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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the fifteenth meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) as regards proposals from various parties to amend the Appendices to that Convention.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the 15th meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals ('the Convention') in connection with the envisaged adoption of decisions concerning the amendment of the Appendices to the Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the Conservation of Migratory Species of Wild Animals (CMS)

The Convention on the Conservation of Migratory Species of Wild Animals aims to conserve terrestrial, marine and avian migratory species throughout their range. It is an intergovernmental treaty, concluded under the aegis of the United Nations Environment Programme, concerned with the conservation of wildlife and habitats on a global scale. The migratory species to be conserved are listed in Appendices I (endangered species) and II (species to be the subjects of agreements) to the Convention. The Convention entered into force on 1 November 1983.

The European Union is a party to the Convention¹. All Member States are parties to the Convention.

2.2. The Conference of the Parties

The Conference of the Parties is the principal decision-making body of the Convention. Its functions are enumerated in Article VII of the Convention, including powers to assess the conservation status of migratory species and, subsequently, to amend Appendices I and II to the Convention. Decisions at a meeting of the Conference of the Parties require a two-thirds majority of the Parties present and voting, except where otherwise provided for by the Convention.

The 15th meeting of the Conference of the Parties will take place in Campogrande (Brazil) from 23 to 29 March 2026.

2.3. The envisaged act of the Conference of the Parties

During its 15th meeting, the Conference of the Parties is to adopt decisions regarding amendments of the Appendices to the Convention ('the envisaged acts').

The purpose of the envisaged acts is to amend Appendix I and Appendix II to the Convention, as provided for in Article XI of the Convention.

In accordance with Article III of the Convention, Appendix I to the Convention shall list migratory species which are endangered and for which Parties that are Range States of the species concerned shall endeavour to take various conservation measures and shall prohibit the taking of animals belonging to such species.

Article IV to the Convention stipulates that Appendix II shall list migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would

¹ Council Decision 82/461/EEC of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals, OJ L 210, 19.7.1982, p. 10.

significantly benefit from the international cooperation that could be achieved by an international agreement.

If the circumstances so warrant, a migratory species may be listed both in Appendix I and Appendix II.

In accordance with Article XI of the Convention, proposals for amendments may be made by any Party. An amendment to the Appendices enters into force for all Parties ninety days after the meeting of the Conference of the Parties at which it is adopted, except for those Parties which make a reservation.

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

With regard to the 15th meeting of the Conference of the Parties to the Convention, the Union has not proposed any amendments to the Appendices to the Convention.

Other Parties to the Convention have submitted proposals to amend Appendix I to include the following species and subspecies: *Acinonyx jubatus* (populations of Zimbabwe, Botswana and Namibia), *Hyaena hyaena*, *Pteronura brasiliensis*, *Pterodroma baraui*, *Pterodroma cervicalis occulta*, *Pterodroma hasitata*, *Pterodroma madeira*, *Pterodroma magentae*, *Pterodroma incerta*, *Pseudobulweria macgillivrayi*, *Pseudobulweria aterrima*, *Pseudobulweria becki*, *Numenius phaeopus hudsonicus*, *Limosa haemastica*, *Tringa flavipes*, *Alopias pelagicus*, *Alopias superciliosus*, *Alopias vulpinus*, *Sphyrna lewini*, *Sphyrna mokarran*.

One Party to the Convention, Uzbekistan, has submitted a proposal to amend Appendix I to remove from this Appendix the following species (while maintaining it in Appendix II): *Cervus elaphus yarkandensis*.

Other Parties to the Convention have submitted proposals to amend Appendix II to include the following species: *Acinonyx jubatus* (populations of Zimbabwe, Botswana and Namibia), *Hyaena hyaena*, *Pteronura brasiliensis*, *Pterodroma leucoptera* (populations of Australia and New Caledonia), *Pterodroma brevipes*, *Pterodroma defilippiana*, *Pterodroma longirostris*, *Pterodroma cookii cookii*, *Pterodroma cookii orientalis*, *Pterodroma pycrofti*, *Pterodroma axillaris*, *Pterodroma neglecta juana*, *Pterodroma arminjoniana*, *Pterodroma alba*, *Pterodroma cervicalis cervicalis*, *Pterodroma externa*, *Pterodroma feae*, *Pterodroma deserta*, *Ardenna carneipes*, *Pseudobulweria rostrata*, *Bubo scandiacus*, *Sporophila iberaensis*, *Mustelus schmitti*, *Squatina guggenheim*, *Pseudoplatystoma corruscans*.

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 15th meeting of the Conference of the Parties with regard to all proposals for amendments.

The Union should support all the above-mentioned proposals, with one exception for the species *Cervus elaphus yarkandensis*, because they are science-based and in line with the Union's commitment to international cooperation for the protection of biodiversity, including consideration of how to make best use of scientific information concerning both biological features and fisheries biological reference points.

Adding these species to Appendix I or II to the Convention or removing the species *Cervus elaphus yarkandensis* from Appendix I, as proposed, would not require any change in Union law.

The Union is not a range state for the mammals *Acinonyx jubatus* and *Hyaena hyaena*. Adding these species to Appendices I and II should be supported.

The mammal *Pteronura brasiliensis* occurs in the Union only in French Guiana, where Union nature legislation does not apply. Adding this species to Appendices I and II to the Convention should be supported.

In reference to the mammal *Cervus elaphus yarkandensis*, the Scientific Council of the Convention noted during its eighth session, held in December 2025, the lack of clarity about the taxonomic scope of the proposal and the need for more data on population numbers. Consequently, there is currently a lack of sufficient information to establish a position on this species. Therefore, the final EU position on the removal of this species from Appendix I shall be dependent upon the submission and consideration of new scientific or technical information either prior to or during the Conference of the Parties, and it shall be made in accordance with the criteria established in Article III(3) of the Convention.

The birds *Pterodroma cervicalis occulta*, *Pterodroma hasitata*, *Pterodroma magentae*, *Pterodroma incerta*, *Pseudobulweria macgillivrayi*, *Pseudobulweria becki*, *Pterodroma leucoptera* (populations of Australia and New Caledonia), *Pterodroma brevipes*, *Pterodroma defilippiana*, *Pterodroma longirostris*, *Pterodroma cookii cookii*, *Pterodroma cookii orientalis*, *Pterodroma pycrofti*, *Pterodroma axillaris*, *Pterodroma neglecta juana*, *Pterodroma arminjoniana*, *Pterodroma alba*, *Pterodroma cervicalis cervicalis*, *Pterodroma externa*, *Ardenna carneipes*, *Pseudobulweria rostrata*, *Numenius phaeopus hudsonicus*, *Limosa haemastica*, *Tringa flavipes* and *Sporophila iberaensis* do not occur within the European territory to which Directive 2009/147/EC applies. Hence adding these species to Appendix I or II to the Convention would not require any change in Union law and should be supported.

The birds *Pterodroma madeira*, *Pterodroma feae*, *Pterodroma deserta* and *Bubo scandiacus* are already covered by the EU Birds Directive². Adding these species to Appendix I or II to the Convention should be supported.

The fishes *Alopias pelagicus*, *Alopias superciliosus* and *Alopias vulpinus* are strictly protected under the 2025 Fishing Opportunities Regulation³. They are also protected under the Technical Measures Regulation⁴. The Technical Measures Regulation also provides the necessary level of protection for the fishes *Sphyrna lewini* and *Sphyrna mokarran*. Adding these species to Appendix I or II to the Convention should be supported.

The Union is not a range state for the fish species *Mustelus schmitti*, *Squatina guggenheim* and *Pseudoplatystoma corruscans*. Adding these species to Appendix I or II to the Convention should be supported.

² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds OJ L 20, 26.1.2010, pp. 7–25

³ Council Regulation (EU) 2025/202 of 30 January 2025 fixing for 2025 and 2026 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2024/257 as regards fishing opportunities for 2025 OJ L, 2025/202, 31.1.2025

⁴ Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 OJ L 198 25.7.2019, p. 105

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’*⁵.

4.1.2. Application to the present case

The Conference of the Parties is a body set up by an agreement, namely the Convention on the Conservation of Migratory Species of Wild Animals.

The acts which the Conference of the Parties is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article XI of the Convention on the Conservation of Migratory Species of Wild Animals.

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

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 environmental protection.

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.

5. PUBLICATION OF THE ENVISAGED ACT

As the acts of the Conference of the Parties will amend Appendices I and II to the Convention on the Conservation of Migratory Species of Wild Animals, it is appropriate to publish them in the *Official Journal of the European Union* after their adoption.

⁵ 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.

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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 Migratory Species of Wild Animals (the ‘Convention’) was concluded by the Union by Council Decision 82/461/EEC⁶ and entered into force on 1 November 1983.
- (2) Pursuant to Article XI of the Convention, the Conference of the Parties to the Convention (the ‘Conference of the Parties’) may adopt decisions to amend the Appendices to the Convention.
- (3) The Conference of the Parties, during its fifteenth meeting in March 2026, is to adopt decisions to amend the Appendices to the Convention on proposals (i) regarding the inclusion in Appendix I to the Convention of *Acinonyx jubatus* (populations of Zimbabwe, Botswana and Namibia), *Hyaena hyaena*, *Pteronura brasiliensis*, *Pterodroma barau*, *Pterodroma cervicalis occulta*, *Pterodroma hasitata*, *Pterodroma madeira*, *Pterodroma magentae*, *Pterodroma incerta*, *Pseudobulweria macgillivrayi*, *Pseudobulweria aterrima*, *Pseudobulweria becki*, *Numenius phaeopus hudsonicus*, *Limosa haemastica*, *Tringa flavipes*, *Alopias pelagicus*, *Alopias superciliosus*, *Alopias vulpinus*, *Sphyrna lewini*, *Sphyrna mokarran*; (ii) regarding the removal from Appendix I to the Convention (while maintaining it in Appendix II) of *Cervus elaphus yarkandensis*; and (iii) regarding the inclusion in Appendix II to the Convention of *Acinonyx jubatus* (populations of Zimbabwe, Botswana and Namibia), *Hyaena hyaena*, *Pteronura brasiliensis*, *Pterodroma leucoptera* (populations of Australia and New Caledonia), *Pterodroma brevipes*, *Pterodroma defilippiana*, *Pterodroma longirostris*, *Pterodroma cookii cookii*, *Pterodroma cookii orientalis*, *Pterodroma pycrofti*, *Pterodroma axillaris*, *Pterodroma neglecta juana*, *Pterodroma arminjoniana*, *Pterodroma alba*, *Pterodroma cervicalis cervicalis*, *Pterodroma externa*, *Pterodroma feae*, *Pterodroma deserta*, *Ardenna carneipes*, *Pseudobulweria rostrata*, *Bubo scandiacus*, *Sporophila iberaensis*, *Mustelus schmitti*, *Squatina guggenheim*, *Pseudoplatystoma corruscans*.

⁶ Council Decision 82/461/EEC of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals (OJ L 210, 19.7.1982, p. 10).

- (4) The envisaged acts of the Conference of the Parties will produce legal effects under international law for the Union.
- (5) The Union should support all the above-mentioned proposals, with one exception for the species *Cervus elaphus yarkandensis*, because they are 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 in line with decisions taken at the Conference of the Parties to that Convention.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the fifteenth meeting of the Conference of the Parties shall be the following:

- (1) to support the addition to Appendix I of the following species or subspecies:
 - (1) Populations of Zimbabwe, Botswana and Namibia of *Acinonyx jubatus*
 - (2) *Hyaena hyaena*
 - (3) *Pteronura brasiliensis*
 - (4) *Pterodroma baraui*
 - (5) *Pterodroma cervicalis occulta*
 - (6) *Pterodroma hasitata*
 - (7) *Pterodroma madeira*
 - (8) *Pterodroma magentae*
 - (9) *Pterodroma incerta*
 - (10) *Pseudobulweria macgillivrayi*
 - (11) *Pseudobulweria aterrima*
 - (12) *Pseudobulweria becki*
 - (13) *Numenius phaeopus hudsonicus*
 - (14) *Limosa haemastica*
 - (15) *Tringa flavipes*
 - (16) *Alopias pelagicus*
 - (17) *Alopias superciliosus*
 - (18) *Alopias vulpinus*
 - (19) *Sphyrna lewini*
 - (20) *Sphyrna mokarran*
- (2) to make the final position on the removal from Appendix I of the following species conditional on the availability of additional information and / or amendments to the proposal allowing to determine whether the criteria established in Article III(3) of the Convention are met:
 - (1) *Cervus elaphus yarkandensis*

- (3) to support the addition to Appendix II of the following species:
- (1) Populations of Zimbabwe, Botswana and Namibia of *Acinonyx jubatus*
 - (2) *Hyaena hyaena*
 - (3) *Pteronura brasiliensis*
 - (4) Populations of Australia and New Caledonia of *Pterodroma leucoptera*
 - (5) *Pterodroma brevipes*
 - (6) *Pterodroma defilippiana*
 - (7) *Pterodroma longirostris*
 - (8) *Pterodroma cookii cookii*
 - (9) *Pterodroma cookii orientalis*
 - (10) *Pterodroma pycrofti*
 - (11) *Pterodroma axillaris*
 - (12) *Pterodroma neglecta juana*
 - (13) *Pterodroma arminjoniana*
 - (14) *Pterodroma alba*
 - (15) *Pterodroma cervicalis cervicalis*
 - (16) *Pterodroma externa*
 - (17) *Pterodroma feae*
 - (18) *Pterodroma deserta*
 - (19) *Ardenna carneipes*
 - (20) *Pseudobulweria rostrata*
 - (21) *Bubo scandiacus*
 - (22) *Sporophila iberaensis*
 - (23) *Mustelus schmitti*
 - (24) *Squatina guggenheim*
 - (25) *Pseudoplatystoma corruscans*

Article 2

Minor technical changes to the positions set out in Article 1 may be agreed to without further decision of the Council.

Article 3

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

Done at Brussels,

*For the Council
The President*