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European Union

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LIMITE

COPEN 325
DROIPEN 137
JAI 1186
ENV 1027
RELEX 1082

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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)

Delegations will find in this Addendum the negotiating guidelines to which reference is made in the Council Decision set out in 12693/23 INIT.

Negotiating Directives

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

- (1) The negotiation process is open, inclusive and transparent, and based on cooperation in good faith.
- (2) 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:

- (3) 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/EC¹.
- (4) 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:

- (5) 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.

¹ COM (2021) 851 final, 2021/0422 (COD)

- (6) 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.
- (7) The 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 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.
- (8) 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/EC¹ and take account of the progress in the negotiations between Union co-legislators and – eventually – the final version of the Directive.
- (9) The Convention contains a definition of the liability of legal persons which is compatible with the definition in the Union acquis.
- (10) The Convention ensures the availability of effective, dissuasive, and proportionate sanctions for natural and legal persons.
- (11) The Convention contains appropriate rules on jurisdiction as far as possible in line with the final version of the new Environmental Crime Directive.
- (12) The Convention fosters international cooperation and promotes that existing mechanism to cooperation, exchange information and provide mutual assistance are used.

¹ See footnote 1.

- (13) The Convention contains provisions to strengthen national enforcement chains regarding environmental crime to enable them to successfully detect, investigate, prosecute and sanction environmental offences.
- (14) The role of the citizens in detecting and contributing to bringing to justice environmental crime is acknowledged and their rights defended.
- (15) 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:

- (16) The Convention will take account of existing global and regional instruments, and ongoing international cooperation in the global fight against environmental crime.
- (17) The Convention 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:

- (18) 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.
- (19) 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.
- (20) 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.

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