



Brussels, 21.3.2019  
COM(2019) 146 final

2019/0083 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union at the 18<sup>th</sup> meeting of the  
Conference of the Parties to the Convention on International Trade in Endangered  
Species of Wild Fauna and Flora (CITES CoP18)**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP18) in connection with the envisaged adoption of decisions inter alia to amend the Appendices to the Convention.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ('the Convention' or CITES) aims to protect wild animals and plants against over-exploitation through international trade. The Convention entered into force on 1 July 1975.

The European Union and all its Member States are Parties to the Convention<sup>1</sup>.

#### **2.2. The Conference of the Parties to the Convention**

Established pursuant to Article XI of the Convention, the Conference of the Parties (CoP) is the governing body of the Convention. The CoP meets every two to three years to review the implementation of the Convention. Most notably, it considers and adopts proposals to amend the lists of species in Appendices I and II to the Convention. The CoP also considers discussion documents and reports from the Parties, the permanent committees, the Secretariat and working groups, and recommends measures to improve the effectiveness of the Convention's implementation.

As far as possible, the CoP decides on proposals for amendment of Appendices I and II by consensus. When the CoP does not reach consensus, the decisions are put to a vote and can be adopted by a two-thirds majority of representatives present and voting under Article XV(1)(b) of the Convention. Each Party has one vote, except regional economic integration organisations which, in the areas of their competence, have the 'right to vote with a number of votes equal to the number of their Member States which are Parties to the Convention' under Article XXI(5) of the Convention. The Union and the Member States exercise their voting rights alternately, depending on the subject matter of the decision to be taken. On decisions to amend the Appendices, voting rights are exercised by the Union, given that the CITES Appendices are transposed in relevant Union legislation.<sup>2</sup>

#### **2.3. The envisaged decisions of the Conference of the Parties**

Between 23 May and 3 June 2019, during its 18th meeting, the Conference of the Parties is to decide on 57 proposals to amend the CITES Appendices ('listing proposals'). The purpose of including particular (groups of) species in the Appendices is to monitor and regulate (Appendix II) or to generally prohibit (Appendix I) commercial trade in those species.

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<sup>1</sup> Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), OJ L 75, 19.3.2015, p. 1-3.

<sup>2</sup> Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, p. 1, and relevant implementing acts.

As integral parts of the Convention, the Appendices are legally binding. Under Article XV(1)(c) of the Convention, amendments decided by the CoP become applicable 90 days after the closure of the CoP.

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

As a Party to the Convention, the Union is to take a position on each of the listing proposals as well as on the numerous other draft decisions on the agenda of the CoP. The listing proposals – including those which were submitted by the Union itself – as well as the other proposed CoP decisions have been reviewed by experts from the Commission and the Member States, including with regard to their potential impacts on relevant Union rules and policies. The position proposed by the Commission is based on these expert discussions, held in the context of relevant Commission expert groups.

The listing proposals as well as several of the other draft CoP decisions are liable to affect EU rules or alter their scope, mostly because they would entail amendments to relevant Union legislation and implementing rules. Changes to the Appendices of the Convention need to be reflected in the EU acquis, through corresponding changes to Council Regulation (EC) No 338/97 and, where relevant, implementing Regulations. This will result in the establishment or removal of restrictions to trade from, into and within the EU for the species concerned by these changes.

The Commission is in regular contact with stakeholders having an interest in matters covered by the Convention, such as environmental non-governmental organisations, representatives of business sectors engaged in trade or in the utilisation of wildlife products, and hunting or fishing organisations. On 29 January 2019, the Commission services held a specific consultation meeting with interested stakeholders to obtain their views on the issues under discussion for CITES CoP18. The input provided by stakeholders has been duly taken into consideration by the Commission when developing the proposed Council Decision.

Further analyses of CoP proposals are carried out by the CITES Secretariat and by experts from specialised organisations such as the International Union for Conservation of Nature (IUCN), TRAFFIC, and the FAO Expert Advisory Panel for assessment of CITES species listing amendment proposals. Most of these analyses were not available in time for the Commission's proposal; they should all be fully considered when the proposal is discussed with Member States in the Council.

Several working documents for CITES CoP18 were also not available early enough for the Commission to propose a Union position at the present time. The Commission therefore proposes that the position on those issues be established during the discussions in the Council working group, or during the CoP meeting for documents which become available only then.

### **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*’<sup>3</sup>.

#### *4.1.2. Application to the present case*

The Conference of the Parties is a body set up by an agreement, namely CITES.

Several of the acts which the CoP is called upon to adopt constitute acts having legal effects. The amended Appendices, being integral part of the Convention, will be binding under international law. Some of the other CoP decisions are capable of decisively influencing the content of EU legislation, in particular Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and Commission Implementing Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006. This is because both acts are closely aligned with relevant rules for implementing the Convention as decided by the CoP.

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

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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

### *4.2.2. Application to the present case*

The envisaged CoP decisions pursue objectives and have components in the areas of 'environment' and 'trade'. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 192(1) and 207.

## **4.3. Conclusion**

The legal basis of the proposed decision should be Articles 192(1) and 207 in conjunction with Article 218(9) TFEU.

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<sup>3</sup> 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.

Proposal for a

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**on the position to be taken on behalf of the European Union at the 18<sup>th</sup> meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP18)**

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1) and 207(3) and (4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention on International Trade in Endangered Species of Wild Fauna and Flora ('the Convention') was concluded by the Union by Council Decision (EU) 2015/451 of 6 March 2015<sup>4</sup> and entered into force on 1 July 1975.
- (2) Pursuant to Article XI(3) of the Convention, the Conference of the Parties may, inter alia, adopt decisions to amend the Appendices to the Convention .
- (3) The Conference of the Parties, during its 18th meeting from 23 May to 3 June 2019, is to adopt decisions on 57 proposals to amend the Appendices, as well as on numerous other matters of implementing and interpreting the Convention.

It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the amendments to the Appendices will be binding on the Union and several other decisions will be capable of decisively influencing the content of Union law, in particular Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, and Commission Implementing Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006.

- (4) The proposed position to be taken on the different proposals before the Conference of the Parties is based on expert analysis of their merits, in the light of the best available scientific evidence, as well as on the extent of their alignment with relevant Union rules and policies.

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<sup>4</sup> OJ L 75, 19.3.2015, p. 1-3.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora is set out in the Annexes.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*

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### Information Note

#### 1. Proposal

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP18)

#### 2. Date of Commission document

22/03/2019

#### 3. Number of Commission document

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#### 4. Number of Council document:

2018/0083 (NLE)

#### 5. Dealt with in Brussels by

Environment Council

#### 6. Department with primary responsibility

Department of Culture, Heritage and the Gaeltacht

#### 7. Other Departments involved

N/A

#### 8. Background to, Short summary and aim of the proposal

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ('the Convention' or CITES) aims to protect wild animals and plants against over-exploitation through international trade. The Convention entered into force on 1 July 1975.

The European Union and all its Member States are Parties to the Convention. Ireland has been a Party to the Convention since 2002.

Established pursuant to Article XI of the Convention, the Conference of the Parties (CoP) is the governing body of the Convention. The CoP meets every two to three years to review the implementation of the Convention. Most notably, it considers and adopts proposals to amend the lists of species in Appendices I and II to the Convention. The CoP also considers discussion documents and reports from the Parties, the permanent committees, the Secretariat and working groups, and recommends measures to improve the effectiveness of the Convention's implementation.

The Union and the Member States exercise their voting rights at the CoP alternately, depending on the subject matter of the decision to be taken. On decisions to amend the Appendices, voting rights are exercised by the Union, given that the CITES Appendices are transposed in relevant Union legislation.

CITES CoP 18 will take place in Sri Lanka between 23 May and 3 June 2019.

## **Proposal**

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP18) in connection with the envisaged adoption of decisions inter alia to amend the Appendices to the Convention.

As a Party to the Convention, the Union is to take a position on each of the listing proposals as well as on the numerous other draft decisions on the agenda of the CoP. The listing proposals – including those which were submitted by the Union itself – as well as the other proposed CoP decisions have been reviewed by experts from the Commission and the Member States, including with regard to their potential impacts on relevant Union rules and policies. The position proposed by the Commission is based on these expert discussions, held in the context of relevant Commission expert groups.

The listing proposals as well as several of the other draft CoP decisions are liable to affect EU rules or alter their scope, mostly because they would entail amendments to relevant Union legislation and implementing rules. Changes to the Appendices of the Convention need to be reflected in the EU acquis, through corresponding changes to Council Regulation (EC) No 338/97 and, where relevant, implementing Regulations. This will result in the establishment or removal of restrictions to trade from, into and within the EU for the species concerned by these changes.

Several working documents for CITES CoP18 were not available early enough for the Commission to propose a Union position at the present time. The Commission therefore proposes that the position on those issues be established during the discussions in the Council working group, or during the CoP meeting for documents which become available only then

## **9. Legal basis of the proposal**

The proposal is made under Article 192(1), together with Article 218(9) TFEU.

## **10. Voting Method**

QMV

## **11. Role of the EP**

Council decision

## **12. Category of proposal**

Some significance

## **13. Implications for Ireland & Ireland's Initial View**

The proposed position to be taken on the different proposals before the Conference of the Parties is based on expert analysis of their merits, in the light of the best available scientific evidence, as well as on the extent of their alignment with relevant Union rules and policies.

The Union co-sponsored the proposals for inclusion of certain species of sharks including mako sharks in Appendix II. This issue was discussed with DAFM and Ireland's view was put forward at the relevant Expert Group and working party meetings that preceded the current proposal.

Based on the information contained in the Proposal provided, Ireland should support the position adopted by the EU.

**14. Impact on the public**

N/A

**15. Have any consultations with Stakeholders taken place or are there any plans to do so?**

DCHG has consulted with DAFM on issues that may have an impact on fisheries (i.e. re the Mako shark species).

**16. Are there any subsidiarity issues for Ireland?**

N/A

**17. Anticipated negotiating period**

**18. Proposed implementation date**

On the date of its adoption

**19. Consequences for national legislation**

N/A

**20. Method of Transposition into Irish law**

N/A

**21. Anticipated Transposition date**

N/A

**22. Consequences for the EU budget in Euros annually**

None

**23. Contact name, telephone number and e-mail address of official in Department with primary responsibility**

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**Date 08 April 2019**

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### Nóta Faisnéise

#### 1. Togra

Togra le haghaidh CINNEADH ÓN gCOMHAIRLE maidir leis a seasamh atá le glacadh thar ceann an Aontais Eorpaigh ag an 18ú cruinniú de Chomhdháil na bPáirtithe sa Choinbhinsiún maidir le Trádáil Idirnáisiúnta i Speicis Fauna agus Flora Fiáine i mBaol (CITES CoP18)

#### 2. Dáta Dhoiciméad an Choimisiúin

22/03/2019

#### 3. Uimhir Dhoiciméad an Choimisiúin

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#### 4. Uimhir Dhoiciméad na Comhairle:

2018/0083 (NLE)

#### 5. An Chomhairle a dhéileáil leis sa Bhruiséil

An Chomhairle Comhshaoil

#### 6. An Roinn ar a bhfuil an fhreagracht phríomha

An Roinn Cultúir, Oidhreachta agus Gaeltachta

#### 7. Ranna Eile a bhí bainteach leis an ábhar

Ní hinfheidhme

#### 8. Cúlra agus aidhm an togra agus Achoimre ghearr air

Is é is aidhm don Choinbhinsiún maidir le Trádáil Idirnáisiúnta i Speicis Fauna agus Flora Fiáine i mBaol ('an Coinbhinsiún' nó CITES) ná ainmhithe agus plandaí fiáine a chosaint ar róshaothrú trí bhíthin trádáil idirnáisiúnta. Tháinig an Coinbhinsiún i bhfeidhm ar an 1 Iúil 1975.

Tá an tAontas Eorpach agus a chuid Ballstát go léir ina bPáirtithe sa Choinbhinsiún. Tá Éire ina Páirtí sa Choinbhinsiún ó bhí an bhliain 2002 ann.

Is é Comhdháil na bPáirtithe (CoP) comhlacht ceannais an Choinbhinsiúin agus bunaíodh é de bhun Airteagal XI den Choinbhinsiún. Tagann an CoP le chéile uair amháin gach dhá bhliain nó trí bliana chun athbhreithniú a dhéanamh ar chur i bhfeidhm an Choinbhinsiúin. Go háirithe, breithníonn sé, agus glacann sé, tograí chun leasú a dhéanamh ar liostaí na speiceas in Aguisíní I agus II den Choinbhinsiún. Ina theannta sin, breithníonn an CoP plé-dhoiciméid agus tuarascálacha ó na Páirtithe, ó na buanchoistí, ón Rúnaíocht agus ó ghrúpaí oibre, agus molann sé bearta chun feabhas a chur ar éifeachtacht chur i bhfeidhm an Choinbhinsiúin.

Déanann an tAontas agus na Ballstáit a gcearta vótála sa CoP a fheidhmiú ar a sea, agus sin ag brath ar ábhar an chinnidh atá le déanamh. Maidir le cinntí chun na hAguisíní a leasú, is é an tAontas a fheidhmíonn cearta vótála ós rud é go bhfuil Aguisíní CITES trasuite i reachtaíocht iomchuí Aontais.

Beidh CITES CoP 18 ar siúl i Srí Lanca idir an 23 Bealtaine agus an 3 Meitheamh 2019.

## **Togra**

Baineann an togra seo leis an gcinneadh lena mbunaítear an seasamh atá le glacadh thar ceann an Aontais ag an 18ú cruinniú de Chomhdháil na bPáirtithe sa Choinbhinsiún maidir le Trádáil Idirnáisiúnta i Speicis Flora agus Fauna Fiáine i mBaol (CITES CoP18) i dtaca le cinntí a shamhlaítear a ghlacfar chun na hAguisíní a ghabhann leis an gCoinbhinsiún a leasú, inter alia.

Ina cháil mar Pháirtí sa Choinbhinsiún, tá seasamh le glacadh ag an Aontas ar gach ceann ar leith de na tograí maidir le liostú agus, chomh maith leis sin, ar an líon mór dréachtchinntí eile atá ar chlár oibre an CoP. Tá athbhreithniú déanta ag saineolaithe de chuid an Choimisiúin agus na mBallstát ar na tograí maidir le liostú - lena n-áirítear na cinn a thíolaic an tAontas é féin - agus, chomh maith leis sin, ar chinntí eile CoP atá molta agus, mar chuid den athbhreithniú sin, scrúdaíodh tionchair fhéideartha na dtograí agus na gcinntí eile sin ar rialacha agus ar bheartais iomchuí an Aontais. Tá an seasamh atá molta ag an gCoimisiún bunaithe ar an bplé a rinne na saineolaithe sin i gcomhthéacs ghrúpaí iomchuí saineolaithe an Choimisiúin.

D'fhéadfadh sé go ndéanfaidh na tograí maidir le liostú, chomh maith leis na dréachtchinntí eile de chuid an CoP, difear do rialacha AE nó go ndéanfaidís athrú ar scóip na rialacha sin, go háirithe ós rud é go mbeadh gá le leasuithe a dhéanamh dá mbarr ar reachtaíocht iomchuí de chuid an Aontais agus ar rialacha cur chun feidhme. Ní mór athruithe ar Aguisíní an Choinbhinsiúin a léiriú in acquis AE trí athruithe comhfhreagracha a dhéanamh ar Rialachán (CE) Uimh. 338/97 ón gComhairle agus, más iomchuí, ar Rialacháin cur chun feidhme. Is é a leanfaidh as sin ná srianta ar thrádáil ón AE, isteach ann agus laistigh de i leith na speiceas lena mbaineann na hathruithe atá i gceist.

Bhí roinnt doiciméad le haghaidh CITES CoP18 ar fáil sách luath le go mbeadh an Coimisiún in ann seasamh a mholadh san am i láthair. Dá bhrí sin, tá an Coimisiún ag moladh go ndéanfar an seasamh ar na saincheisteanna sin a leagan amach le linn an phlé i ngrúpa oibre na Comhairle nó le linn chruinniú an CoP maidir le doiciméid nach dtagann chun bheith ar fáil go dtí an tráth sin.

## **9. Bunús dlí an togra**

Tá an togra á dhéanamh faoi Airteagal 182(1) agus, ina theannta sin, faoi Airteagal 218(9), de CFAE (An Conradh ar Fheidhmiú an Aontais Eorpaigh).

## **10. Modh Vótála**

VTC (Vótáil trí thromlach cáilithe)

## **11. Ról PE (Parlaimint na hEorpa)**

Cinneadh ón gComhairle

## **12. Catagóir an Togra**

Ábhairín tábhachtach

### **13. Impleachtaí d'Éirinn & Dearcadh Tosaigh na hÉireann**

Tá an seasamh a bheartaítear a ghlacadh maidir leis na tograí éagsúla roimh Chomhdháil na bPáirtithe bunaithe ar anailís shaineolach ar thuillteanais na dtograí, de réir na fianaise eolaíochta is fearr atá ar fáil agus, chomh maith leis sin, ar a mhéid atá siad ailínithe le rialacha agus le beartais iomchuí an Aontais.

Chomhurráigh an tAontas na tograí maidir le speicis áirithe siorcanna, lena n-áirítear siorcanna mácó, a chur san áireamh in Aguisín II. Pléadh an t-ábhar le RTBM (an Roinn Talmhaíochta, Bia agus Mara) agus cuireadh dearcadh na hÉireann in iúl ag na cruinnithe iomchuí den Ghrúpa Saineolaithe agus den ghrúpa oibre a bhí ann sula ndearnadh an togra láithreach.

Ar bhonn na faisnéise atá ann sa Togra a soláthraíodh, is ceart d'Éirinn tacú leis an seasamh atá glactha ag an AE.

### **14. Tionchar ar an bpobal**

Ní hinfheidhme

### **15. An ndearnadh aon chomhairliúcháin le Geallsealbhóirí nó an bhfuil aon phleananna ann chun déanamh amhlaidh?**

Ghlac RCOG (an Roinn Cultúir, Oidhreachta agus Gaeltachta) comhairle le RTBM (an Roinn Talmhaíochta, Bia agus Mara) maidir le saincheisteanna a bhféadfadh tionchar a bheith acu ar iascaigh (i.e. maidir leis an siorc mácó).

### **16. An bhfuil aon saincheisteanna foghabhálacha ann maidir le hÉirinn?**

Ní hinfheidhme

### **17. Tréimhse mheasta na caibidlíochta**

### **18. An dáta cur chun feidhme atá beartaithe**

Dáta glactha an chinnidh

### **19. Iarmhairtí don reachtaíocht náisiúnta**

Ní hinfheidhme

### **20. An modh ina ndéanfar trasuíomh isteach i ndlí na hÉireann**

*Ní hinfheidhme*

### **21. Dáta Trasuite measta**

*Ní hinfheidhme*

### **22. Iarmhairtí do bhuiséad an AE in Euro in aghaidh na bliana**

Ceann ar bith

### **23. Ainm, uimhir theileafóin agus seoladh ríomhphoist an oifigigh ar a bhfuil an phríomhfhreagracht sa Roinn**

Alan Moore

An tSeirbhís Páirceanna Náisiúnta & Fiadhúlra

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**Dáta 08 Aibreán 2019**