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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 19 October 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: Proposal for a COUNCIL DECISION on the position to be adopted, on
behalf of the European Union, at the twentieth ordinary meeting of the
Contracting Parties to the Convention for the protection of the marine
environment and the coastal region of the Mediterranean, with regard to a
proposal for amending Annex II to the Protocol concerning specially
protected areas and biological diversity in the Mediterranean

Delegations will find attached document COM(2017) 603 final.

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2017/0263 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, at the twentieth ordinary meeting of the Contracting Parties to the Convention for the protection of the marine environment and the coastal region of the Mediterranean, with regard to a proposal for amending Annex II to the Protocol concerning specially protected areas and biological diversity in the Mediterranean

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 at the Twentieth Ordinary Meeting of the Contracting Parties to the Barcelona Convention concerning the amendments to Annex II to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

2. CONTEXT OF THE PROPOSAL

2.1. The Barcelona Convention and Protocols

The Barcelona Convention for the protection of the marine environment and the coastal region of the Mediterranean ('the Barcelona Convention') aims to ensure the sustainable management of natural marine and land resources and to protect the marine environment and coastal zones, through prevention, reduction and elimination of pollution. The Barcelona Convention entered into force on 9 July 2004.

Seven Protocols addressing specific aspects of Mediterranean environmental conservation complete the Barcelona Convention, including the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (adopted in 1995, replacing the related protocol of 1982) and its Annexes.

The European Union is a Party to the Barcelona Convention¹ and its Protocols². Italy, Greece, Spain, France, Slovenia, Malta, Cyprus and Croatia are also parties to the Barcelona Convention and its Protocols, together with 13 non-EU Mediterranean countries.

2.2. The Twentieth Ordinary Meeting of the Contracting Parties

The Twentieth Ordinary Meeting of the Contracting Parties of the Barcelona Convention will take place from 17 to 20 December 2017 in Tirana, Albania.

The Meeting of the Parties will be asked to decide, inter alia, on an act having legal effects, namely a proposal to amend Annex II (List of Endangered and Threatened Species) to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean ("the Protocol").

The procedure described in Article 23 of the Barcelona Convention applies to the adoption of any amendment to the Annexes to a protocol. Such amendments shall be adopted by a three-fourths majority vote of the Contracting Parties to the Protocol. In accordance with Article 25 of the Barcelona Convention, *"the European Economic Community [...] shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention and to one or more protocols; the European Economic Community [...] shall not exercise their right to vote in cases where the member States concerned exercise theirs, and conversely"*.

¹ 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) and Council Decision 1999/802/EC of 22 October 1999 on the acceptance of amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft (Barcelona Convention) (OJ L 322, 14.12.1999, p. 32).

² Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention) (OJ L 322, 14.12.1999, p. 1).

2.3. The envisaged amendments to Annex II to the Protocol

During the Twentieth Ordinary Meeting of the Contracting Parties of the Barcelona Convention, between 17-20 December 2017, the Parties are to adopt amendments to Annex II to Protocol ('the envisaged act').

The purposes of the envisaged act are to:

- add to the list of species of Annex II to the Protocol, four new species of *Anthozoa* (a class of marine invertebrates including corals), namely *Isidella elongata*, *Dendrophyllia cornigera*, *Dendrophyllia ramea* and *Desmophyllum dianthus*,
- update the denomination of a number of marine and coastal bird species, in view of the taxonomic changes that occurred since the last amendments of the Annexes to the Protocol.

The envisaged act shall become binding on the parties in accordance with Article 29 of the Barcelona Convention, which provides that "[a]ny protocol to this Convention shall be binding [...] on the Contracting Parties to the protocol in question" and Article 23, which provides that "Annexes to this Convention or to any protocol shall form an integral part of the Convention or such protocol, as the case may be".

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The Protocol establishes a List of Endangered or Threatened Species and a List of Species whose Exploitation is Regulated (Article 12). These two lists respectively constitute Annexes II and III to the Protocol. Contracting Parties have the obligation to adopt concerted measures to ensure the protection and the conservation of animal and plant species appearing in these annexes.

The envisaged act first proposes to update the denomination of a number of marine and coastal bird species, in view of the taxonomic changes that occurred since the last amendments of the Annexes to the Protocol. These do not constitute substantial or material amendments but merely give up-to-date names to species already on the list.

Secondly, the envisaged act proposes to add to the list of species of Annex II to the Protocol, four new *Anthozoa* species (*Isidella elongata*, *Dendrophyllia cornigera*, *Dendrophyllia ramea* and *Desmophyllum dianthus*).

This second proposal was discussed in the relevant technical body under the Convention, at the 13th meeting of the focal points for the Protocol, where the EU was represented.

The four coral species concerned are present in the habitat type of Community interest "Reefs" whose conservation requires the designation of special areas of conservation³ under Annex I to the Habitats Directive⁴. In particular, the Interpretation Manual of European Union Habitats⁵ includes as Mediterranean reef forming species the *Dendrophyllia ramea* community, *Dendrophyllia cornigera* community, facies of *Isidella elongata*, and white corals communities such as those of *Lophelia pertusa* and *Madrepora oculata* (to which the

³ Special areas of conservation as defined in article 1 (l) of the Habitat Directive means sites of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated.

⁴ 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, p. 7).

⁵ Interpretation Manual of European Union Habitats – EUR28, adopted by the Habitats Committee on 4 October 1999 (version EUR15) and last amended in April 2013 http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/Int_Manual_EU28.pdf.

species *Desmophyllum dianthus* is known to be associated). The four species are recognised as threatened in the Mediterranean Red List of Threatened Species⁶ (*Dendrophyllia ramea* is presently classified as vulnerable; *Dendrophyllia cornigera* and *Desmophyllum dianthus* are endangered; and *Isidella elongate* is critically endangered and is considered nearly-endemic). Three of the concerned species (*D. ramea*, *D. cornigera* and *D. dianthus*) belong to a group of stony corals included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and therefore in Annex B to Council Regulation (EC) No 338/97⁷ (Wildlife Trade Regulation). The four *Anthozoa* species are exposed to numerous anthropogenic impacts in the Mediterranean Sea such as bottom trawling, benthic long line fishing, input of pollutants, drilling, global warming or ocean acidification. Their recovery ability can be very low, due to relatively slow growth rates, low dispersal ability, and relatively long life span. Even if the scientific information related to the population of the four species is scarce, the available population records or qualitative observations point to alarming habitat regression and/or population decline.

The support of these proposals by the Union ensures consistency between its internal and external action.

The Union is committed to international cooperation for the protection of biodiversity in line with Article 191(1) TFEU and in accordance with Article 5 of the UN Convention on Biological Diversity (CBD), and the decisions made during the tenth, twelfth and thirteenth meetings of the Conference of the Parties to the CBD in Nagoya, 2010⁸, Pyeongchang, 2014⁹ and Mexico, 2016. In that regard, the species proposed for inclusion are in particular concerned by Decision XIII/11¹⁰ of the thirteenth Conference of the Parties to the CBD promoting the implementation of a voluntary specific work plan on biodiversity in cold-water areas, aiming among others at maintaining and enhancing the resilience of ecosystems in cold-water areas.

This proposal is also in line with the concern expressed at the United Nations Conference on Sustainable Development in 2012 *"on the significant vulnerability of coral reefs and mangroves to impacts, including from climate change, ocean acidification, overfishing, destructive fishing practices and pollution"* and the commitment *"to support international cooperation with a view to conserving coral reef and mangrove ecosystems and realizing their social, economic and environmental benefits as well as facilitating technical collaboration and voluntary information-sharing"* made at that same Conference.

It also contributes to the achievement of Sustainable Development Goal 14.2, aiming at *"by 2020 sustainably manag[ing] and protect[ing] marine and coastal ecosystems to avoid significant adverse impacts including by strengthening their resilience and take action for their restoration, to achieve healthy and productive oceans"*.

In view of the above, the Union should support the proposal to amend Annex II to the Protocol.

⁶ <http://www.iucnredlist.org/initiatives/mediterranean>

⁷ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

⁸ Dec. X/2, *Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*, including "Aichi Biodiversity Target" no. 10, according to which "by 2015, the multiple anthropogenic pressures on coral reefs, and other vulnerable ecosystems impacted by climate change or ocean acidification are minimized, so as to maintain their integrity and functioning".

⁹ Dec. XII/23, Annex, *Priority actions to achieve Aichi Biodiversity Target 10 for coral reefs and closely associated ecosystems*.

¹⁰ Dec. XIII/11, *Voluntary specific workplan on biodiversity in cold-water areas within the jurisdictional scope of the convention*.

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 notion 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*’.¹¹

4.1.2. Application to the present case

The act which the Meeting of the Contracting Parties to the Barcelona Convention is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 23 and 29 of the Barcelona Convention. 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 adopted on behalf of the Union.

4.2.2. Application to the present case

The objective and content of the envisaged act relate to environment. The substantive legal basis of the proposed decision, therefore, is Article 192(1) TFEU.

4.3. Conclusion

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

¹¹ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, at the twentieth ordinary meeting of the Contracting Parties to the Convention for the protection of the marine environment and the coastal region of the Mediterranean, with regard to a proposal for amending Annex II to the Protocol concerning specially protected areas and biological diversity in the Mediterranean

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 for the protection of the marine environment and the coastal region of the Mediterranean ('the Barcelona Convention') was concluded by the Community in accordance with Council Decision 1999/802/EC¹² and entered into force on 9 July 2004.
- (2) The Union is also a Party to the Protocol concerning specially protected areas and biological diversity in the Mediterranean ('the Protocol'), which was concluded by the Community in accordance with Council Decision 1999/800/EC¹³ and entered into force on 12 December 1999.
- (3) Pursuant to Article 18 of the Barcelona Convention, one of the functions of the meetings of the Contracting Parties is to adopt, review and amend as required the Annexes to that Convention and to the protocols.
- (4) The twentieth ordinary meeting of the Contracting Parties to the Barcelona Convention, is scheduled to take place from 17 to 20 December 2017. Among the points on the agenda, the meeting is to adopt amendments to Annex II to the Protocol.
- (5) The purpose of those amendments is to add four new *Anthozoa* species (*Isidella elongata*, *Dendrophyllia cornigera*, *Dendrophyllia ramea* and *Desmophyllum dianthus*) to the list of species set out in Annex II to the Protocol, and to update the denomination of a number of marine and coastal bird species in that list in view of certain taxonomic changes that occurred since the last amendments of the Annexes to the Protocol.

¹² Council Decision 1999/802/EC of 22 October 1999 on the acceptance of amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft (Barcelona Convention) (OJ L 322, 14.12.1999, p. 32).

¹³ Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention) (OJ L 322, 14.12.1999, p. 1).

- (6) It is appropriate to establish the position to be adopted on behalf of the Union in the twentieth ordinary meeting of the Contracting Parties to the Barcelona Convention, as the amendments to Annex II to the Protocol will be binding upon the Union.
- (7) The four *Anthozoa* species proposed for inclusion in Annex II to the Protocol are present in natural habitat types of Community interest whose conservation requires the designation of special areas of conservation as set out in Annex I to Council Directive 92/43/EEC¹⁴. Three of those species are also included in Appendix II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora which is implemented in the Union by Annex B to Council Regulation (EC) No 338/97¹⁵. All of the species proposed for inclusion are known to be threatened in the Mediterranean Sea and are therefore in need of the enhanced protection from human activities that is provided under the Protocol.
- (8) As the proposal for the decision at the twentieth ordinary meeting of the Contracting Parties to the Barcelona Convention is for the amendment of Annex II to the Protocol, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.
- (9) At the twentieth ordinary meeting of the Contracting Parties to the Barcelona Convention, the Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty on European Union (TEU). The Member States are to support the position of the Union in accordance with Article 4(3) TEU,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, at the twentieth ordinary meeting of the Contracting Parties to the Convention for the protection of the marine environment and the coastal region of the Mediterranean ('Barcelona Convention') shall be to support the proposal for a decision amending Annex II to the Protocol concerning specially protected areas and biological diversity in the Mediterranean ('the Protocol') as regards:

- (1) the addition of the following species to:
 - *Dendrophyllia cornigera*,
 - *Dendrophyllia ramea*,
 - *Desmophyllum dianthus*,
 - *Isidella elongata*;
- (2) the changes made to the denomination of marine and coastal bird species due to taxonomic changes set out in Annex.

Article 2

After its adoption, the decision referred to in Article 1 shall be published in the *Official Journal of the European Union*.

¹⁴ 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, p. 7).

¹⁵ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

Article 3

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

*For the Council
The President*