



Brussels, 4 September 2023
(OR. en)

12606/23

LIMITE

COPEN 297
DROIPEN 125
JAI 1101
ENV 938
RELEX 998

NOTE

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 12235/23
No. Cion doc.: 11545/23 REV 1 + ADD 1 REV 1

Subject: Draft Council Decision authorising the European Commission to participate, on behalf of the European Union, in negotiations for a Council of Europe Convention on the protection of the environment through criminal law

- Revised text by the Presidency
- Informal silence procedure until Wednesday 6 September 2023, 18:00

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (11.10.2023)

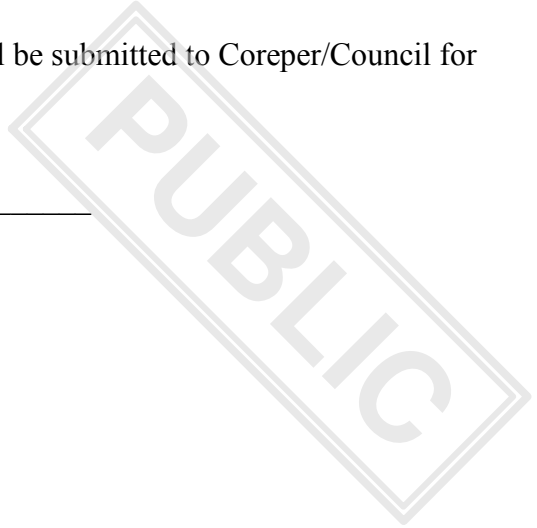
At the JHA Counsellors meeting on 4 September 2023, delegations examined the revised text of the draft Council Decision on the basis of 12235/23. In the light of the comments presented by delegations, the Presidency made several (small) modifications to the text, see the Annex.

Deleted wording has been marked by ~~strikethrough~~, new wording has been marked by underlining and **bold**.

It is proposed to finalise the text through an informal silence procedure: unless any delegation informs the Presidency (**DELETED**) and (**DELETED**) and the General Secretariat (**DELETED**) by **Wednesday 6 September 2023, 18:00**, it will be assumed that all Member States can accept the text set out in the Annex.

Subsequently, in case of agreement, the text will be submitted to legal-linguists for a ‘mise à point’.

After the decision on the IE opt-in is known, the text will be submitted to Coreper/Council for adoption.



(draft)

COUNCIL DECISION

authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172), as well as a draft Explanatory Report thereto.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(2), in conjunction with Article 218(3) and (4) thereof,

Having regard to the Recommendation from the European Commission,

Whereas:

- (1) On 23 November 2022, the Committee of Ministers of the Council of Europe has mandated the Committee of experts for the protection of the environment through Criminal law to draft a new Convention superseding and replacing the 1998 Convention on the protection of the environment through criminal law (ETS No. 172) by 30 June 2024.

- (2) The envisaged Convention is likely to provide for common rules on purpose and scope, terminology and definitions, substantial criminal law offences, persons liable and sanctions, procedural rights and cooperation, preventive measures and civil society participation. Certain parts of the envisioned Convention falls in an area covered to a large extent by Union law¹, which risks being affected or altered in scope by the new Convention, according to Article 3(2) TFEU.
- (3) In order to protect the integrity of Union law and to ensure consistency between the rules of international law and Union law, it is necessary that the Commission participate in the negotiations on the new Convention, for matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules **or their adoption is expected in the foreseeable future**.
- (4) This Decision should be without prejudice to the division of competences between the Union and its Member States as defined by the Treaties, to the participation of Member States in the negotiations for the matters falling outside of the mandate granted to the Commission, and to any subsequent decision to conclude the Convention.
- (5) The negotiating directives set out in the addendum to this Decision are addressed to the Commission and may be revised and further developed if appropriate depending on the evolution of the negotiations.
- (6) In view of the fact that all Member States are also Members of the Council of Europe, the Member States participating in the negotiations should support the Union negotiator in carrying out the tasks following from the Treaties, in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the TEU, in full mutual respect.

¹ In particular by Directive 2008/99/EC on the protection of the environment through criminal law and the proposal for a new Directive which would replace it COM(2021) 851 final, 2021/0422 (COD).

- (7) In accordance with the principle of sincere cooperation, the Commission and the Member States should cooperate closely during the negotiation process, including via regular contact with the Member States' experts and their representatives in Strasbourg.
- (8) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...], its wish to take part in the adoption and application of this Decision.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to negotiate on behalf of the Union, as regards matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules **or their adoption is expected in the foreseeable future**, the new Convention on the protection of the environment through criminal law superseding and replacing the 1998 Council of Europe Convention on the protection of the environment through criminal law (ETS No. 172).
2. The negotiations shall be conducted on the basis of the negotiating directives set out in the addendum to this Decision, subject to any directives which the Council may subsequently issue to the Commission.

Article 2

The negotiations shall be conducted in consultation with the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN), which is hereby designated as the special committee within the meaning of the Article 218(4) TFEU.

The Commission shall regularly report to the special committee referred to in the first paragraph on the progress of the negotiations and shall forward all negotiating documents to it as early as possible.

Whenever so requested by the Council, the Commission shall report to the Council on the conduct and the outcome of the negotiations, including in writing.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

ADDENDUM

Negotiating Directives

Regarding the process of the negotiations, the Union should aim to achieve that:

- (0a) The negotiation process is open, inclusive and transparent, and based on cooperation in good faith.
- ~~(0b) Input received from all the Parties to the Convention are considered on an equal basis to ensure an inclusive process.~~
- (0**be**) The negotiation process is based on an effective and realistic work programme.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (1) The Convention is compatible with Union law on the protection of the environment through criminal law, including the ongoing negotiations on the Commission Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC².
- (2) The Convention ensures respect for the fundamental rights and freedoms as enshrined in the European Union Treaties and the Charter of Fundamental Rights of the European Union.

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (3) The specific objectives set out in detail below are reached, while ensuring that the outcome of the negotiations is compatible with the relevant Union's internal rules on environmental crime. These internal rules, as they evolve in the Union legislative procedure and eventually in their final adopted form, will serve as the baseline for the Union's negotiating position.

² COM (2021) 851 final, 2021/0422 (COD)

- (4) The negotiations lead to a common understanding of environmental crime categories and sanctions for natural and legal persons in the EU Member States and Member States of the Council of Europe and will on this basis facilitate international cooperation.
- (5) The ~~envisaged new~~ Convention is compatible with the Union acquis, which contributes to the pursuit of the objectives of the Union policy protecting the environment and reflects as much as possible the scope of the new Environmental Crime Directive that is currently being negotiated. The new Environmental Crime Directive and the ~~new~~ Convention mutually reinforce and strengthen each other in their objectives to increase the level of environmental protection and to achieve an improvement of the quality of the environment.
- (6) Environmental offences in the Convention and their scope are clearly defined and are compatible with the list of criminal offences in Article 3(1) of the Commission proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC³ and take account of the progress in the negotiations between Union co-legislators and – eventually – the final version of the Directive.
- (7) The Convention contains a definition of the liability of legal persons which is compatible with the definition in the Union acquis.
- (8) The Convention ensures the availability of effective, dissuasive, and proportionate sanctions for natural and legal persons.
- (9) The Convention contains appropriate rules on jurisdiction **as far as possible in line with the final version of the new Environmental Crime Directive.** ~~that ensure that Member States have at least jurisdiction regarding environmental offences committed by their nationals or that occur on their territory or on board of ships flying their flag.~~
- (10) The Convention fosters international cooperation and promotes that existing mechanism to cooperation, exchange information and provide mutual assistance are used.

³ See footnote 1.

- (11) The Convention contains provisions to strengthen national enforcement chains regarding environmental crime to enable them to successfully detect, investigate, prosecute and sanction environmental offences.
- (12) The role of the citizens in detecting and **contributing to** bringing to justice environmental crime is acknowledged and their rights defended.
- (13) Member States take measures to raise awareness of the harmfulness of environmental offences. The precautionary principle aiming to avoid environmental offences is recognised.

Regarding the functioning of the Convention, the Union should aim to achieve that:

- (14) The ~~amended~~ Convention will take account of existing global and regional instruments, and ongoing international cooperation in the global fight against environmental crime.
- (15) The ~~amended~~ Convention ~~preserves its~~ **includes an** implementation mechanism and final provisions, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension, and denunciation.

Overall, the procedure for negotiations shall be as follows:

- (16) The Commission should endeavour to ensure that the ~~new~~ Convention is consistent with relevant existing and foreseeable future Union law and policies, as well as the Union's commitments under other relevant multilateral agreements.
- (17) The negotiations must be prepared for well in advance. To this end, the Commission shall inform the Council of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible.
- (18) The negotiating sessions shall be preceded by a meeting of the COPEN Working Party in order to identify key issues, formulate opinions and provide guidance, including formulating declarations and reservations, as appropriate.

- (19) The Commission shall report to the COPEN Working Party on the outcome of the negotiations after each negotiating session, including in writing.
- (20) The Commission shall **promptly** inform the Council and consult the COPEN Working Party on any important issue that may arise during the negotiations.
-