Council of the European Union

Brussels, 5 June 2018
(OR. en)

9739/18

Interinstitutional File:
2018/0221 (NLE)

ENV 403

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 June 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 399 final
Subject:	Proposal for a COUNCIL DECISION on the submission, on behalf of the European Union, of a proposal for amending Annexes 2 and 3 of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA)

Delegations will find attached document COM(2018) 399 final.

Encl.: COM(2018) 399 final

EUROPEAN
COMMISSION

Brussels, 5.6.2018
COM(2018) 399 final

2018/0221 (NLE)

Proposal for a

COUNCIL DECISION

on the submission, on behalf of the European Union, of a proposal for amending Annexes 2 and 3 of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA).

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. The Agreement on the Conservation of African-Eurasian Migratory Waterbirds

The Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) is dedicated to the conservation of migratory waterbirds and their habitats across Africa, Europe, the Middle East, Central Asia, Greenland and the Canadian Archipelago.

Developed under the framework of the Convention on Migratory Species (CMS) and administered by the United Nations Environment Programme (UNEP), AEWA brings together countries and the wider international conservation community in an effort to establish coordinated conservation and management of migratory waterbirds throughout their entire migratory range.

The Agreement entered into force on 1 November 1999. The European Union is a Contracting Party to this Agreement since 1 October 2005[1]. At present, there are seventy-seven Contracting Parties, forty-one from Eurasia (including the EU) and thirty-six from Africa.

Directive 2009/147/EC on the conservation of wild birds (Birds Directive)[2] implements in Union law the commitments set out in the Agreement. The Birds Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

1.2. The Meeting of the Parties

The Meeting of the Parties (MOP) is the principal decision-making body for the Agreement. It has powers to review the Annexes to the Agreement and it meets every three years.

The seventh Meeting of the Parties of the Agreement will take place on 4-8 December 2018, in South-Africa.

Pursuant to Article X, paragraphs 2 and 3 of the Agreement, any proposals to amend the Annexes of the Agreement, shall be communicated to the Agreement Secretariat not less than 150 days before the opening of the session of the Meeting of the Parties, i.e. 7 July 2018.

---

[1] Council Decision 2006/871/EC of 18 July 2005 on the conclusion on behalf of the European Community of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds. OJ L 345, 8.12.2006, p. 24.

[2] OJ L 20 of 26.01.2010. p. 7
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF

1.3. The proposals from Croatia and Italy

Croatia and Italy have proposed that the European Union submits a proposal for amending Annex 2 of the Agreement, which lists the species to which the Agreement applies, by adding the Shag (*Phalacrocorax aristotelis*) to Annex 2.

Croatia and Italy have also proposed that the European Union submits a proposal for amending Annex 3 of the Agreement, by listing the non-EU (Barents Sea) population of *Phalacrocorax aristotelis aristotelis* and the EU population (East Mediterranean – Croatia, Adriatic Sea) of *Phalacrocorax aristotelis desmarestii* in Column A of Table 1 of Annex 3 (respectively, in categories 2[3] and 1c[4]).

The reasons for these proposals are the following.

The family Phalacrocoracidae (Cormorants) is already included in Annex 2 of the Agreement. Based on their migratory status, six out of the eight species breeding within the geographic scope of the Agreement are listed in Annex 2. Two unlisted species are European Shag *Phalacrocorax aristotelis* and Long-tailed Cormorant *Phalacrocorax africanus*.

The European Shag inhabits Atlantic coast of Europe and North Africa, from Morocco to northern Norway and Kola peninsula, including Iceland, as well as the Mediterranean and parts of the Black Sea coast (del Hoyo et al. 1992). Three subspecies are recognised: *Ph. a. aristotelis* in Atlantic, *Ph. a. desmarestii* in the Mediterranean and the Black Sea and *Ph. a. riggenbachi* from Morocco. Overall, this species is sedentary or dispersive, but some populations are truly migratory: the northernmost populations of *Ph. a. aristotelis* from Norway and Russia and the Adriatic population of *Ph. a desmarestii*.

The global population was estimated to c. 100,000 pairs in 1990s and to 75,000-81,000 in 2004 (BirdLife International 2004). The species is classified by IUCN as Least concern (Birdlife 2015). The overall trend is decreasing, although some populations may be stable (Wetlands International 2006). Large fluctuations in population size were recorded. For example, the population in the United Kingdom showed 21% increase between 1969 and 1987, from 31,600 pairs in 1969–1970 to 47,300 pairs in 1985–1987, followed by 27% decline in 1998–2002, with further 26% decline to 2011 (Balmer et al. 2013). Also in Norway population shows large fluctuations. The northernmost, migratory population in the Barents Sea decreased from 10,000 pairs in 1980 to some 1,000 in 1994 but increased again to 5,000 pairs in 2013 (Fauchald et al. 2015).

Subspecies *Ph. a. desmaresti* was estimated to number 8,700-11,126 breeding pairs (Bazin and Imbert 2012). In 2006, the population was estimated to c. 10,000 individuals (Culioli 2006). Population decrease was recorded at Corsica where the formerly stable population of up to 1000 pairs in 1975–1983 declined by > 50% to c. 375 pairs by 1994, with subsequent recovery (Dubois *et al*. 2008).

---

[3] Pursuant to Table 1 of Annex 3 to the Agreement, Category 2 includes Populations numbering between around 10,000 and around 25,000 individuals.

[4] Pursuant to Table 1 of Annex 3 to the Agreement, Category 1 includes: (a) Species, which are included in Appendix I to the Convention on the Conservation of Migratory species of Wild Animals; (b) Species, which are listed as threatened on the IUCN Red list of Threatened Species, as reported in the most recent summary by BirdLife International; or (c) Populations, which number less than around 10,000 individuals.

The subspecies *Ph. a. desmarestii* is protected in the European part of the range and red-listed several countries, for example: it is classified as "Vulnerable" in Bulgaria, and as "Endangered" in Albania. *Ph. a. aristotelis* is protected in part of the range (UK). It was recently uplisted from Amber to Red list in the UK (Eaton *et al.* 2015) and it is Red-listed in Russia because of the small population size. A reduction in the population of 15-30 % over 10 years makes the species qualifies for the category "Near Threatened" in Norway (Korneev *et al.* 2015).

Velando and Freire (2002) underline that an effective conservation of the *P. a. desmarestii* should pass through the protection of the breeding sites as well as the feeding and roosting areas, and the regulation of demersal fisheries in the feeding areas. According to Velando and Freire (2002), the Conservation Actions proposed by Birdlife in 2015 are 1) the identification of important sites at sea for this species; 2) subsequent designation as Marine Protected Areas; 3) management of key breeding and wintering roosting sites, including eradication of invasive predators; 4) onboard monitoring programmes of fishing vessels to determine high-risk areas for gillnet bycatch; 5) where relevant implement mitigation and protection measures.

1.4. The proposals from Luxemburg

Luxemburg has proposed to move all populations of the following three species to Column A of Table 1 of Annex 3 of the Agreement: Curlew Sandpiper[5] (*Calidris ferruginea*), Atlantic Puffin[6] (*Fratercula arctica*) and Razorbill[7] (*Alca torda*). While Luxemburg has not proposed any specific category for these three species, according to the criteria established in Table 1 of Annex 3 to the Agreement, the Curlew Sandpiper (*Calidris ferruginea*) and the Razorbill (*Alca torda*) qualify for category 4[8] and the Atlantic Puffin (*Fratercula arctica*) qualifies for category 1b[9].

The proposal by Luxemburg refers to Resolution 6.1 of AEWA MOP6[10] which acknowledged the recent global Red Listing of the Common Eider (*Somateria mollissima*), Common Pochard (*Aythya ferina*), Horned Grebe (*Podiceps auritus*), Eurasian Oystercatcher (*Haematopus ostralegus*), Northern Lapwing (*Vanellus vanellus*), Bar-tailed Godwit (*Limosa lapponica*), Red Knot (*Calidris canutus*), Curlew Sandpiper (*Calidris ferruginea*), Armenian

---

[5] Table 1 of Annex 3 to the Agreement currently lists two populations of *Caladirs ferruginea*: the population in Western Siberia/West Africa, listed in column B, category 2c, and the population in Central Siberia/SW Asia, E & S Africa, listed in column B, category 2c.

[6] Table 1 of Annex 3 to the Agreement currently lists three populations of *Fratercula arctica*: the population in Hudson bay & Maine E to S Greenland, Iceland, Bear Is, Norway to S Novaya Zemlya , listed in column C, the population in NE Canada, N Greenland, to Jan Mayen, Svalbard, N Novaya Zemlya, listed in column A, category 3a, and the population in Faeroes, S Norway & Sweden, Britain, Ireland, NW France, listed in column C.

[7] Table 1 of Annex 3 to the Agreement currently lists two populations of *Alca torda:* the population of *Alca torda torda* in E North America, Greenland, E to Baltic & White Seas, listed in column C, and the population of *Alca torda islandica* in Iceland, Faeroes, Britain, Ireland, Helgoland, NW France, listed in column C.

[8] Pursuant to Table 1 of Annex 3 to the Agreement, Category 4 includes species, which are listed as Near Threatened on the IUCN Red List of Threatened species, as reported in the most recent summary by BirdLife International, but do not fulfil the conditions in respect of Category 1, 2 or 3 and which are pertinent for international action.

[9] *Supra 4.*

[10] UNEP/AEWA/MOP6/Res. 6.1 - http://www.unep-aewa.org/en/document/adoption-amendments-aewa-annexes-2

Gull (*Larus armenicus*), Atlantic Puffin (*Fratercula arctica*) and Razorbill (*Alca torda*), and noted the importance of considering the implications of these changes in listings for MOP7.

1.5. Analysis of the proposals

The amendments to Annexes 2 and 3 proposed by Croatia, Italy and Luxembourg would make all populations of the Shag (*Phalacrocorax aristotelis)*, Curlew Sandpiper (*Calidris ferruginea*), Atlantic Puffin (*Fratercula arctica*) and Razorbill (*Alca torda*) subject to the requirement of Annex 3, section 2.1.1 of the Agreement, which establishes the species conservation legal measures applicable to population of species listed in Colum A of Table 1 of Annex 3. In particular, for populations listed in Column A of Table 1, Parties shall provide protection to those populations listed in accordance with Article III, paragraph 2(a), of the Agreement. Such Parties shall in particular and subject to paragraph 2.1.3:

> (a) prohibit the taking of birds and eggs of those populations occurring in their territory;
>
> (b) prohibit deliberate disturbance in so far as such disturbance would be significant for the conservation of the population concerned; and
>
> (c) prohibit the possession or utilization of, and trade in, birds or eggs of those populations which have been taken in contravention of the prohibitions laid down pursuant to subparagraph (a) above, as well as the possession or utilization of, and trade in, any readily recognizable parts or derivatives of such birds and their eggs.

By way of exception for those populations listed in Categories 2 and 3 in Column A and which are marked by an asterisk, and those populations listed in Category 4 in Column A, hunting may continue on a sustainable use basis[11]. This sustainable use shall be conducted within the framework of an international species action plan, through which Parties will endeavour to implement the principles of adaptive harvest management[12]. Such use shall, as a minimum, be subject to the same legal measures as the taking of birds from populations listed in Column B of Table 1, as required in paragraph 2.1.2.

The Italo-Croatian proposal as well as the Luxemburgish proposals are well-founded. They are compatible with and complementary to EU law, particularly the Birds Directive.

Following the written consultation of the Nature Directives Expert Group (NADEG), the Commission proposes that the Union should support the above proposals because they are science-based and in line with the Union's commitment to international cooperation for the protection of biodiversity. The proposals for amendment will not require a change of existing Union law.

Any proposals to amend the Annexes of the Agreement, shall be communicated to the Agreement Secretariat not less than 150 days before the opening of the session (cf. Article X, paragraphs 2 and 3 of the Agreement), i.e. 7 July 2018.

---

[11] "*Sustainable use*" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

[12] Adaptive harvest management is the periodic process of setting hunting regulations based on a system of population and habitat monitoring, harvest-level recording, data analysis and defining regulatory options.

It is therefore necessary for the Council to urgently take a decision on the submission, on behalf of the European Union, of the above proposal to Agreement Secretariat. This constitutes a position to be adopted on the Union's behalf for the purpose of Article 218(9) TFEU.

2018/0221 (NLE)

Proposal for a

COUNCIL DECISION

on the submission, on behalf of the European Union, of a proposal for amending Annexes 2 and 3 of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA).

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 Agreement on the Conservation of African-Eurasian Migratory Waterbirds ('the Agreement') was concluded by the Union by Council Decision 2006/871/EC[1] and entered into force on 1 October 2005. The Agreement aims to conserve migratory waterbirds and their habitats across Africa, Europe, the Middle East, Central Asia, Greenland and the Canadian Archipelago.

(2) As a Party to the Agreement, the Union may make proposals for amendment of the Annexes to the Agreement. Annex 2 includes the waterbird species to which the Agreement applies. Annex 3 includes the Action Plan, which specifies actions which the Parties have to undertake in relation to priority species, such as species conservation, habitat conservation, management of human activities, research and monitoring, education and information, and implementation, consistent with the general conservation measures specified in Article III of the Agreement.

(3) Croatia and Italy have proposed that the European Union submit a proposal for amending Annex 2 to the Agreement, by adding the Shag (*Phalacrocorax aristotelis*).

(4) Croatia and Italy have also proposed that the European Union submits a proposal for amending Annex 3 to the Agreement, by listing the non-EU (Barents Sea) population of *Phalacrocorax aristotelis aristotelis* and the EU population (East Mediterranean – Croatia, Adriatic Sea) of *Phalacrocorax aristotelis desmarestii* in Column A of Table 1 of that Annex respectively, in categories 2[2] and 1c[3]).

---

[1] OJ L 345, 8.12.2006, p. 24.

[2] Pursuant to Table 1 of Annex 3 to the Agreement, Category 2 includes Populations numbering between around 10,000 and around 25,000 individuals.

[3] Pursuant to Table 1 of Annex 3 to the Agreement, Category 1 includes: (a) Species, which are included in Appendix I to the Convention on the Conservation of Migratory species of Wild Animals; (b) Species, which

(5) Luxemburg has proposed to move all populations of the following three species to Column A of Table 1 of Annex 3 to the Agreement: Curlew Sandpiper[4] (*Calidris ferruginea*), Atlantic Puffin[5] (*Fratercula arctica*) and Razorbill[6] (*Alca torda*). While Luxemburg has not proposed any specific category for these three species, according to the criteria established in Table 1 of Annex 3 to the Agreement, the Curlew Sandpiper (*Calidris ferruginea*) and the Razorbill (*Alca torda*) qualify for category 4[7] and the Atlantic Puffin (*Fratercula arctica*) qualifies for category 1b[8].

(6) The amendments to Annexes 2 and 3 proposed by Croatia, Italy and Luxembourg would make all populations of the Shag (*Phalacrocorax aristotelis)*, Curlew Sandpiper (*Calidris ferruginea*), Atlantic Puffin (*Fratercula arctica*) and Razorbill (*Alca torda*) subject to the requirement of Annex 3, section 2.1.1 of the Agreement, which establishes the species conservation legal measures applicable to populations of species listed in Colum A of Table 1 of Annex 3. In particular, for populations listed in Column A of Table 1, the Parties to the Agreement are to prohibit the taking of birds and eggs of those populations occurring in their territory, prohibit deliberate disturbance in so far as such disturbance would be significant for the conservation of the population concerned. By way of exception for those populations listed in Categories 2 and 3 in Column A and which are marked by an asterisk, and those populations listed in Category 4 in Column A, hunting may continue on a sustainable use basis[9]. This sustainable use is to be conducted within the framework of an international species action plan, through which Parties will endeavour to implement the principles of adaptive harvest management[10].

(7) The Italo-Croatian proposal as well as the Luxemburgish proposals are well-founded. They are compatible with and complementary to Union law, particularly the Directive 2009/147/EC[11].

---

are listed as threatened on the IUCN Red list of Threatened Species, as reported in the most recent summary by BirdLife International; or (c) Populations, which number less than around 10,000 individuals.

[4] Table 1 of Annex 3 to the Agreement currently lists two populations of *Caladirs ferruginea*: the population in Western Siberia/West Africa, listed in column B, category 2c, and the population in Central Siberia/SW Asia, E & S Africa, listed in column B, category 2c.

[5] Table 1 of Annex 3 to the Agreement currently lists three populations of *Fratercula arctica*: the population in Hudson bay & Maine E to S Greenland, Iceland, Bear Is, Norway to S Novaya Zemlya , listed in column C, the population in NE Canada, N Greenland, to Jan Mayen, Svalbard, N Novaya Zemlya, listed in column A, category 3a, and the population in Faeroes, S Norway & Sweden, Britain, Ireland, NW France, listed in column C.

[6] Table 1 of Annex 3 to the Agreement currently lists two populations of *Alca torda:* the population of *Alca torda torda* in E North America, Greenland, E to Baltic & White Seas, listed in column C, and the population of *Alca torda islandica* in Iceland, Faeroes, Britain, Ireland, Helgoland, NW France, listed in column C.

[7] Pursuant to Table 1 of Annex 3 to the Agreement, Category 4 includes species, which are listed as Near Threatened on the IUCN Red List of Threatened species, as reported in the most recent summary by BirdLife International, but do not fulfil the conditions in respect of Category 1, 2 or 3 and which are pertinent for international action.

[8] *Supra 15.*

[9] "*Sustainable use*" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

[10] Adaptive harvest management is the periodic process of setting hunting regulations based on a system of population and habitat monitoring, harvest-level recording, data analysis and defining regulatory options.

[11] OJ L 20 of 26.01.2010. p. 7.

(8) The proposals are science-based, in line with the Union's commitment to international cooperation for the protection of biodiversity.

(9) The species are already covered by Directive 2009/147/EC on the conservation of wild birds and the Shag *(Phalacrocorax aristotelis)* is also listed in Annex I to that Directive. Therefore, the proposed amendments would not require any change in Union law.

(10) The Union should therefore submit those proposals to the Agreement Secretariat, in view of the seventh Meeting of the Parties, which will take place on 4 to 8 December 2018 in South Africa,

(11)

HAS ADOPTED THIS DECISION:

Article 1

1. The Union shall submitt the following proposals for amending Annexes 2 and 3 of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds:

   (a) Adding the Shag (*Phalacrocorax aristotelis)* to Annex 2 of the Agreement.

   (b) Listing the non-EU (Barents Sea) population of *Phalacrocorax aristotelis aristotelis* and the EU population (East Mediterranean – Croatia, Adriatic Sea) of *Phalacrocorax aristotelis desmarestii* in Column A of Table 1 of Annex 3 (respectively, categories 2 and 1c).

   (c) Moving all populations of the Curlew Sandpiper (*Calidris ferruginea*), Atlantic Puffin (*Fratercula arctica*) and Razorbill (*Alca torda*) to Column A of Table 1 of Annex 3 of the Agreement (respectively, categories 4, 1b, and 4).

2. The Commission shall communicate the proposal on behalf of the Union to the Secretariat of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President