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2026/0178 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in relation to matters falling within its competence, at the next three meetings of the International Whaling Commission, including related inter-sessional meetings

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 next three meetings of the International Whaling Commission (IWC) under the International Convention for the Regulation of Whaling (ICRW)¹, in 2026, 2028 and 2030, including inter-sessional meetings and actions in connection with the envisaged adoption of (1) amendments to the ICRW Schedule and (2) IWC resolutions and decisions.

2. CONTEXT OF THE PROPOSAL

2.1. The International Convention for the Regulation of Whaling (ICRW)

The International Convention for the Regulation of Whaling (ICRW) ('the Agreement') aims to ensure both the conservation and the sustainable management of whales at global level. The Agreement entered into force on 10 December 1948.

The ICRW includes a legally binding 'Schedule'², which designates protected and unprotected species, open and closed waters (including sanctuary areas), and sets catch limits for commercial and subsistence whaling. The ICRW also regulates scientific research whaling. In this context, the Schedule requires Contracting Governments to submit scientific permit proposals for scrutiny by the Scientific Committee before their issuance. The permits are issued by individual countries.

In the context of the ICRW and throughout this proposal, any reference to 'whales' shall be understood as referring to the species listed in Part I of the ICRW Schedule (all baleen whales plus the sperm whale³). All other toothed whales, including dolphins, porpoises and odontocetes such as the long-finned and short-finned pilot whales, fall outside the Schedule's remit.

By contrast, the use of 'cetaceans' in this proposal is deliberate to invoke the entire order *Cetacea*⁴, including small cetaceans (dolphins, porpoises and other toothed whales), both to align with the broader protective scope of Union law and to reflect the fact that the IWC's subsidiary bodies, funds and other initiatives address conservation and management issues which pertain to all cetaceans.

Furthermore, the use of the term 'whaling' throughout this proposal is guided by Union law, specifically the Habitats Directive⁵, in that it encompasses the deliberate disturbance, capture or killing of cetaceans.

ICRW membership is restricted to governments and therefore the European Union (EU) only has observer status⁶. Currently, 24 EU Member States are parties to the Agreement⁷.

¹ <https://archive.iwc.int/?r=3607>.

² <https://archive.iwc.int/?r=3606>.

³ The sperm whale is a toothed whale. Other toothed whales are the beaked whale, bottlenose whales, killer whale and pilot whale. See the ICRW's Schedule, Part I. 'Interpretation'.

⁴ The order *Cetacea* comprises all whales, dolphins and porpoises, and is divided into the previously mentioned two suborders: baleen and toothed whales. Together, these suborders encompass 90+ extant species found in oceans worldwide.

⁵ OJ L 206, 22.7.1992, p. 7.

2.2. The International Whaling Commission (IWC)

The body governing the implementation of the ICRW is the IWC, which meets every two years. Pursuant to Article III(1) of the ICRW, the IWC is composed of one member from each Contracting Government, and each member shall have one vote. The IWC exercises its basic responsibilities for both sustainable management and conservation by making amendments to the Schedule to the ICRW in response to requests from Contracting Governments. Amendments have to be adopted by a three-quarters majority of voting IWC members (Article III(2) in conjunction with Article V of the ICRW). Pursuant to Article III(2) of the ICRW, other decisions of the IWC are taken by simple majority of the IWC members voting.

2.3. The envisaged act of the IWC

The proposed Council Decision concerns the following categories of acts to be adopted by the IWC at its next three biennial meetings (which are to take place in 2026, 2028 and 2030) and related inter-sessional meetings ('the envisaged acts'):

1. **Amendments to the ICRW Schedule**, which are legally binding on the Contracting Governments within ninety days of notification by the IWC Secretariat⁸, such as maintaining or extending the commercial whaling moratorium, creating or modifying whale sanctuaries, and setting provisions for aboriginal subsistence whaling;
2. **IWC resolutions, recommendations and decisions**, for example on the adoption of conservation and welfare measures for cetaceans compliance, enforcement and implementation of Schedule provisions, observer accreditation, civil-society participation and governance reforms.

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

3.1. Content and reasons for the proposed position to be taken on the Union's behalf

3.1.1. Commercial whaling, small-type coastal whaling and criteria for scientific permits

The IWC regulates commercial whaling. It decided in 1982 that there should be a moratorium on commercial whaling on all whale species and populations from 1986 onwards⁹.

The Union should support the maintenance and full implementation of the moratorium on commercial whaling. For nearly four decades, the moratorium has played a vital role in protecting whale populations. It has provided critical protection for whales, helping some populations to recover. Others remain critically depleted due to an increasing array of non-

⁶ An amendment to the ICRW allowing the EU to become a member would require the ratification of a protocol by all IWC Contracting Governments. In 1992, the Commission adopted a proposal to negotiate the accession of the EU to the Convention, but the Council has not given any follow-up to it (draft Council Decision authorising the Commission to negotiate, on behalf of the Community, a protocol amending the international Convention on the Regulation of Whaling, Washington, 2 December 1946, COM (92) 316).

⁷ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

⁸ Article I(1) in conjunction with V(3) of the ICRW.

⁹ See Schedule to the ICRW, paragraph 10(d) (establishing a moratorium on the taking, killing or treating of whales, except minke whales, by factory ships or whale catchers attached to factory ships) and paragraph 10(e) (setting zero catch limits for all stocks for the 1986 pelagic and 1986 coastal seasons and thereafter).

whaling threats, including entanglement in fishing gear, ship strikes, pollution (such as underwater noise and plastics), and habitat degradation. Shielding these populations from the additional pressure of commercial hunting also in future is therefore crucial for their recovery.

In addition, the Union should insist on strictly the IWC's Revised Management Procedure (RMP) as recommended by the IWC's Scientific Committee as key to preventing excessive catch limits. Although Iceland, Norway and Japan, which set their catch limits independently, claim that their methods to estimate sustainable catch limits for whaling are aligned with those developed by the IWC, it should be noted that none of their catch limits have been set or endorsed through the IWC's RMP, which is more precautionary¹⁰.

Effective national tools should ensure that moratorium obligations translate into real-world compliance. The Union should therefore also support and promote the adoption of complementary compliance measures by Contracting Parties, including:

- Port-State Controls: Denial of entry, landing, bunkering or other services to any vessel engaged in commercial whaling activities that lack IWC endorsement.
- National Prohibitions: Domestic legal provisions barring operators under Member-State jurisdiction from participating in, supporting or financing commercial whaling contrary to the moratorium.

The pro-whaling camp often emphasises the narrative that the moratorium on commercial whaling has placed undue hardship on certain local coastal communities reliant on whaling for food and cultural purposes. This argument underpinned Japan's past efforts to persuade the IWC to recognise small-type coastal whaling¹¹, which would effectively allow a partial lifting of the moratorium. Linked to this are proposals framing whaling as essential for food and nutritional security, advocating for the IWC to recognise whales as a viable food source.

The EU should support the view that conservation measures, including the moratorium, do not threaten food security, but instead ensure the long-term sustainability of marine ecosystems. Moreover, food security issues are already addressed by the Food and Agriculture Organisation of the UN, and recognising whales as a food source within the IWC would significantly change the organisation's mandate. It is crucial that the IWC's focus remains on managing whale populations in a way that supports ecosystem health and sustainability, rather than supporting commercial whaling under the guise of food security.

Against this backdrop, the Union should oppose proposals introducing new whaling categories and support the finding of the International Court of Justice in its judgment of 31 March 2014 on Whaling in the Antarctic¹² that the Agreement divides whaling into three categories: commercial whaling and aboriginal subsistence whaling (ASW) (both covered by the Schedule) and special permit whaling under Article VIII. This will prevent loopholes in the ban on commercial whaling.

In reference to special permit whaling, or scientific whaling, the Union should remain firm

¹⁰ For instance, in February 2025, the IWC's Bureau noted that the IWC's Scientific Committee disagrees with respective assertions made by Japan. Meeting Report of the IWC Bureau Meeting, 6 February 2025, <https://archive.iwc.int/?r=22535>.

¹¹ Small-type coastal whaling is a type of whaling characterised by the use of small boats, hunting whales (minke whales and other small whales) on day trips in national waters for commercial purposes.

¹² Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014, para. 229-230, <https://www.icj-cij.org/sites/default/files/case-related/148/148-20140331-JUD-01-00-EN.pdf>.

that Article VIII, which allows special permit whaling, cannot be used to justify what is primarily commercial whaling. Abuse of the Article defies the spirit of the moratorium and the will of the IWC as expressed in various resolutions.

For the Union to consider special permit whaling proposals as legitimate under Article VIII, they must satisfy the considerations set out by the International Court of Justice. This means strict compliance with Resolution 2014-5 on Whaling under Special Permit¹³, which requires that two cumulative conditions must be satisfied for issuing a special permit: the lethal sampling is ‘scientific research’ and is only ‘for the purposes of’ that research.

In practical terms, that means that the Scientific Committee is satisfied that any Contracting Party wanting to issue special permits: (i) has demonstrated that the expected output of the project is justifiable as scientific research; (ii) has carefully considered whether the use of non-lethal sampling could meet the research objective; (iii) has concluded that this is not feasible; and (iv) has demonstrated that the sample sizes proposed are strictly related to scientific need and are not larger than reasonable for the scientific objective.

None of the three States bound by the Whaling in the Antarctic Judgment (Australia, Japan, New Zealand) ever sought revision or interpretation of the Court’s finding on IWC competence. Their silence constitutes tacit agreement that the IWC may legitimately debate and regulate special-permit whaling. The Union should therefore continue to advocate approaches guaranteeing that, before being issued, any special permit is considered by the IWC Scientific Committee and by the IWC itself and complies with their recommendations.

3.1.2. *Conservation and animal welfare*

In 2003, a Conservation Committee was created under the Agreement, which collaborates closely with the Scientific Committee to address a range of threats to whales and their habitats. In 2016, a Strategic Plan (2016-2026)¹⁴ was adopted, accompanied by a work plan¹⁵, which identifies priority threats to cetaceans (ship strikes, marine debris, bycatch, anthropogenic sound, chemical pollution and climate change) and priority actions (sustainable whale watching, conservation management plans, sanctuaries, data collection and reporting).

As part of its strong policy commitment to conservation, the Union should continue to support all proposals for whale sanctuaries¹⁶. To be adopted, these proposals require an amendment to the Schedule by a three-quarter majority of votes to be adopted. Reaching this majority will require active preparatory discussions with the core pro-whaling camp, i.e. objection and reservation holders and the broader coalition of States mobilised by whaling proponents, which frequently vote against such amendments.

The Union should also encourage greater transparency for the proposals on sanctuaries. The provisions in the Schedule dealing with sanctuaries are currently under Section III of the Schedule entitled ‘catching’. The Union should encourage the IWC to place these provisions in a separate section within the Schedule.

¹³ [https://archive.iwc.int/pages/download.php?ref=3723&ext=pdf&alternative=2971&noattach=true&k=.](https://archive.iwc.int/pages/download.php?ref=3723&ext=pdf&alternative=2971&noattach=true&k=)

¹⁴ <https://archive.iwc.int/?r=22234>

¹⁵ <https://archive.iwc.int/pages/view.php?ref=19861&k=>

¹⁶ Two sanctuaries – the Indian Ocean Sanctuary and the Southern Ocean Sanctuary – are currently designated by the IWC, both of which prohibit commercial whaling. An additional proposal for a sanctuary in the South Atlantic Ocean has been repeatedly submitted to the IWC in recent years but has so far not achieved the three-quarters majority of votes needed.

In addition, IWC proposals designed to improve the welfare of whales should be supported. The work on animal welfare may include but is not limited to entanglements, ship strikes, mass stranding, whale watching, noise pollution, improvement of killing and euthanasia methods.

The IWC also concerns itself with issues related to disease in cetaceans, particularly those that may be related to human activities and those capable of spreading disease between animals and humans. Such diseases could pose a risk to aboriginal subsistence hunting communities when consuming whale products derived from non-commercial hunts. The Union should support debates on this subject if they are based on science and the IWC's consideration of the issue adds value to the work of other fora.

3.1.3. *Aboriginal subsistence whaling (ASW)*

ASW has been a critical component of the IWC's regulatory framework since its establishment under the Agreement. ASW is not subject to the moratorium as it is not commercial whaling. The IWC has consistently approached subsistence hunting more leniently than commercial whaling, allowing Indigenous Peoples to continue harvesting whales for cultural and nutritional purposes, even during periods when commercial whaling was restricted or prohibited.

In pursuit of a more consistent, long-term and less burdensome approach, in 2018, the IWC adopted a new methodology for ASW quotas. It decided to set catch limits for a seven-year period with automatic renewals every six years, provided certain conditions are met. These conditions include: (i) advice from the Scientific Committee that the proposed catch limits will not harm the whale stocks; (ii) confirmation that no changes are requested based on need; and (iii) that the relevant ASW country has complied with an approved timeline and information requirements. If these conditions are met, the quotas will be automatically renewed without the need for further negotiations¹⁷.

In relation to Indigenous Peoples' rights, the Union has long promoted the respect of human rights everywhere in the world and has a wide range of policies that are relevant to Indigenous Peoples¹⁸. The Union has actively participated in the IWC's discussions on ASW, advocating for a rights-based approach to Indigenous Peoples' whaling activities, supporting improvements to the process for setting ASW catch limits and measures to strengthen the involvement of Indigenous Peoples in the IWC's decision-making process. The Union has also signalled support for proposed changes to IWC terminology, including replacing the term 'aborigines' with 'Indigenous Peoples'.

While the Union promotes human rights, including the rights of Indigenous Peoples, it also recognises that these rights are not absolute and can be subject to reasonable and justified limitations, especially when it comes to sustainability concerns. Therefore, the Union also emphasises that any ASW exemptions must be clearly justified, strictly non-commercial and

¹⁷ <https://iwc.int/management-and-conservation/whaling/aboriginal>.

¹⁸ The EU supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNGA 61/295) at the UN General Assembly in 2007 and the Outcome Document (UNGA 69/2) of the World Conference on Indigenous Peoples held as part of the High-Level Plenary of the UNGA in 2014. Both documents stress the rights of Indigenous Peoples to the resources they have traditionally used and the need for States to protect those rights and to cooperate and consult with Indigenous Peoples. On 15 May 2017, the Council of the EU adopted Conclusions (Doc. 8814/17, 15 May 2017) which reaffirm its support for the rights of Indigenous Peoples and recognise that there is room for applying this policy framework more effectively in multilateral cooperation, namely by further enhancing opportunities for dialogue and consultation at all levels of EU cooperation.

biologically sustainable. Providing scientific information to support ASW catch limits aligns with the IWC's duty to ensure sustainable whaling practices and the management of whale populations globally.

Against this background, the Union position should be to support the continued implementation of the IWC's established framework for ASW, including the seven-year quota-setting and automatic renewal mechanism adopted in 2018, where the agreed conditions are fulfilled. The Union should continue to support a rights-based approach that recognises the cultural and nutritional needs of Indigenous Peoples, while ensuring that any ASW catch limits remain strictly non-commercial, scientifically justified and biologically sustainable. The Union should also continue to support measures aimed at strengthening the participation of Indigenous Peoples in the IWC's work and decision-making processes, as well as the use of appropriate terminology reflecting international standards on Indigenous Peoples' rights.

3.2. Consistency with other Union policies and initiatives

The proposed position is an external extension of the Union's internal environmental acquis pertaining to cetaceans and a vehicle for strengthening ocean diplomacy. In ensuring that international governance remains consistent with the Union's high standards for cetacean conservation, the following non-exhaustive list of regulatory instruments is of particular relevance:

- Under the Habitats Directive¹⁹: All cetaceans are Annex IV species, protected from deliberate disturbance, capture or killing in EU waters. The proposed position ensures this protection is not undermined in international or adjacent waters.
- By opposing commercial whaling, the EU upholds its ban on the trade of cetacean products for commercial purposes under the Wildlife Trade Regulation²⁰ as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which the Union and its Member States are Party.
- IWC conservation work contributes to achieving good-environmental-status targets for the marine environment, including cetacean mortality and set out under the Marine Strategy Framework Directive²¹ (MSFD).
- The Nature Restoration Regulation²² sets a legally binding target to restore at least 20 % of the Union's Sea areas by 2030. Crucially, it mandates the restoration of habitats for protected marine species, including cetaceans. The EU's position at the IWC directly supports these targets by advocating for the removal of external pressures (such as noise and commercial hunting) that would otherwise hinder the recovery of these restored habitats.
- The Union recognises the key role of cetaceans in the nutrient cycling ('whale pump') and the sequestration of carbon in their biomass (blue carbon). By protecting these living carbon sinks from the pressures of whaling and environmental degradation, the Union's position contributes to the Union's objectives for natural

¹⁹ OJ L 206, 22.7.1992, p. 7.

²⁰ OJ L 61, 3.3.1997, p. 1.

²¹ OJ L 164, 25.6.2008, p. 19.

²² OJ L, 29.7.2024, p. 14, 18.

carbon sequestration and thereby its climate-neutrality objectives under the European Climate Law²³.

In addition, the following initiatives are worth noting in this context:

- The EU Biodiversity Strategy for 2030²⁴ sets the target of legally protecting 30 %, and strictly protecting 10 % of the EU’s seas. Support for sanctuaries and ecosystem-based management aligns with these goals.
- The Union supports efforts within the IWC to improve the welfare outcomes of whaling operations, including through the development and use of the most humane hunting and killing methods available, the reduction of time to death and the minimisation of avoidable pain, distress and suffering. This approach is consistent with the Union’s broader commitment to animal welfare and with Article 13 TFEU, which recognises animals as sentient beings. Accordingly, the Union promotes the application of the highest feasible welfare standards in the context of whaling activities authorised under the IWC framework.
- By adopting a stable, multi-year position at the IWC, the Union ensures that its international commitments regarding cetaceans are aligned with the holistic approach of the European Ocean Pact²⁵ and are ready to be integrated into the forthcoming Ocean Act. The Union’s position at the IWC serves as a strategic bridge between international ocean diplomacy and ecosystem-based management, ensuring that the protection of cetaceans is treated not merely as a localised conservation issue, but as a critical component of global ocean health, climate resilience, and the rules-based governance of the collective maritime space.
- As the Union and its Member States are Parties to the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement), the Union is committed to fostering cross-sectoral cooperation. The Union’s advocacy for whale sanctuaries and the mitigation of cumulative impacts on cetaceans within the IWC provides a practical mechanism to implement the BBNJ framework. This ensures that the IWC contributes to the global network of area-based management tools and high-seas biodiversity protection.
- As the Union and its Member States are also Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS), the Union attaches particular importance to the conservation of migratory cetaceans throughout their range. The IWC plays a key role in advancing the objectives of CMS by promoting coordinated international action to address threats to cetaceans, including habitat degradation, cumulative impacts from human activities, and other pressures affecting migratory species across national jurisdictions and areas beyond national jurisdiction.
- The proposed position is may also contribute to achieving the Union’s obligations under the Kunming-Montréal Global Biodiversity Framework. By promoting a conservation-led agenda, the Union acts to fulfil Target 3 (the ‘30x30’ target) through the designation and effective management of whale sanctuaries, and Target

²³ OJ L 243, 9.7.2021, p. 3, 5.

²⁴ COM (2020) 380 final, 20.05.2020, p. 4.

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Ocean Pact, COM/2025/281 Final.

4, which requires urgent management actions to halt human-induced extinction of threatened species and to foster their recovery. As both the Union and the Member States are Parties to the Convention on Biological Diversity (CBD), the IWC remains a critical forum for translating these global targets into measures on the ground.

3.3. Exclusive external competence

The Union's competence to adopt the proposed position is exclusive pursuant to Article 3(2) TFEU. Under this provision, the Union has exclusive competence for the conclusion of an international agreement – or the adoption of acts within a body set up by such an agreement – insofar as those acts may affect common rules or alter their scope.

According to the settled case-law of the Court of Justice, such a risk of affectation exists where the international commitments fall within an area already covered to a large extent by Union rules²⁶. This is the case for the protection of cetaceans, on which the Union has established a comprehensive and rigorous legal framework, as demonstrated in Section 3.2 (see list of relevant regulatory instruments).

The Union's internal rules constitute a coherent system of strict protection that leaves no room for Member States to adopt divergent standards. Because IWC acts, such as amendments to the ICRW Schedule, govern the very activities (capture, killing, and trade) that the Union's internal legislation prohibits, any international decision on these matters necessarily falls within the scope of those Union rules, so that as per the settled case-law of the Court, a risk of affectation within the meaning of Article 3(2) TFEU exists²⁷. In that context, as the settled case-law has already confirmed²⁸, the fact that there is no contradiction between IWC acts and Union law is irrelevant.

Consequently, as the subject matter of the envisaged acts falls within an area largely covered by the Union's common rules, the Union alone is entitled to enter into such commitments, preventing Member States from acting individually in a manner that could alter the scope or the integrity of the Union's protective regime.

3.4. Necessity and desirability of Union position

Given that the envisaged acts fall within the Union's exclusive competence pursuant to Article 3(2) TFEU, establishing a Union position on these matters is necessary.

In addition, given that whales and other cetaceans are highly migratory species, their conservation is an inherently cross-border challenge that cannot be managed by Member States individually.

As the Union only holds observer status in the IWC, its influence is maximised only when the 24 Member States that are Party to the ICRW vote as a single block.

The multi-year nature of the previous Council Decisions (adopted on 13 December 2011²⁹

²⁶ See, for instance, Opinion 3/15 (*Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled*), [EU:C:2017:114](#), paragraph 105.

²⁷ Opinion 1/13 (*1980 Hague Convention*) of 14 October 2014, [ECLI:EU:C:2014:2303](#), paragraph 71 and case-law quoted.

²⁸ See, for instance, Opinion 3/15 (*Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled*), [EU:C:2017:114](#), paragraph 113.

²⁹ Council Decision of 13 December 2011 (ST 17641 2011 COR 1) establishing the position to be adopted, on behalf of the European Union, regarding proposed amendments to the International Convention for the Regulation of Whaling and its Schedule.

and 20 December 2017³⁰ respectively on the basis of proposals by the Commission³¹) and the stable policy approach that they provided enabled the Union and its Member States that are Party to the ICRW to become more proactively engaged in IWC matters, to respond at short notice to requests from non-EU governments, and to contribute consistently to conservation outcomes. Therefore, to preserve this momentum and predictability, this proposal for a Decision adopts the same multi-session approach, setting out the Union's coordinated position for the IWC meetings in 2026, 2028 and 2030.

4. LEGAL BASIS

4.1. Procedural legal basis

The IWC is a body set up by an agreement, namely the ICRW.

The acts which the IWC is called upon to adopt constitute acts having legal effects, for the following reasons:

- **Amendments to the ICRW Schedule** will produce legal effects for the Member States that are parties to the agreement, because they are binding under international law in accordance with Article I(1) of the ICRW, which provides that the Schedule forms an integral part of the Convention, in conjunction with Article V(3) of the ICRW regulating the procedure and entry into force of amendments to the Schedule, unless an objection is lodged by a Contracting Government.
- **IWC resolutions, recommendations and decisions** constitute acts having legal effects. As regards recommendations under Article VI of the Convention adopted in the form of resolutions, the International Court of Justice has stated in its judgment of 31 March 2014, *Whaling in the Antarctic (Australia v. Japan; New Zealand intervening)* that – despite these resolutions being non-binding – ‘when they are adopted by consensus or by a unanimous vote, they may be relevant for the interpretation of the Convention or its Schedule’ (point 46). A non-legally binding act of an international body that establishes a subsequent agreement of the parties on the interpretation of legally binding rules in an international agreement constitutes an act having legal effects within the meaning of Article 218(9) TFEU. Based on Rule J(3) of the Rules of Procedure of the IWC, Resolutions are adopted by consensus. In view of the above, the resolutions adopted at the IWC meetings covered by this decision may constitute acts having legal effects. As regards decisions, it follows from Rule E of the Rules of Procedure of the IWC that this term refers to a mixed set of acts, including the acts mentioned in Rule J of the Rules of Procedure, which refers to amendments to the ICRW Schedules, recommendations under Article VI and resolutions, and ‘other decisions’. It thus follows that IWC decisions are in part legally binding, and for another part are covered by the above reasoning on resolutions. In that view, decisions adopted at the IWC meetings covered by this decision may constitute acts having legal effects.

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

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

³⁰ Council Decision of 12 December 2017 (ST 14970 2017 INIT) on the position to be adopted, on behalf of the European Union, in relation to matters falling within its competence, at the next three meetings of the International Whaling Commission, including related intersessional meetings.

³¹ COM(2011) 495 final, and COM(2017) 463 final.

4.2. Substantive legal basis

In the context of the IWC, the main objective and content of the envisaged acts relate to the protection of the environment, in particular (i) ensuring an effective international regulatory framework for the conservation and management of whales; (ii) guaranteeing a significant improvement in the conservation status of whales and other cetaceans; and (iii) bringing all whaling operations by IWC members under IWC control. Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

This proposal for the substantive legal basis is without prejudice to the exclusive competence of the EU in the field of the conservation of the marine biological resources pursuant to the provisions of Article 3 (1) (d) in conjunction with Article 38, 43 and Annex I of the Treaty and thus of all living aquatic resources under the Common Fisheries Policy³². This shall not create a precedent for any future negotiations about the conservation and management of living aquatic resources falling under the Common Fisheries Policy.

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 IWC may involve amendments to the Schedule to the Convention, which are binding under international law, it is appropriate to publish them in the *Official Journal of the European Union* after their adoption.

³² OJ L 354 28.12.2013, p. 22.

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on the position to be adopted, on behalf of the European Union, in relation to matters falling within its competence, at the next three meetings of the International Whaling Commission, including related inter-sessional meetings

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 International Convention for the Regulation of Whaling (ICRW) ('the Agreement') entered into force on 10 December 1948.
- (2) Pursuant to Article III(2) and Article V of the ICRW, the International Whaling Commission (IWC) is able to adopt decisions, including amendments to the Schedule of the ICRW. Article VI of the ICRW allows the IWC to adopt recommendations. Rules E and J of the Rules of Procedure of the IWC then specify that the IWC is also able to adopt resolutions and other decisions.
- (3) The IWC, during its 70th, 71st and 72nd meeting in the years 2026, 2028, and 2030, as well as during any related inter-sessional meetings, is expected to consider and may adopt amendments to the Schedule to the ICRW and various resolutions, recommendations and decisions. These acts may concern the regulation of commercial, scientific, and aboriginal subsistence whaling, the establishment and management of whale sanctuaries, and the adoption of conservation and welfare measures for cetaceans.
- (4) The envisaged acts of the IWC, will, if adopted, produce legal effects for the Member States that are Parties to the ICRW.
- (5) The Union has established a comprehensive internal legal framework for the protection of all cetacean species. The Union's position within the IWC should be guided by the objective of ensuring a high level of protection for cetaceans, consistent with the Union's internal environmental acquis and its international commitments. This position should reflect the strategic priorities of the European Ocean Pact, recognising the essential role of healthy cetacean populations in natural carbon sequestration, while promoting the highest animal welfare standards in line with the recognition of animals as sentient beings under Article 13 TFEU. It is therefore in the Union's interest to promote equivalent protections globally, including within the IWC, to ensure consistency with Union policies and prevent undermining of Union standards.
- (6) It is therefore necessary to establish the position to be taken on the Union's behalf in the IWC with regard to the amendments of the Schedule to the ICRW and the

envisaged IWC resolutions and decisions concerning the regulation of commercial, scientific, and aboriginal subsistence whaling, the establishment and management of whale sanctuaries, and the adoption of conservation and welfare measures for cetaceans.

- (7) The Union's position is to be expressed by the Member States that are represented in the IWC, acting jointly, in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 70th, 71st and 72nd meetings of the IWC, including the related inter-sessional meetings, is set out in the Annex to this Decision.

Article 2

The position referred to in Article 1 shall be expressed by the Member States that are represented in the IWC, acting jointly in the interest of the Union.

Article 3

Minor technical changes to the position set out in the Annex may be agreed upon without a further decision of the Council.

Article 4

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

Done at Brussels,

*For the Council
The President*