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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	5171/18 COMAR 1 JUR 10 COJUR 1 ENV 8 + ADD1
Subject:	<p>MARINE BIODIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (UNCLOS)</p> <p>- draft Council Decision authorising the opening of negotiations, on behalf of the European Union, on an international legally-binding instrument 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</p> <p>- draft Directives for the negotiations of an international legally-binding instrument 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</p>

1. On 4 January 2018, the Commission submitted to the Council a Recommendation for a Council Decision authorising the opening of negotiations on an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction ('the BBNJ').¹
2. The Recommendation was examined by the "Law of the Sea" Working Party (COMAR) on 25 January 2018 and on 28 February 2018.

¹ Doc 5171/18 + ADD 1

3. On 25 January 2018 the "Law of the Sea" Working Party (COMAR) discussed the proposed Council Decision and the negotiating directives as set out in the Recommendation. It considered that the text of the decision and of the negotiating directives should be aligned as much as possible with the Council Decision (EU) 2016/455 of 22 March 2016 authorising the opening of the negotiations on the elements of the draft text of the international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS), and with the negotiating directives (doc. 6862/16 ADD1), which were adopted for the purposes of the BBNJ negotiations during the Preparatory Committee. The Working Party agreed to add substantive legal basis to the draft Council Decision, to designate COMAR as a special committee in consultation with which the negotiations must be conducted, to include recitals and provisions, stressing the mixed nature of the negotiations and the related duty of loyal cooperation as well as the language limiting the authorization to negotiate, on behalf of the European Union, to the competences of the European Union that have already been exercised internally.
4. On 28 February 2018 the Working Party reached agreement on the draft Council Decision authorising the opening of negotiations, on behalf of the European Union, as regards matters falling within the Union's competence and in respect of which the Union has adopted rules, on an internationally legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. At the same meeting agreement on draft Directives for the negotiations was equally reached.
5. In the light of the above, and subject to confirmation by the Permanent Representatives' Committee, the Council is invited to:

- adopt the draft Council Decision authorising the opening of negotiations on behalf of the European Union on an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction as set out in doc. 6698/18 JUR 95 COMAR 3 COJUR 3 ENV 140;
- agree on the Directives for the negotiations of an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction set out in doc. 7008/18 JUR 120 COMAR 6 COJUR 5 ENV 167.

The European Parliament will be informed in accordance with Article 218(10) TFEU, and the Decision and the negotiating directives will be transmitted to the European Parliament.
