

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

13765/18

COM (2018) 717 final

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION IN THE SEVENTH MEETING OF THE PARTIES OF THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS WITH REGARD TO CERTAIN AMENDMENTS TO ANNEX 3 TO THE AGREEMENT

Submitted by the Department for Environment, Food and Rural Affairs

13m November 2018

SUBJECT MATTER

1. The draft Council decision seeks agreement on the position to be taken by the European Commission, on behalf of the EU and its Member States, at the seventh Meeting of the Parties of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds with regard to certain amendments to Annex 3 to the Agreement proposed in resolution 7.3.
2. AEWA is an intergovernmental treaty 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 framework of the Convention on Migratory Species and administered by the United Nations Environment Programme, 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.
3. The AEWA Meeting of Parties (MoP) is the decision making body of the agreement with powers to assess the conservation status of migratory species and, subsequently, to review the listing of species to the relevant annexes to the agreement.
4. The EU has been a party to AEWA since October 2005. Article 3(1) of Council Decision 2006/871/EC authorises the Commission, on behalf of the Community, to approve amendments to the annexes of the AEWA agreement. However Article 3(3) limits that authorisation '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'. In the present case, the amendments relating to the 'up-listing' of the 9 species will not be consistent with the Birds Directive – and hence the Commission is required to seek a council decision to vote to adopt the amendment.
5. In accordance with Article 10 of the agreement, an amendment to the annexes enters into force for all parties 90 days after the MoP at which it is adopted, except for those parties who, within 90 days, make a reservation which means that they

will not apply the listing. It will be necessary for the EU to enter a reservation – because the Birds Directive will not be consistent with the amendments.

6. On the basis that the proposals are science based and in line with Union legislation and with the Union's commitment to international cooperation for the protection of biodiversity, the decision recommends that the European Commission, on behalf of the EU and its Member States, should approve the part of resolution 7.3 which moves the following species to Annex 3 (which specifies certain actions that parties have to take in relation to priority species) to AEWA: Common Eider - *Somateria mollissima*, Red-breasted Merganser - *Mergus serrator*, Common Pochard - *Aythya ferina*, Eurasian Oystercatcher - *Haematopus ostralegus*, Northern Lapwing - *Vanellus*, Bar-tailed Godwit - *Limosa lapponica*, Black-tailed Godwit - *Limosa*, Red Knot - *Calidris canutus*, and Spotted Redshank, *Tringa erythropus*.
7. With respect to the remainder of draft resolution 7.3, the Commission is authorised to adopt the draft resolution under Article 3(1) of Council Decision 2006/871/EC.
8. Directive 2009/147/EC on the conservation of wild birds (Birds Directive) is relevant here. It implements in Union law 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, management and control of these species and lays down rules for their exploitation.
9. All of the species proposed for addition to Annex 3 to AEWA are listed on Annex II of the Birds Directive meaning that hunting of these species is permitted. Changes to the listing of AEWA annexes, restricting hunting, would therefore require a change to the Birds Directive.
10. The European Commission intends to enter a reservation with regard to the proposed amendments concerning the above nine species, as it did for amendments with similar effects at the previous Meetings of the Parties. This is because it is not possible to make the necessary changes to the annexes of the Birds directive within 90 days of the proposal being adopted at MOP. The Commission is authorised to enter a reservation and a Council Decision is not required for this purpose (see Article 3(4) Council Decision 2006/871/EC). This reservation would apply to the UK and Gibraltar and would continue to do so after exit from the EU.
11. With the exception of the pochard in the UK, the UK and Gibraltar are already compliant with proposed up-listing of species on the AEWA Annexes as hunting is already prohibited.
12. Currently, the hunting of pochard is permitted in the UK. Once the UK has left the European Union a decision will need to be taken as to whether to maintain the reservation for this species.

SCRUTINY HISTORY

13. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

14. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

15. Whilst international negotiations concerning the AEWA are not a devolved matter, responsibility for implementation of environmental protection lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers. The devolved administrations have been consulted.

LEGAL AND PROCEDURAL ISSUES

16.

i. Legal Basis.

The procedural legal basis for the proposed decision is Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). The substantive legal basis of the proposed decision is Art 192(1) TFEU.

ii. European Parliament Procedure

In accordance with Article 218(10) of the TFEU, the European Parliament shall be immediately and fully informed at all stages of the procedure.

iii. Voting Procedure

Article 218(8) of the TFEU requires the Council to act by a qualified majority.

iv. Impact on United Kingdom Law

If the reservation were not in place it would be necessary to amend the Wildlife and Countryside Act 1981 to prohibit the hunting of the pochard.

v. Application to Gibraltar

The UK ratification of the AEWA was extended to Gibraltar at the time that the UK ratified the AEWA. The UK ratified the AEWA in 1999 and the AEWA became effective in 1999. Therefore, the amendments to AEWA, if adopted, would apply to Gibraltar. The reservation will extend to Gibraltar.

vi. Fundamental Rights Analysis

The proposed decision has no impact on fundamental rights.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

17. The proposal does not have relevance under the European Economic Area Agreement.

SUBSIDIARITY

18. The proposals to amend the appendices to the agreement are for species that are already covered by EU rules (the Wild Birds Directive), and therefore fall within EU competence. As such, we are content for the position of the EU and its Member States for these species to be represented by the European Commission.

POLICY IMPLICATIONS (including Exit implications where appropriate)

19. Parliament voted to trigger Article 50 and leave the EU. Until we leave the EU, all the rights and obligations of EU membership remain in force. The outcome of our negotiations with the EU on a future partnership will determine what arrangements apply in future.

20. As set out above the proposed amendments to the AEWA annexes would necessitate changes to the Annex II to the Birds Directive within 90 days of the proposals being adopted at the meeting of parties. As this is not possible within the permitted time frame the European Commission intends to issue a reservation.

CONSULTATION

21. The species listing proposals are openly available on the AEWA website. In the run up to the MoP the views of key UK stakeholders will be sought.

IMPACT ASSESSMENT

22. It is not foreseen that the adoption of these listing proposals at AEWA MoP7 will have any impact on businesses within the UK, so an impact assessment is not considered necessary.

FINANCIAL IMPLICATIONS

23. It is not expected that these amendments to the convention will have any significant financial implications for the UK.

TIMETABLE

24. This Decision will go to coreper as an I point on 28 November and then to Council for approval as an A point on the 3 December. (i.e. not for discussion). The last day to clear scrutiny is 2nd Dec.



Thérèse Coffey MP

**PARLIAMENTARY UNDER SECRETARY OF STATE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION IN THE SEVENTH MEETING OF THE PARTIES OF THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS WITH REGARD TO CERTAIN AMENDMENTS TO ANNEX 3 TO THE AGREEMENT

EM 9739/18, COM(2018) 399 FINAL: PROPOSAL FOR A COUNCIL DECISION ON THE SUBMISSION, ON BEHALF OF THE EUROPEAN UNION, OF A PROPOSAL FOR AMENDING ANNEXES 2 AND 3 OF THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS (AEWA)

DATE EM SIGNED: 16/06/2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 32;20/6/2018)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1698 - 26/06/2018

EM 12096/04, COM(04)531: PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION BY THE EUROPEAN COMMUNITY OF THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS
DEFRA EM: 28/10/2004

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT 36, 03/04 CLEARED ON 10/11/2004 AS NOT RAISING ISSUES OF LEGAL OR POLITICAL IMPORTANCE	CLEARED AT SIFT 1195 ON 02/11/2004