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Proposal for a

## **COUNCIL DECISION**

**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**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The objective of this proposal is to obtain from the Council the authorisation for the European Commission to sign the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement) on behalf of the European Union.

The European Union and its Member States have since 2004 been engaged in an international process at the United Nations (UN) to develop this agreement. On the basis of the relevant negotiating directives<sup>1</sup>, the European Commission conducted negotiations from 2016 to 2023 with a view to concluding the BBNJ Agreement. The final text of the BBNJ Agreement was adopted by the BBNJ intergovernmental conference on 19-20 June 2023. A signing ceremony will take place on 20 September 2023 during the UN General Assembly.

The BBNJ Agreement addresses the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Such areas cover nearly two-thirds of the world's ocean and about 95% of its volume and comprise the high seas and the international seabed area. The BBNJ Agreement will enable better protection and management of marine biodiversity of areas beyond national jurisdiction. The agreement in particular covers issues relating to marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments, and capacity-building and the transfer of marine technology.

The BBNJ Agreement will be the third implementing agreement under UNCLOS, to which the EU and its Member States are Parties. The agreement will bring UNCLOS up to speed with the developments and challenges that have occurred in relation to marine biodiversity since the Convention's conclusion in 1982. It will also further support the achievement of the 2030 UN Agenda for Sustainable Development, in particular its Sustainable Development Goal 14 ("Life Below Water"). The BBNJ Agreement will also contribute to reach the goals and targets set under the Global Biodiversity Framework, and notably the target to ensure effective conservation and management of at least 30% of the world's lands, inland waters, coastal areas and oceans by 2030. Furthermore, it will support the implementation of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

#### **• Consistency with existing Union policies**

The European Commission ensured that the negotiations on the text of the BBNJ Agreement were fully consistent with relevant European Union rules and policies in the areas which will be covered by it (environment policy, maritime transport policy, common fisheries policy, internal market policy, common commercial policy, research and technological development policy, climate policy and other relevant policies) and with relevant bilateral and multilateral agreements to which the European Union is already a Party. The BBNJ agreement also contributes to the European Green Deal and is a priority under the EU's international ocean governance agenda.

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<sup>1</sup> Adopted by the Council on 22 March 2016 and on 19 March 2018.

Since the BBNJ Agreement is an implementing agreement to UNCLOS and the Convention is already part of the European Union acquis, the European Commission also ensured that the provisions and the balance of rights and obligations enshrined in UNCLOS and reflected in the European Union acquis were respected and that the outcome of the negotiations was consistent with UNCLOS.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The European Commission worked closely with Member States during the negotiations. Regular consultations also took place with relevant stakeholders, in particular civil society organisations and other organisations represented in the United Nations context.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **• Legal basis**

The proposal is made under Article 192(1), together with Article 218(5) of the Treaty on the Functioning of the European Union (TFEU). Article 218 of the TFEU lays down the procedure for the negotiation and conclusion of agreements between the European Union and third countries or international organisations. In particular, paragraph 5 thereof provides for the Council, on a proposal from the European Commission as a negotiator, to adopt a decision authorising the signing of an agreement on behalf of the European Union.

In accordance with Article 191 and 192(1) of the TFEU, the European Union shall contribute to the pursuit, *inter alia*, of the following objectives: 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.

## **4. BUDGETARY IMPLICATIONS**

The BBNJ Agreement creates a dedicated institutional structure, including a Secretariat, a Scientific and Technical Body, a Clearing-house mechanism, a Capacity building and technology transfer committee and an Access and Benefit-Sharing Committee. The cost of these institutions will be divided among all Parties to the BBNJ Agreement, based on a UN Scale.

The financial institutional costs of the implementation of the BBNJ Agreement for the European Union will only be known after the first Conference of the Parties, which should agree on a first budget for the BBNJ Agreement.

In addition to institutional costs, the implementation of the BBNJ Agreement is likely to generate financial needs to build capacity in developing countries and help the transfer of marine technology, but also, for instance, to generate the scientific knowledge needed to establish, monitor and review marine protected areas. Potential costs, globally, will be estimated under the BBNJ Agreement in due time.

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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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Areas beyond national jurisdiction cover nearly two-thirds of the surface of the world's ocean and ninety five percent of its volume and contain a rich marine biodiversity of both ecological and socioeconomic importance that is under mounting pressure.
- (2) There is a need to address, in a coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use.
- (3) There is a need for the comprehensive global regime under the United Nations Convention on the Law of the Sea (UNCLOS) to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
- (4) By way of the Council Decision 98/392/EC<sup>2</sup>, the European Union concluded UNCLOS in respect of those matters governed by it for which competence has been transferred to the European Union by its Member States. The European 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.
- (5) As a Party to UNCLOS, the European Union, alongside its Member States, has participated in the UN Ad Hoc Open-ended Informal Working Group (Working Group) that met from 2006 to 2015 to study issues relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. At the last meeting of the Working Group, it was recommended that 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 of areas beyond national jurisdiction (Instrument) should be developed.
- (6) Following the recommendations adopted by the Working Group on 23 January 2015, the UN General Assembly adopted, on 19 June 2015, Resolution 69/292 which

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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).

established, prior to holding an intergovernmental conference, a Preparatory Committee, open to all States Members of the United Nations, members of specialised agencies and parties to UNCLOS, to make substantive recommendations to the UN General Assembly on the elements of the draft Instrument. The participation rights of the European Union with regard to the meeting of the Preparatory Committee were covered by paragraph 1(j) of the above-mentioned Resolution 69/292.

- (7) On 22 March 2016, the Council authorised the European Commission to open negotiations on behalf of the European Union on the elements of a draft text 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 of areas beyond national jurisdiction, in accordance with the negotiating directives set out in the Addendum to that authorisation.
- (8) The European Union participated, alongside its Member States, in the four sessions, in 2016 and 2017, of the Preparatory Committee which was mandated to make substantive recommendations to the UN General Assembly on the elements of a future international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.
- (9) The Preparatory Committee adopted its report on 21 July 2017 and recommended that the UN General Assembly consider the elements contained in its recommendation and that it take a decision, as soon as possible, on the convening of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee and to elaborate the text of an international legally binding instrument under UNCLOS.
- (10) In its resolution 72/249 of 24 December 2017, the UN General Assembly decided to convene an intergovernmental conference, under the auspices of the United Nations, to elaborate the text 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 of areas beyond national jurisdiction.
- (11) On 19 March 2018, the Council authorised the European Commission to open negotiations, on behalf of the European Union, as regards matters falling within the European Union's competence and in respect of which the European Union has adopted rules, 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.
- (12) Alongside its Member States, the European Union has participated in the negotiations of the text of that Instrument, in accordance with the negotiating directives set out in the Annex to that authorisation. The negotiation process was successfully completed, at the further resumed fifth session of the intergovernmental conference that took place in New York from 19 to 20 June 2023 when 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 (BBNJ Agreement) was adopted.
- (13) The European Union has achieved its objectives in the negotiations and took an active part in the outcome.
- (14) The BBNJ Agreement covers four areas: marine genetic resources and the sharing of benefits; area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and the transfer of marine

technology. It will further support the achievement of the 2030 UN Agenda for Sustainable Development, in particular its Sustainable Development Goal 14 (“Life Below Water”). The BBNJ Agreement will also contribute to meeting the goals and targets of the Kunming-Montreal Global Biodiversity Framework agreed in December 2022, including its target to protect at least 30% of the ocean by 2030.

- (15) The BBNJ Agreement is in conformity with the environmental objectives of the European Union as referred to in Article 191 of the Treaty on the Functioning of the European Union, namely preserving, protecting and improving the quality of 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.
- (16) Becoming a Party to the BBNJ Agreement will promote consistency in the European Union’s conservation and management approach across the ocean and reinforce its commitment to the long-term conservation and sustainable use of marine biological resources globally.
- (17) Therefore, the BBNJ Agreement should be signed on behalf of the European Union.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The signing 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 is hereby approved on behalf of the European Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

#### *Article 2*

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the European Commission.

#### *Article 3*

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

Done at Brussels,

*For the Council  
The President*