



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 June 2008

9818/08

**ENV 317
PECHE 114**

"A" ITEM NOTE

from : General Secretariat

to : Council

Subject : Proposal for a Council Decision establishing the position to be adopted on behalf of the European Community with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling
- Adoption

- 1) The Commission proposal for a Council Decision establishing the position to be adopted on behalf of the European Community with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling was forwarded to the Council on 21 December 2007.
- 2) The Committee of Permanent Representatives examined the proposal on 20 May 2008.
- 3) The Council is invited to
 - adopt with qualified majority, DK voting against the Decision, as set out in Annex I to this document, as an "A" item at its meeting on 5 June 2008,
 - record the statements of Denmark and the Commission as set out in Annex II and Annex III to this document in its minutes.

- 4) At this stage, the UK is maintaining a scrutiny reservation and a parliamentary scrutiny reservation.

DRAFT

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Community at the 60th meeting of the IWC in 2008 with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling (ICRW)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1), in conjunction with the second subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission ¹,

Whereas:

- (1) Article 174(1) of the EC Treaty states that one of the objectives of Community environment policy is the promotion of measures at international level to deal with regional or worldwide environmental problems.
- (2) Within the Community, Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) ² lists all cetacean species as species of Community interest and requires Member States to maintain these species in, or restore them to, a favourable conservation status in those parts of their territory to which the Treaty applies. All cetacean species are listed in its Annex IV. Therefore, all whale species are strictly protected from deliberate disturbance, capture or killing within Community waters. The same Directive also prohibits the keeping, transport and sale or exchange, of specimens taken from the wild.

¹ Doc. 16833/07, COM(2007)821 final.

² OJ L 206, 22.7.1992, p. 7.

- (3) Council Regulation 338/97/EC of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein,³ implementing the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the EC, bans the introduction of cetaceans into the Community for primarily commercial purposes⁴.
- (4) Whales are migratory species. Consequently, EC policies and legislation relating to whales will be more effective within Community waters if backed by coherent worldwide action.
- (5) The International Whaling Commission (IWC) is the competent international organisation regarding the conservation and management of whale stocks at global level and was set up by the International Convention for the Regulation of Whaling (the Convention), signed in 1946. Membership of the IWC is open only to governments. Currently, twenty-one Member States of the European Union are parties to the IWC⁵. The European Community has observer status at the IWC and is represented by the Commission.
- (6) Commercial whaling was suspended in 1986 as a result of a moratorium agreed by the majority of countries represented in the IWC. Leading pro-whaling States have consistently contested the moratorium and still carry out whaling for scientific purposes or under other exceptions.

³ OJ L 61, 3.3.1997, p. 1.

⁴ In addition, Council Regulation (EEC) 348/81 of 20 January 1981 on common rules for imports of whales or other cetacean products (OJ L 39, 12.2.1981) allows imports of listed products only if they are not used for commercial purposes.

⁵ Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, UK.

- (7) At the inter-sessional meeting of the IWC in London in March 2008, participating States considered a process for determining a way forward for the IWC. Member States, aware of the sensitive situation currently prevailing within the IWC, should endeavour to participate constructively in all discussions.
- (8) The IWC works on the basis of a Schedule that governs the conduct of commercial and aboriginal subsistence whaling throughout the world. The Schedule is annexed to the Convention and is defined as an integral part of it. It provides for detailed whaling regulations with respect to the conservation and utilization of whale resources. Its provisions and amendments thereto are binding on Parties unless a Party formally objects to an amendment in accordance with Article V(3) of the ICRW.
- (9) Proposals for decisions to amend the Schedule adopted within the IWC may have legal effects and affect the achievement of the objectives of Community policies and legislation in relation to cetaceans. Some of the proposals regularly put forward for decision at each meeting of the IWC aim at authorising whaling activities, through the establishment of quotas and the application of management measures, or at the setting up of whale sanctuaries, and require the establishment of a Community position.
- (10) Member States have a duty of loyal cooperation under Article 10 of the EC Treaty and cannot take on obligations outside the framework of Community legislation which might affect Community rules or alter their scope.
- (11) The Community being an observer at the IWC, the Community position in relation to matters within its competence should be expressed by the Member States acting jointly in the interest of the Community.

(12) At the 60th meeting of the IWC in 2008, the Community and the Member States should cooperate closely to ensure that any amendments to the Schedule are consistent with the objectives of Community policies and legislation on whales,

HAS DECIDED AS FOLLOWS:

Article 1

The position of the Community at the 60th meeting of the IWC in 2008, as regards areas within its competence, shall be in accordance with the Annex to this Decision and shall be expressed by the Member States acting jointly in the interest of the Community.

Article 2

Where new scientific or technical information presented before or during the meetings of the IWC is likely to affect the position referred to in Article 1, or where proposals are made on the spot on matters which are not yet the subject of a Community position, the Community position as regards areas within the Community's field of competence shall be established by means of co-ordination, including on the spot, before the proposal is put to a vote.

Done at

For the Council

The President

Annex

- (1) The overarching objective of the European Community in relation to the IWC is to ensure an effective international regulatory framework for the conservation and management of whales.
- (2) The Member States acting jointly in the interest of the Community shall take the following position on proposals for decisions having legal effects by the IWC at its 60th meeting in 2008:
 - (a) Support the maintenance of the moratorium on commercial whaling in the Schedule;
 - (b) Oppose any proposals regarding new types of whaling, currently not envisaged in the Convention, that could undermine the maintenance of the moratorium on commercial whaling, unless such proposals would guarantee a significant improvement in the conservation status of whales in the long term and bring all whaling operations by IWC members under IWC control;
 - (c) Support proposals and positions, aimed to end the conduct of “scientific whaling” outside IWC control;
 - (d) Support proposals to amend the Schedule for the creation of whale sanctuaries according to the IWC rules;
 - (e) Support proposals for the management of aboriginal subsistence whaling, on the condition that conservation of relevant stocks is not compromised, having due regard to the precautionary principle and the advice of the Scientific Committee, and that whaling operations are properly regulated and catches remain within the scope of documented and recognised subsistence needs.

Statement to be annexed to the Committee/Council's minutes

Statement by Denmark
On

The Council decision establishing the position to be adopted on behalf of the European Community at the 60th meeting of the IWC in 2008 with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling.

Denmark has consistently during the discussion of the proposal tried to bridge the gap between the divergent views within the Community on the proper policy to be pursued in the IWC, but it has proven impossible to reach a solution which safeguards the interests of Greenland and the Faroe Islands – Danish overseas territories not being a part of the European Community. In order to continue the whaling policy in the IWC, which Denmark has pursued for decades in the interest of its overseas territories, Denmark will act in accordance with Declaration no. 25 annexed to the Final Act of the Maastricht Treaty.

**Statement by the Commission
On**

The Council Decision establishing the position to be adopted on behalf of the European Community at the 60th meeting of the International Whaling Commission (IWC) in 2008 with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling

As regards the legal basis of the decision, the Commission regrets the deletion of Article 37 as a part of the operational legal basis that was initially proposed by the Commission.

However, the Commission can accept the deletion of Article 37 in this particular case and on the understanding that this is without prejudice to the competence under the Treaty of the Common Fisheries Policy to cover all living aquatic resources as established in Article 1 of Council Regulation (EC) No 2371/2002. This acceptance should not be viewed as a precedent for any future negotiations with respect to living aquatic resources as referred to in the said regulation.