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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 25 September 2025

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2025) 522 final

Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the ninth session of the Meeting of the Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds with regard to an amendment to Table 1 of Annex 3 of the Agreement

Delegations will find attached document COM(2025) 522 final.

Encl.: COM(2025) 522 final



Brussels, 25.9.2025
COM(2025) 522 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the ninth session of the Meeting of the Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds with regard to an amendment to Table 1 of Annex 3 of the Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the European Union's behalf at the ninth session of the Meeting of the Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) in connection with the envisaged adoption of an amendment to Table 1 of Annex 3 of the Agreement.

2. CONTEXT OF THE PROPOSAL

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

The 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 Convention on Migratory Species and administered by the United Nations Environment Programme, the 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 EU has been a Contracting Party to this Agreement since 1 October 2005 ⁽¹⁾. At present, there are 85 Contracting Parties, 46 from Eurasia (including the EU) and 39 from Africa. 24 EU Member States are parties to the Agreement ⁽²⁾.

Directive 2009/147/EC on the conservation of wild birds (the Birds Directive) ⁽³⁾ is the instrument in EU law that implements 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 and conservation of these species and lays down rules for their exploitation.

2.2. The Meeting of the Parties

The Meeting of the Parties 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. Each Party has one vote, but regional economic integration organisations like the EU exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Agreement. Any amendment to an Annex must be adopted by a two-thirds majority of the Parties present at the meeting.

The Ninth Meeting of the Parties of the Agreement will take place on 11-15 November 2025 in Bonn, Germany.

2.3. The envisaged act

On 11-15 November 2025, the Meeting of the Parties is to adopt Resolution 9.xx on the adoption of amendments to the AEWA Annexes in accordance with Article X, paragraph 5

⁽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⁾ Three Member States are not Parties to the Agreement: Austria, Malta and Poland.

⁽³⁾ 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>.

of the Agreement ('the envisaged act').

The purpose of the envisaged act is to amend Annex 2 of the Agreement, the AEWA Action Plan in Annex 3 and Table 1 of Annex 3 of the Agreement. While Annex 2 comprises the list of migratory waterbirds to which the Agreement applies, Annex 3 specifies actions that the Parties must undertake in relation to priority species. The priority species are listed in Table 1 of Annex 3 according to certain criteria set out in the same table.

Article II of the Agreement provides for the following: '*Parties shall take co-ordinated measures to maintain migratory waterbird species in a favourable conservation status or to restore them to such a status. To this end, they shall apply within the limits of their national jurisdiction the measures prescribed in Article III, together with the specific actions determined in the Action Plan provided for in Article IV, of this Agreement*'.

The envisaged act will enter into force for all Parties and become binding on them on the ninetieth day after the date of its adoption by the Meeting of the Parties, except for Parties that have entered a reservation. During the ninety-day period, any Party may, by written notification to the Depositary, enter a reservation with respect to an amendment to an Annex.

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

The amendments to Annex 2 of the Agreement, the AEWA Action Plan in Annex 3 and Table 1 of Annex 3 contained in the envisaged act were proposed by the United Kingdom⁽⁴⁾, based on the recommendations by the AEWA Technical Committee:

- (1) The proposed amendments to Annex 2 and the AEWA Action Plan in Annex 3 are consistent with and do not entail any modification to the Birds Directive, which is the EU legal implementation tool of the Agreement. These amendments, mainly rooted in scientific progress and in the precautionary principle, will be discussed with Member States in the relevant Expert Group on the Nature Directives and the Council Working Parties. They can be approved on behalf of the EU by the Commission, in line with Articles 3(1) and 3(3) of 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.
- (2) The proposed amendments to Table 1 of Annex 3 consist of changing the categories of certain species' populations, following the evidence gathered as part of the 9th edition of the AEWA Conservation Status Report.

Most of the proposed amendments are consistent with and do not entail any modification to the Birds Directive, which is the EU legal implementation tool of the Agreement. They can be approved on behalf of the EU by the Commission, in line with Articles 3(1) and 3(3) of Council Decision 2006/871/EC.

However, the change in the listing of one population of one species is not conform to the relevant EU legislation (the Birds Directive). This amendment concerns a change from Column B2(e) to Column A1(b) of Table 1 for the Western Europe & Western Africa population of the Grey Plover (*Pluvialis squatarola squatarola*). The envisaged change for the Grey Plover population means that no more hunting would be allowed under the Agreement, although the species is listed in Annex II, Part B of the Birds Directive and thus huntable in some Member States. Therefore, this

⁽⁴⁾ AEWA Notification 2025/016: Received Proposals to MOP9 for Amendments to the Agreement, sent on 18 July 2025.

amendment, if adopted, will require stronger legal protection for the species than what is required under EU law. However, the change in the listing is considered necessary, as the species has recently been listed as Vulnerable on the IUCN Red List of Threatened Species (Global) following its update in 2024.

It is thus necessary to establish a position on behalf of the EU pursuant to Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) to approve this amendment on behalf of the Union. However, in line with Article 3(4) of Council Decision 2006/871/EC, the Commission should enter a reservation with regard to the proposed amendment concerning the Grey Plover, as it did for amendments with similar effects at previous meetings of the Parties. This is necessary since this amendment would require an amendment to the Birds Directive, which is not possible within 90 days of the date of their adoption by the Meeting of the Parties.

4. LEGAL BASIS

4.1. Procedural legal basis

The Meeting of the Parties is a body set up by the Agreement on the Conservation of African-Eurasian Migratory Waterbirds.

The act that the Meeting of the Parties is called upon to adopt constitutes an act with legal effects. The envisaged act will be binding under international law and is capable of decisively influencing the content of EU legislation, namely the EU Birds Directive. This is because some actions, in particular on hunting, that the Parties are to undertake in relation to priority species listed in Table 1 of Annex 3 are not always compatible with what the Birds Directive provides for the same species. If a species listed in Annex II of the Birds Directive becomes no longer huntable under the AEWA, the Birds Directive would need to be amended.

Under Article 3 of Council Decision 2006/871/EC as regards matters falling within Community competence, the Commission is authorised ‘to approve, on behalf of the Community, amendments to the Annexes to the Agreement adopted in accordance with Article X(5) of the Agreement.’ However, this authorisation is ‘limited to those amendments that are consistent with, and do not entail any modification of, Community legislation on the conservation of wild birds and their natural habitats.’

Since the proposed amendment to Table 1 of Annex 3 concerning the Grey Plover (*Pluvialis squatarola squatarola*) would require an amendment to the Birds Directive, a Council decision is needed to establish the position to be taken on behalf of the EU in the Ninth Meeting of the Parties of the Agreement on this matter ⁽⁵⁾.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

The procedural legal basis for the proposed decision is therefore Article 218(9) TFEU.

4.2. Substantive legal basis

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 EU’s behalf. If the envisaged act pursues two aims or has two components and if one of

⁽⁵⁾ For amendments that would not require an amendment to the Birds Directive, the Commission may approve them in accordance with Council Decision 2006/871/EC of 18 July 2005.

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.

The main objective and content of the envisaged act relate to the environment.

The substantive legal basis of the proposed decision is therefore 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.

5. PUBLICATION OF THE ENVISAGED ACT

As the envisaged act of the Meeting of the Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds will amend Annex 3, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the ninth session of the Meeting of the Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds with regard to an amendment to Table 1 of Annex 3 of the Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) TFEU, 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') entered into force on 1 November 1999 and was approved on behalf of the European Union by Council Decision 2006/871/EC ⁽⁶⁾.
- (2) Pursuant to Article X, paragraph 5 of the Agreement, the Meeting of the Parties may adopt amendments to Annexes of the Agreement.
- (3) The Ninth Meeting of the Parties on 11-15 November 2025 is expected to adopt a resolution on the adoption of amendments to the Annexes to the Agreement. The proposed amendment to Table 1 of Annex 3 of the Agreement concerning the species Grey Plover (*Pluvialis squatarola squatarola*) would, if adopted, require a modification of Directive 2009/147 and therefore falls outside the scope of the amendments that can be approved by the Commission pursuant to Article 3(1) in conjunction with 3(3) of Council Decision 2006/871/EC.
- (4) It is necessary to establish the position to be taken on the EU's behalf in the Meeting of the Parties on the proposed amendment to Table 1 of Annex 3 of the Agreement concerning the species Grey Plover (*Pluvialis squatarola squatarola*) as the amendment will be binding on the EU and capable of decisively influencing the content of EU law, namely the Birds Directive.
- (5) The proposed amendment to Table 1 of Annex 3 of the Agreement submitted by the United Kingdom and set out in draft Resolution 9.xx concerning the species Grey Plover (*Pluvialis squatarola squatarola*) should be approved on behalf of the European Union as it helps achieve a higher degree of protection of this species' populations that are in decline.

⁽⁶⁾ OJ L345, 8.12.2006, p. 24.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the EU's behalf at the Ninth Meeting of the Parties to the Agreement shall be the following:

The amendment to Table 1 of Annex 3 of the Agreement submitted by the United Kingdom and set out in draft Resolution 9.xx of the Ninth Meeting of the Parties to the Agreement concerning the Grey Plover (*Pluvialis squatarola squatarola*) shall be approved at the Ninth Meeting of the Parties on behalf of the European Union.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*