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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	ST 11378/23 + ADD1
Subject:	Council Decision on the signing, on behalf of the European Union, of the United Nations Convention on the International Effects of Judicial Sales of Ships, adopted by the United Nations General Assembly in New York on 7 December 2022 - Adoption - Statement by the European Commission

Delegations will find attached a statement by the European Commission to be included in the minutes of the Permanent Representatives Committee and of the Council.

ANNEX

Statement by the Commission to be included in the minutes of Coreper and Council concerning the Council Decision on signing of the UN Convention on Judicial sales of ships

The Commission considers that pursuant to the principle of good faith, and for reasons of legal certainty and of preserving the autonomy of Union law, it is important to inform third states about the territorial scope of the Union's participation in the United Nations Convention on the International Effects of Judicial Sale of Ships (the "Beijing Convention"). The current text of the declaration concerning the competence of the European Union does not take into account that the United Kingdom has ceased to be a Member State of the European Union as of 1 February 2020. Moreover, currently neither Denmark nor Ireland are bound by the decision on the signature of the Beijing Convention by the Union. Therefore, currently the Beijing Convention will not apply to the territories of those two Member States. Upon signature of the Beijing Convention, the Commission therefore intends to inform the third states about the territorial scope of the Union's participation in the Beijing Convention accordingly.

The Commission considers that the Decision on the signing of the agreement should refer to the person designated by the negotiator as the one to be empowered to sign. Therefore, the changes that provide for the President of the Council to designate the person who is to sign the agreement on behalf of the Union are not in accordance with the Treaties.

All acts of external representation in the process of treaty-making, including the signature of an international agreement and the subsequent expression of the consent to be bound by it are in accordance with Article 17(1) TEU the institutional prerogatives of the 3 Commission, with the exception of such acts pertaining to agreements falling exclusively or predominantly within the common foreign and security policy of the Union, where it is the High Representative who represents the Union externally according to Article 27(2) TEU. Without prejudice to this exception, when the Commission and another actor designated by the Council, co-sign an international agreement on behalf of the Union, only the signature of the Commission commits the Union.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties 'cannot alter the rules of the Treaties that the institutions are obliged to respect' (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.

The Commission confirms its view that the text of the declaration concerning the competence of the European Union as annexed to the draft Council Decision on the signing, on behalf of the European Union, of the United Nations Convention on the International Effects of Judicial Sales of Ships, adopted by the United Nations General Assembly in New York on 7 December 2022, reflects the principle of conferral as well as the division of competences between the Union and the Member States and Article 3(2) of the Treaty on the Functioning of the European Union, as interpreted by the Court of Justice of the European Union.