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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)/Council

Subject: Draft Council Decision authorising the Commission to submit, on behalf of the Union, a proposal for an amendment of the Appendices to the Convention on the conservation of migratory species of wild animals with a view to the twelfth meeting of the Conference of the Parties

- Adoption
- = Statements

Statement by Germany

This Decision authorises the Commission to submit the proposal to the Secretariat of the Convention on the conservation of migratory species of wild animals (CMS) on behalf of the Union only. Since the matter at hand is a matter of shared environmental competence under Article 4(2)e) of the Treaty on the Functioning of the EU (TFEU), in practice the proposal will need to be submitted to CMS also on behalf of the Member States. In that regard we agree to the text based on the understanding that the proposal will be dealt with in the same manner as the proposals of the EU and its 28 Member States for the last 11th Conference of the Parties of CMS. In particular, the listing proposal at the 11th COP for listing *coracias garrulus*, a bird listed in Annex I of the Birds Directive (2009/147/EG), in the Appendix I of CMS was proposed to the CMS Secretariat by the European Union and its 28 Member States. We expect that the same procedure will be followed for the 12th Conference of the Parties.

The proposal is a matter of shared competence under Article 4 (2) e) TFEU, because it addresses an environmental issue. This is reflected in the choice of the legal basis (Article 192 (1) TFEU). It remains a shared competence despite the fact that the species are listed in the Birds Directive (2009/147/EG). There is no risk that common rules and in particular the EU Birds Directive are affected or altered in their scope through the listing under Appendix II of CMS, and therefore Article 3 (2) TFEU does not apply here. The obligation that follows an Appendix II listing under CMS is simply that Parties of CMS shall endeavour to conclude agreements that benefit the species. Whether or not the measures to be agreed upon through these agreements affect common rules of the EU or alter their scope is a different matter which is not predetermined through the listing itself. The Birds Directive dated 1979 does not comprise all elements which are state of the art for instruments under Appendix II (e. g. Monitoring). Besides, the Birds Directive in Article 14 keeps open the possibility that Member States may take stricter measures. Member States may also wish to enter in negotiations about an instrument under Article 4 of CMS in their own right insofar as they remain competent. The Decision should not be misunderstood in restricting Member States in this regard.
