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Proposal for a

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The objective of this proposal is for the Commission to obtain authorisation from the Council to conclude 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 ('the BBNJ Agreement') on behalf of the European Union (EU).

The EU and its Member States have been engaged in an international process with the United Nations (UN) to develop this Agreement since 2004. On the basis of the relevant Council Decisions authorising the opening of negotiations on behalf of the EU¹, the 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 Conference² on 19 June 2023. The EU signed the BBNJ Agreement on 20 September 2023.

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 covers in particular 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. It 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 Sustainable Development Goal 14 (Life Below Water). The BBNJ Agreement will also help reach the goals and targets set under the Global Biodiversity Framework (adopted under the Convention on Biological Diversity), in particular 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 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 that will be covered by it (environment policy, maritime transport policy, maritime security, energy policy, common fisheries policy, internal market policy, common commercial policy, research and technological development policy, climate policy and other relevant policies) and with

¹ Adopted by the Council on 22 March 2016 and on 19 March 2018.

² Intergovernmental Conference 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.

relevant bilateral and multilateral agreements to which the EU 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.

Since the BBNJ Agreement is an implementing agreement under UNCLOS and this Convention is already part of the EU *acquis*, the Commission also ensured that the provisions and the balance of rights and obligations enshrined in UNCLOS and reflected in the EU *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 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 UN context.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Legal basis

The proposal is made under Article 192(1) and Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU). Article 218 TFEU lays down the procedure for negotiating and concluding of agreements between the European Union and third countries or international organisations. In particular, paragraph 6 provides for the Council, on a proposal from the Commission as negotiator, to adopt, after obtaining the consent of the European Parliament, a decision authorising the conclusion of an agreement on behalf of the EU.

In accordance with Article 191 and 192(1) TFEU, the EU is required to contribute to the pursuit 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.

Considering the objectives and substantive provisions of the BBNJ Agreement as well as all applicable relevant EU policies, the centre of gravity approach indicates that the environmental legal basis is the most appropriate for concluding the BBNJ Agreement.

4. BUDGETARY IMPLICATIONS

The BBNJ Agreement creates a dedicated institutional structure. This includes a secretariat, a Scientific and Technical Body, a Clearing-House Mechanism, a capacity-building and transfer of marine technology 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, where an initial budget should be agreed for the BBNJ Agreement.

In addition to institutional costs, 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 global costs 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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (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 (BBNJ Agreement) was adopted in New York on 19 June 2023.
- (2) In accordance with Council Decision (EU) 2023/1974 ⁽²⁾, the BBNJ Agreement was signed on 20 September 2023, on behalf of the Union, subject to its conclusion at a later date.
- (3) Pursuant to its Article 68(1), the BBNJ Agreement will enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession. The BBNJ Agreement is open to all States and regional economic integration organisations. Any instrument deposited by a regional economic integration organisation will not be counted as additional to those deposited by the Member States of that organisation. The BBNJ Agreement is open to parties and non-parties to the United Nations Convention on the Law of the Sea (UNCLOS).
- (4) By Council Decision 98/392/EC ⁽³⁾, the Union concluded UNCLOS in respect of those matters governed by it for which competence has been transferred to the Union by its Member States.
- (5) In its conclusions of 20 July 2023 ⁽⁴⁾, the Council welcomed the adoption of the BBNJ Agreement and underlined the commitment of the Union and its Member States to the Agreement's swift ratification and implementation.

¹ [OJ [...], [...], p. [...].]

² 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. 1-3).

³ 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).

- (6) The objective of the BBNJ Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of UNCLOS and further international cooperation and coordination.
- (7) Under the BBNJ Agreement, Parties are to cooperate for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies in the achievement of the objectives of this Agreement.
- (8) The BBNJ Agreement covers four areas: marine genetic resources including the fair and equitable sharing of benefits (Part II of the BBNJ Agreement), measures such as area-based management tools, including marine protected areas (Part III of the BBNJ Agreement), environmental impact assessments (Part IV of the BBNJ Agreement), as well as capacity building and the transfer of marine technology (Part V of the BBNJ Agreement). The BBNJ Agreement will further support the achievement of the 2030 UN Agenda for Sustainable Development, in particular its Sustainable Development Goal 14 ('Life Below Water') and contribute to meeting the goals and targets of the Kunming-Montreal Global Biodiversity Framework.
- (9) The BBNJ Agreement is in conformity with the environmental objectives of the 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.
- (10) In accordance with Article 67(2) of the BBNJ Agreement, the Union should, in its instrument of approval declare the extent of its competence in respect of the matters governed by the BBNJ Agreement.
- (11) Pursuant to Article 70 in conjunction with Article 10(1) of the BBNJ Agreement, the Union may make an exception to this Agreement if that exception is expressly provided by other articles of the BBNJ Agreement. The Union should make an exception to exclude any retroactive effects of the application of the provisions of Part II related to Marine Genetic Resources, including the fair and equitable sharing of benefits.
- (12) The BBNJ Agreement, the Declaration of Competence and the Exception on non-retroactivity pursuant to Article 70 in conjunction with Article 10(1) of the BBNJ Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 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 BBNJ Agreement') is hereby approved on behalf of the Union.

⁴ Council Conclusions on the EU priorities at the United Nations during the 78th session of the United Nations General Assembly, September 2023 – September 2024 (ST 11688/23).

The text of the BBNJ Agreement is attached to this Decision (Annex 1).

Article 2

The Declaration of Competence required by Article 67(2) of the BBNJ Agreement is hereby approved.

The Declaration of Competence is attached to this Decision (Annex 2).

Article 3

The Exception on non-retroactivity under Article 70 in conjunction with Article 10(1) of the BBNJ Agreement is hereby adopted.

The Exception under Article 70 in conjunction with Article 10(1) of the BBNJ Agreement is attached to this Decision (Annex 3).

Article 4

The Commission shall proceed, on behalf of the Union, to the deposit of the instrument of approval in accordance with Article 66 of the BBNJ Agreement, together with the Declaration of Competence and the Exception on non-retroactivity under Article 70 in conjunction with Article 10(1) of the BBNJ Agreement.

Article 5

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

Done at Brussels,

*For the Council
The President*