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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') as regards the adoption of a Regional Plan on Agriculture Management, a Regional Plan on Aquaculture Management, a Regional Plan on Urban Stormwater Management, in the framework of Article 15 of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, and as regards the adoption of amendments to Annexes II and III to the Protocol concerning Special Protected Areas and Biological Diversity

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 23rd Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the 'Barcelona Convention') and its Protocols in connection with the envisaged adoption of three new Regional Plans (Regional Plan on Agriculture Management, Regional Plan on Aquaculture Management and Regional Plan on Urban Stormwater Management) within the framework of Article 15 of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, and the adoption of amendments to Annexes II and III of the Protocol on Special Protected Areas and Biological Diversity.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols

The Barcelona Convention and its seven Protocols adopted in the framework of the Mediterranean Action Plan¹ constitute the main legally binding Multilateral Environmental Agreement for the Mediterranean Sea and aim to protect the marine and coastal environment of the Mediterranean. The Barcelona Convention entered into force in 1978 and was amended in 1995. The amendments to the Barcelona Convention entered into force in 2004.

The Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (the 'LBS Protocol') aims to prevent, abate and fully eliminate where possible, pollution of the Mediterranean Sea by dumping of waste or other matter.

The Protocol on Special Protected Areas and Biological Diversity (the 'SPA and Biodiversity Protocol') aims to safeguard the biological diversity in the Mediterranean through the creation and management of Specially Protected Areas and the protection and conservation of species.

The European Union is a party to the Barcelona Convention and its Protocols, including the LBS Protocol² and the SPA and Biodiversity Protocol³. Italy, Greece, Spain, France, Slovenia, Malta, Cyprus and Croatia are also Parties to the Convention and its Protocols, together with thirteen non-EU Mediterranean countries.

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 (the 'Meeting of the Contracting Parties') brings together the Ministers and senior officials representing the Contracting Parties to the Barcelona Convention and its Protocols. The Contracting Parties will meet between 4 and 8 December 2023 in Portoroz, Slovenia.

The Meeting of Contracting Parties, which takes place once every two years, is the highest decision-making body of the Convention. Represented by their competent Ministries, the

¹ The Convention for the Protection of the Mediterranean Sea Against Pollution (the Barcelona Convention) was adopted on 16 February 1976 and entered into force on 12 February 1978. The Convention was amended by the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean on 10 June 1995. The amended Convention entered into force on 9 July 2004; https://wedocs.unep.org/bitstream/handle/20.500.11822/31970/bcp2019_web_eng.pdf

² Council Decision 1999/801/EC, OJ L 322, 14.12.1999, p. 18-31.

³ Council Decision 1999/800/EC, OJ L 322, 14.12.1999, p.1.

Contracting Parties in these biannual meetings decide on the relevant policies, strategies, budget and programme of work.

According to Article 25 of the Barcelona Convention, the EU shall exercise its right to vote with a number of votes equal to the number of its Member States, Contracting Parties to this Convention and to one or more of its Protocols. The EU shall not exercise its right to vote when its Member States exercise theirs and conversely.

According to Article 15, paragraph 1, of the LBS Protocol, decisions on the adoption of action plans, programmes and measures shall be made by a two-thirds majority of the Contracting Parties present and voting.

According to Article 23(2) of the Barcelona Convention, amendments to Annexes of the Convention or to any Protocol shall be adopted by the Meeting of the Contracting Parties by a three-fourth majority vote of the Contracting Parties to the instrument.

2.3. The envisaged acts of the 23rd Meeting of the Contracting Parties to the Barcelona Convention and its Protocols

During the 23rd Ministerial meeting, taking place from 4 to 8 December 2023, the Contracting Parties to the Barcelona Convention and its Protocols are to adopt the following acts ('the envisaged acts'):

- Proposals to adopt three Regional Plans in the framework of Article 15 of the LBS Protocol: (1) the Regional Plan on Agriculture Management, (2) the Regional Plan on Aquaculture Management, and (3) the Regional Plan on Urban Stormwater Management;
- A proposal to amend Annexes II and III to the SPA and Biodiversity Protocol.

The purpose of the envisaged Regional Plans is to reduce and prevent pollution in the Mediterranean from the unsustainable management of agriculture, aquaculture and stormwater respectively. The LBS Protocol provides for the adoption by the Convention of regional Action Plans to eliminate pollution from land-based sources and activities. Once the Plans are adopted, their measures and timetables become legally binding, in accordance with Article 15, paragraph 3 of the LBS Protocol.

The purpose of the amendment of Annexes II and III to the SPA and Biodiversity Protocol is the inclusion of nine cartilaginous species: six species in Annex II (list of endangered or threatened species) and three species in Annex III (list of species whose exploitation is being regulated). The amendments to the Annexes to the Protocol become effective to all Contracting Parties to the SPA and Biodiversity Protocol upon expiry of a period determined by the Contracting Parties when adopting the amendment, in accordance with Articles 23 of the Barcelona Convention and Article 14(1) of the SPA and Biodiversity Protocol.

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

- (1) As regards the Regional Action Plan for Agricultural Management:

In line with the UN Sustainable Development Goals, in particular SDG 2, SDG 6 and SDG 14⁴, the UN Convention to Combat Desertification⁵ and the Stockholm Convention on the

⁴ SDG2: 'End hunger, achieve food security and improved nutrition and promote sustainable agriculture'; SDG 6: 'Ensure availability and sustainable management of water and sanitation for all'; SDG 14: 'Conserve and sustainably use the oceans, seas and marine resources for sustainable development', Adopted at Seventieth session of the UN General Assembly on 25 September 2015, 'Transforming our world: the 2030 Agenda for Sustainable Development.

Protection against Persistent Organic Pollutants⁶, the envisaged Regional Plan requires the establishment of a regulatory framework (by 2028), as well as the implementation of measures (by 2030) for the input reduction of pollutants and other waste, as well as the contribution to sustainable agriculture.

The envisaged Regional Plan is fully in line with the Union's ambition under the Green Deal, in particular its Farm to Fork Strategy⁷ and Biodiversity Strategy⁸, which aim at pollution reduction and encourage low-input farming. The proposed position would also fit in with wider EU policies on protection of the quality of EU water bodies and the marine and coastal environment against land-based pollution, as well as on the sustainable use of pesticides and the reduction of nutrient losses.

It is therefore proposed that the Union support the adoption of the envisaged Regional Plan on Agriculture Management.

(2) As regards the Regional Action Plan for Aquaculture Management:

In line with UN Sustainable Development Goal 14, as well as with global and regional guidelines and initiatives related to the sustainable development of aquaculture⁹, the envisaged Regional Plan requires the establishment of a regulatory framework (by 2027) that sets the operational conditions for aquaculture facilities, and provides for the implementation of measures to minimise pollution from aquaculture activities (by 2028/2030), to promote environmentally sustainable aquaculture (by 2027) and to regulate the generation of plastic waste from aquaculture (by 2028).

As the envisaged Regional Plan is fully in line with the Union's ambition under the Green Deal and related Strategies¹⁰ and Guidelines, in particular the Commission Strategic Guidelines for a more sustainable and competitive EU aquaculture for the period 2021-2030¹¹ to improve the environmental performance of aquaculture and reduce plastic pollution, as well as environmental policy on ensuring the good quality of EU coastal and marine waters, it is proposed that the Union support the adoption of the envisaged act.

It is therefore proposed that the Union support the adoption of the envisaged Regional Plan on Aquaculture Management.

(3) As regards the Regional Action Plan for Urban Stormwater Management:

In line with UN Sustainable Development Goal 14, the envisaged Regional Plan requires the establishment of a regulatory framework (by 2028) to reduce stormwater runoff volume and peak flows and to address related pollution aspects from urban stormwater management. It also provides for the implementation of stormwater management plans (by 2030) based on the

⁵ United Nations Convention to Combat Desertification (UNCCD), in those countries experiencing serious drought and/or desertification, particularly in Africa, established in 1994, [UNCCD Convention ENG 0 0.pdf](#)

⁶ Stockholm Convention (UNEP) on persistent organic pollutants (POPs), which was adopted on the 22 May 2001, entered into force on 17 May 2004, and last revised in 2019. <https://chm.pops.int>.

⁷ Commission Communication of 20 May 2020 on a Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, COM(2020)381 final.

⁸ Commission Communication of 20 May 2020 EU Biodiversity Strategy for 2030 'Bringing nature back into our lives', COM(2020)380 final.

⁹ Guidelines for Sustainable Agriculture are being developed by the UN Food and Agriculture Organization (FAO) for endorsement in 2024, and Strategic Guidelines for a more sustainable and competitive EU aquaculture for the period 2021 to 2030 were adopted by the European Commission in May 2021, COM(2021)236 final.

¹⁰ In particular the EU Farm to Fork Strategy (COM(2020)381final), and EU Biodiversity Strategy (COM(2020)380 final).

¹¹ COM(2021)236 final.

selection of applicable control measures, as well as the implementation of seasonal maintenance of stormwater collection systems (by 2028) to ensure their efficient functioning.

The proposed Regional Plan is fully in line with the Union's policies on the protection of the quality of EU water bodies and the coastal and marine environment against pollution from land-based source of pollution, as well as the proper management of urban wastewater.

It is therefore proposed that the Union support the adoption of the envisaged Regional Plan on Urban Stormwater Management.

(4) As regards the amendments to Annexes II and III to the SPA and Biodiversity Protocol:

According to the assessments of the Red List of the International Union for the Conservation of Species (IUCS)¹², the cartilaginous species proposed for inclusion in Annex II ('endangered or threatened species') and III (species whose exploitation is regulated) respectively, are either (critically) endangered, vulnerable or near threatened. As such, the proposed inclusion of the species and the underlying justification are in conformity with Decision IG.17/14 on the Common Criteria for proposing amendments to Annexes II and III to the SPA and Biodiversity Protocol.¹³

The proposed amendments are fully in line with the Union's ambitions under the EU Biodiversity strategy, as well as its international commitments to protect and restore biodiversity in the framework of the UN Convention on Biological Diversity (CBD). It is also consistent with the Union approach taken in EU fisheries policy on the protection of fisheries resources and marine ecosystems through technical measures, which builds on Recommendations from regional bodies.

It is therefore proposed that the Union support the amendment of Annexes II and III to the SPA and Biodiversity Protocol.

A Union position is needed for the adoption of the envisaged acts because of the legally binding effects of these acts.

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*'¹⁴.

¹² The International Union for Conservation of Nature's Red List of Threatened Species established in 1964, www.iucnredlist.org

¹³ Common Criteria for proposing amendments to Annexes II and III of the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, adopted at COP15 Barcelona Convention, UNEP(DEPI)/MED IG.17/10 Annex V

¹⁴ 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.

4.1.2. Application to the present case

The Meeting of the Contracting Parties is a body set up by an agreement, namely the Barcelona Convention.

The acts, which the Meeting of the Contracting Parties is called upon to adopt, constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 15(3) of the LBS Protocol as regards the envisaged Regional Plans, and Article 29 of the Barcelona Convention as regards the envisaged amendments of the Annexes to the SPA and Biodiversity Protocol.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

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 acts relate to the protection of the 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.

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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') as regards the adoption of a Regional Plan on Agriculture Management, a Regional Plan on Aquaculture Management, a Regional Plan on Urban Stormwater Management, in the framework of Article 15 of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, and as regards the adoption of amendments to Annexes II and III to the Protocol concerning Special Protected Areas and Biological Diversity

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 Union is a Contracting Party to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (hereinafter referred to as 'the Barcelona Convention')¹⁵.
- (2) The Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (the 'LBS Protocol') was concluded by the Union by Council Decision 1999/801/EC¹⁶ and entered into force on 11 May 2008.
- (3) The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (the 'SPA and Biodiversity Protocol') was concluded by the Union by Council Decision 1999/800/EC¹⁷ and entered into force on 12 December 1999.
- (4) Pursuant to Article 15 of the LBS Protocol, the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols may adopt regional action plans containing measures and timetables for their implementation.
- (5) Pursuant to Article 18 of the Barcelona Convention, the Meeting of the Contracting Parties, may adopt amendments of the Protocols to the Barcelona Convention. Pursuant to Article 23 of the Barcelona Convention and its Protocols in conjunction with Article 14(1) of the SPA and Biodiversity Protocol, an amendment to the Annexes to the Protocol is to become effective to all Contracting Parties to the SPA and Biodiversity Protocol upon expiry of a period determined by the Contracting Parties when adopting the amendment, except for those that have notified the Depositary in writing that they are unable to approve the amendment.

¹⁵ Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft, OJ L 240, 19.9.1977, p. 1.

¹⁶ OJ L 322, 14.12.1999, p. 18-31.

¹⁷ OJ L 322, 14.12.1999, p.1.

- (6) The Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, during its 23rd session/meeting held from 4-8 December 2023, is to adopt three new Regional Plans under the LBS Protocol (a Regional Plan on Agriculture Management, a Regional Plan on Aquaculture Management, and a Regional Plan on Urban Stormwater Management), and a proposal to amend Annexes II and III to the SPA and Biodiversity Protocol to include nine cartilaginous species: five species in Annex II (list of endangered or threatened species) and four species in Annex III (list of species whose exploitation is being regulated).
- (7) It is appropriate to establish the position to be taken on the Union's behalf at the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols on the adoption of these proposals, as the Regional Plans will be binding on the Union according to Article 15, paragraph 3 of the LBS Protocol, and the amendments to Annexes II and III of the SPA and Biodiversity Protocol will be binding on the Union in accordance with Article 29 of the Barcelona Convention.
- (8) Since the envisaged Regional Plans are in line with the Union's ambition and policies to reduce pollution from agricultural, aquaculture and urban stormwater and to improve the protection of the coastal and marine environment, it is proposed that the Union support the adoption of the proposed Regional Plans.
- (9) Since the envisaged amendments to Annexes II and III to the SPA and Biodiversity Protocol are consistent with the Union's ambition under the Green Deal, in particular the EU Biodiversity Strategy, as well as with Union law on the protection of fisheries resources and marine ecosystems, it is proposed that the Union support the adoption of the proposed amendments,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 23rd session/meeting of the Contracting Parties to the Barcelona Convention and its Protocols shall be to support, in the framework of Article 15 of the LBS Protocol, the following decisions:

- (a) the adoption of a Regional Plan on Agriculture Management;
- (b) the adoption of a Regional Plan on Aquaculture Management;
- (c) the adoption of a Regional Plan on Urban Stormwater Management.

Article 2

The position to be taken on the Union's behalf in the 23rd session/meeting of the Contracting Parties to the Barcelona Convention and its Protocols shall be to support:

- (a) the inclusion of the following cartilaginous species to Annex II to the SPA and Biodiversity Protocol:
 - *Aetomylaeus bovinus* (Geoffroy St. Hilaire, 1817);
 - *Alopias superciliosus* (Lowe, 1841);
 - *Bathytoshia lata* (Garman, 1880);
 - *Dasyatis pastinaca* (Linnaeus, 1758);
 - *Rhinoptera marginata* (Geoffroy St. Hilaire, 1817); and

- (b) the inclusion of the following cartilaginous species in Annex III to the SPA and Biodiversity Protocol:
- *Dasyatis marmorata* (Steindachner, 1892);
 - *Hexanchus griseus* (Bonnaterre, 1788);
 - *Pteroplatytrygon violacea* (Bonaparte, 1832);
 - *Myliobatis aquila* (Linnaeus, 1758).

Article 3

Minor changes to these positions may be agreed through coordination on the spot, and before a decision is taken at the 23rd Meeting of the Contracting Parties to the Barcelona Convention and its Protocols.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*