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**LIMITE**

**JUR 141  
COMAR 5  
ENV 269  
COJUR 25**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

Subject: COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Agreement 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

**of ...**

**on the conclusion, on behalf of the European Union,  
of the Agreement 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(6), second subparagraph, point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament<sup>1</sup>,

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<sup>1</sup> OJ ..., ..., p. ....

Whereas:

- (1) By virtue of Council Decision 98/392/EC<sup>2</sup>, the European Community approved the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof in respect of those matters governed by it for which competence has been transferred to the Community by its Member States. The Union is thus far the only international organisation which is a Party to UNCLOS within the meaning of Article 305(1)(f) of UNCLOS and Article 1 of Annex IX thereto.
- (2) The Agreement 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 ('the Agreement') was adopted in New York on 19 June 2023.
- (3) In its conclusions of 20 July 2023, the Council noted that the Union and its Member States are committed to the swift ratification and implementation of the Agreement and urged all States to do the same.
- (4) The Union and its Member States aim to ratify the Agreement prior to the United Nations Ocean Conference that will take place in 2025.

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<sup>2</sup> Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1).

- (5) In accordance with Council Decision (EU) 2023/1974<sup>3</sup>, the Agreement was signed on 20 September 2023, on behalf of the Union, subject to its conclusion at a later date.
- (6) Pursuant to Article 66 of the Agreement, the Agreement is subject to ratification, approval or acceptance by States and regional economic integration organizations, such as the Union.
- (7) The Agreement is in line with the environmental objectives of the Union as referred to in Article 191 of the Treaty on the Functioning of the European Union (TFEU), namely: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.
- (8) This Decision should not be interpreted as making use of the possibility for the Union to exercise its external competence with regard to areas covered by the Agreement falling within shared competence. In the area of shared competences, the Member States retain their competence insofar as the Agreement does not affect common rules or alter the scope thereof, including their foreseeable future development.

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<sup>3</sup> Council Decision (EU) 2023/1974 of 18 September 2023 on the signing, on behalf of the European Union, of the Agreement 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 (OJ L 235, 25.9.2023, p. 1).

(9) The conclusion of the Agreement by the Union is without prejudice to the Member States' competence as regards the ratification, approval or acceptance of the Agreement.

(10) In accordance with Article 67(1) of the Agreement, a code of conduct laying down internal arrangements between the Union and its Member States reflecting their respective responsibilities for the performance of their obligations and the exercise of rights under the Agreement has been drawn up between the Council, the Member States and the Commission and is to be applicable from the date of entry into force of this Decision. Those arrangements take duly into account the legitimate interests of the Union and its Member States within their respective areas of competence, with due respect for their rights and obligations under UNCLOS.

(11) In accordance with Article 67(2) of the Agreement, the Union is to declare in its instrument of approval the extent of its competence in respect of the matters governed by the Agreement ('the Declaration of Competence').

(12) Pursuant to Article 70 of the Agreement, in conjunction with Article 10(1) thereof, the Union should make an exception to exclude the retroactive effects as set out in the second sentence of Article 10(1) of the Agreement ('the Exception on non-retroactivity'). Therefore, the provisions of the Agreement should apply, for the Union, only to activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction collected and generated after the entry into force of the Agreement for the Union.

- (13) This Decision is without prejudice to the sovereignty, sovereign rights and jurisdiction of Member States in accordance with UNCLOS.
- (14) The Agreement, the Declaration of Competence and the Exception on non-retroactivity should be approved,

HAS ADOPTED THIS DECISION:

### *Article 1*

1. The Agreement 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 ('the Agreement') is hereby approved on behalf of the Union<sup>4+</sup>.
2. The conclusion of the Agreement by the Union shall be without prejudice to the Member States' competence as regards the ratification, acceptance or approval of the Agreement.

### *Article 2*

The Declaration of Competence required by Article 67(2) of the Agreement ('the Declaration of Competence') is hereby approved on behalf of the Union<sup>5++</sup>.

### *Article 3*

The Exception on non-retroactivity under Article 70 of the Agreement, in conjunction with Article 10(1) thereof, ('the Exception on non-retroactivity') is hereby approved on behalf of the Union<sup>6+++</sup>.

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<sup>4</sup> The text of the Agreement is published in ... [insert OJ reference].

<sup>+</sup> Delegations/OJ: see document ST 12126/23.

<sup>5</sup> The text of the Declaration of Competence is published in ... [insert OJ reference].

<sup>++</sup> Delegations/OJ: see document ST 7586/24.

<sup>6</sup> The text of the Exception on non-retroactivity is published in ... [insert OJ reference].

<sup>+++</sup> Delegations/OJ: see document ST 7607/24.

*Article 4*

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of approval provided for in Article 66 of the Agreement, together with the Declaration of Competence and the Exception on non-retroactivity.

*Article 5*

This Decision shall enter into force on the day of its adoption.

Done at ...,

*For the Council*

*The President*