EUROPEAN
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2017/0277 (NLE)

Proposal for a

# COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the thirty-seventh meeting of the Standing Committee of the Convention on the conservation of European wildlife and natural habitats with regard to an amendment to Appendix II thereto**

# 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 in the view to the thirty-seventh annual meeting of the Standing Committee of Convention on the conservation of European wildlife and natural habitats, Strasbourg, France, 5-8 December, 2017, in connection with the envisaged adoption of a decision concerning an amendment of Appendix II to the Convention.

## 2. CONTEXT OF THE PROPOSAL

### 2.1. The Convention on the conservation of European wildlife and natural habitats

The 1979 Convention on the conservation of European wildlife and natural habitats (Bern Convention) ("the Agreement") aims to conserve European wild flora and fauna and their natural habitats, especially those whose conservation requires the co-operation of several States. It is an intergovernmental treaty, concluded under the aegis of the Council of Europe. The Agreement entered into force on 1 June, 1982. The European Community is a Contracting Party to this Agreement since 1 September, 1982[1]. At present, there are 51 Contracting Parties to the Agreement, including all EU Member States.

### 2.2. The Standing Committee

The Standing Committee is the decision-making organ of the Convention having powers to assess the conservation status of species and, subsequently, to review the listing of them in the Appendices to the Convention. Its functions are enumerated in Articles 13-15 of the Agreement. It meets at least every two years and whenever a majority of the Contracting Parties so request. It has become customary for the Standing Committee to meet every year.

The mandate for the Union's position concerning amendments of the appendices is given by a decision of the Council based on a proposal from the Commission. The EU common positions concerning other draft decisions and resolutions are agreed in prior meetings of the relevant Council working party or at on-the-spot EU coordination meetings.

### 2.3. The envisaged act of the Standing Committee

On 5-8 December, 2017, the thirty-seventh annual meeting of the Standing Committee of the Agreement in Strasbourg, France, is to adopt a decision regarding an amendment of Appendix II to the Agreement ('the envisaged act').

In accordance with Article 17 of the Agreement, an amendment to the Appendices shall be adopted by two-thirds majority of the Contracting parties. It enters into force for all Parties three month after the adoption by the Standing Committee unless one-third of the Contracting parties have notified objections, except for those Parties which make an objection (reservation) during the Standing Committee meeting.

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[1] COUNCIL DECISION 82/72/EEC of 3 December 1981 concerning the conclusion of the Convention on the conservation of European wildlife and natural habitats, OJ L 38, 10.2.1982, p. 1.

The purpose of the envisaged act is to amend Appendix II to the Agreement, as provided for in Article 17 of the Agreement.

The envisaged act shall become binding on the Contracting parties in accordance with Article 6 of the Agreement, which provides that each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II.

## 3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The Standing Committee is a body set up by the Agreement. The thirty-seventh meeting of the Standing Committee to the Agreement will take place in Strasbourg, France, from 5 to 8 December, 2017.

The Republic of Albania has submitted a proposal to amend Appendix II of the Agreement to include the Balkan lynx, *Lynx lynx* spp. *balcanicus*, which is a subspecies of the Eurasian lynx *Lynx lynx*, already listed in Appendix III to the Agreement (protected wild fauna species).

The Union should support the proposal because it is science-based and in line with the Union's commitment to international cooperation for the protection of biodiversity.

It is therefore necessary for the Council to take a decision for the purpose of establishing the position to be adopted on behalf of the Union with a view to the thirty-seventh meeting of the Standing Committee with regard to the proposal for amendment.

The proposal for amendment will not require a change of existing Union law.

## 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*'.[2]

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

*4.1.2. Application to the present case*

The Standing Committee is a body set up by the Agreement. The thirty-seventh annual meeting of the Standing Committee to the Convention will take place in Strasbourg (France) from 5 to 8 December, 2017.

The act which the Standing Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 6 of the Convention to ensure the special protection of the wild fauna species listed in Appendix II. The envisaged act does not supplement or amend the institutional framework of the agreement.

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. 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 act relate to environment.

The substantive legal basis of the proposed decision, therefore, is Article 192(1).

## 4.3. Conclusion

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

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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 on the conservation of European wildlife and natural habitats (Bern Convention) ('the Agreement') was concluded by the Union by Council Decision 82/72/EEC[3] and entered into force on 1 June 1982. This Agreement aims to conserve European wild flora and fauna and their natural habitats, especially those whose conservation requires the co-operation of several States. It is an intergovernmental treaty, concluded under the aegis of the Council of Europe.

(2) Pursuant to Article 17 of the Agreement, the Standing Committee may adopt a decision to amend the appendices to the Agreement.

(3) The Standing Committee, during its thirty-seventh meeting on 5 to 8 December 2017, is to adopt a decision on amending Appendix II to the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Standing Committee, as the decision will be binding on the Union.

(5) The Union should support the proposal to add the Balkan lynx, *Lynx lynx* spp. *balcanicus* to Appendix II to the Agreement, a subspecies of the Eurasian lynx, *Lynx lynx* already in Appendix III to the Agreement, because it is science-based, in line with the Union's commitment to international cooperation for the protection of biodiversity in accordance with Article 5 of the UN Convention on Biological Diversity and decisions taken at the Conference of the Parties under that Convention, in particular with the global target agreed at the Tenth meeting of preventing by 2020 the extinction of known threatened species and improving and sustaining their conservation status, particularly of those most in decline.

[3] OJ L 38, 10.2.1982, p. 1.

(6) The Eurasian Lynx, *Lynx lynx* is already listed in Annex II and Annex IV to Council Directive 92/43/1992[4], hence adding the subspecies Balkan lynx *Lynx lynx* spp. *balcanicus* to Appendix II to the Agreement would not require any change in Union law,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the thirty-seventh meeting of the Standing Committee of the Convention on the conservation European wildlife and natural habitats, shall be to support the addition of *Lynx lynx* spp. *balcanicus* to Appendix II thereto.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*
*The President*

[4] Council Directive 92/43/1992 of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).