for lodging an action pursuant to Article 265 TFEU and the conditions to be eligible to submit a request for review pursuant to Article 10 of the Aarhus Regulation. In SDF's view, it would be contradictory to allow an NGO to request a review pursuant to the Aarhus Regulation while not allowing the same NGO to lodge an action for failure to act pursuant to the Treaties.
16. The Council disagrees with this argument.
17. First, as already explained in the reply dated 8 July 2025, the Council considers that SDF has no standing to bring an action pursuant to Article 265 TFEU. Natural and legal persons can only bring an action under that provision for the failure of an institution to adopt an act if they would have standing to bring an action for annulment against that act pursuant to Article 263 TFEU. Since the act in question would not be addressed to SDF, the latter would only have standing if that act is of direct and individual concern to it. That condition is not met in the case of an act adopted pursuant to Article 19 of the Habitats Directive at issue in the present case as SDF would not be individually and directly concerned by such act.

18. Second, the fact that a natural or legal person has the right to submit a request for review under the Aarhus Regulation does not automatically entail that that person has the right to submit an action before the Court pursuant to the Treaties. The administrative review system under the Aarhus Regulation complements the Union judicial system but did not intend to, and could not, amend the system of remedies under the Treaties, including as regards conditions of admissibility. Therefore, the introduction of requests for internal review does not mean that every person having the right to submit a request pursuant to the Aarhus Regulation has standing to bring an action before the Union courts regardless of the conditions set out in the Treaties and the case law<sup>12</sup>.
19. Lastly, the Council observes that, pursuant to the case law, SDF can ask the Council to review its reply, but it cannot require, at the end of the internal review, that the Council adopts an act pursuant to Article 19 of the Habitats Directive. The case law has clearly ruled that the choice of measures to be adopted following an internal review is entirely discretionary for the institution or body concerned<sup>13</sup>. This applies *a fortiori* as regards an act which the Council cannot adopt in the absence of a Commission proposal.

### **III. CONCLUSIONS**

In the light of the above, the Council concludes that your request should be considered manifestly unfounded, and, as regards the alleged omission, inadmissible.

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<sup>12</sup> See, in this sense, recital 19 of Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, which explains how the conditions to submit a request for review pursuant to the Aarhus Regulation do not coincide with those to lodge a judicial action pursuant to the Treaties.

<sup>13</sup> Judgment of 15 December 2016, case T-177/13, *TestBioTech eV a.o. v Commission*, EU:T:2016:736, paragraph 55.