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European Union

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### OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council

To: Delegations

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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)  
- Adoption

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At its meeting on 28 September 2023, the Council (Justice and Home Affairs) adopted the above-mentioned Council Decision, together with the accompanying negotiating directives.

The texts as adopted by the Council are set out in the Annex + Addendum. The Council Decision will also be published in the *Official Journal*.

Further, the Council approved the position paper by the European Union and its Member States concerning the draft Council of Europe Convention (12891/23). In the meantime, the Commission has submitted that paper to the Council of Europe, in view of the session of negotiations which is scheduled to take place on 16-18 October 2023.

**COUNCIL DECISION (EU) 2023/...**

**of ...**

**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)**

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 set up and mandated the Committee of Experts on 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) (the ‘new Convention’) by 30 June 2024.

- (2) The new Convention is intended to provide for common rules on purpose and scope, terminology and definitions, serious criminal offences, persons liable and penalties, procedural rights and cooperation, preventive measures and civil society participation. Certain parts of the new Convention fall in an area covered to a large extent by Union law, in particular Directive 2008/99/EC of the European Parliament and of the Council<sup>1</sup> and the proposal for a new Directive which would replace it. This could result in Union law being affected or altered in scope by the new Convention within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (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 the adoption of which 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 on matters falling outside the mandate granted to the Commission, and to any subsequent decision to conclude the new 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 Treaty on European Union (TEU), in full mutual respect.

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<sup>1</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

- (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 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 TEU and to the TFEU, 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 TEU and to the TFEU, 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 participate, on behalf of the Union, in negotiations 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 the adoption of which is expected in the foreseeable future, on 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. The Council may subsequently issue additional directives to the Commission.

### *Article 2*

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

The Commission shall regularly report to the COPEN Working Party 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 ...,

*For the Council*

*The President*

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**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/EC<sup>2</sup>.
- (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.

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<sup>2</sup> 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/EC<sup>3</sup> 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.

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<sup>3</sup> 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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