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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document COM(2018) 138 final.

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Brussels, 19.3.2018
COM(2018) 138 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on a Global Pact for the Environment

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

The development of a new instrument of international environmental law aiming to complement and improve the coherence of international environmental law and to facilitate the implementation of existing obligations under international environmental law, has been initiated by an international group of legal experts with the support of the French government. On 24 June 2017, a draft text of a "Global Pact for the Environment" (hereinafter referred to as "the Pact") was presented at Sorbonne University in Paris. The President of the French Republic committed on this occasion to introducing the project of the Pact to the United Nations General Assembly, and the project was presented to the United Nations on 19 September 2017, in the margins of the ministerial week of the General Assembly's 72nd session.

The main objectives of the Pact, as set out by its proponents, are:

- To include in a legally binding treaty the fundamental principles of environmental law, already included in universal political declarations, so as to make them enforceable before internal courts.
- To make universal the main provisions of legally binding conventions that are not universal.
- To add new principles, in view of new challenges – the draft text prepared by the lawyers includes, for example, principles of non-regression and resilience, as well as a duty of care for the environment.

[To be updated once the Resolution will have been formally submitted and/or adopted]
Further to the 19 September 2017 meeting in New York, an ad-hoc group of countries led by France drafted a procedural resolution for adoption by the General Assembly. The draft resolution was made available electronically for co-sponsorship on 20 December 2017 *[and officially presented to the General Assembly on [insert date] 2018]*. The proponents aim to have the resolution adopted in March 2018, so that formal negotiations on the Pact can start during the spring of 2018. Through that resolution, which is still subject to informal discussion in New York and has not yet been formally submitted, the General Assembly would:

- decide to develop an international instrument, called "Global Pact for the Environment", that would aim to complement and improve the coherence of international environmental law and facilitate the implementation of existing obligations under international environmental law;
- decide to establish, prior to holding an intergovernmental conference, an open-ended intergovernmental working group to negotiate a Global Pact for the Environment, which would meet in New York, from 2018 until preferably 2020;
- request the President of the General Assembly to appoint two co-facilitators to lead the consultations and negotiations of the working group, in regular coordination and consultation with all Member States, regional groups, and all relevant stakeholders;
- decide that the first meeting of the working group will examine matters related to the organization of work among members of the group;

- request the Secretary General to arrange for support to be provided by the United Nations Environment Programme (UNEP), for the performance of its work, secretariat services and the provision of essential background information and relevant documents;
- request UNEP to provide the necessary assistance for multi-stakeholders consultations in order to collect input on the main elements of a Global Pact for the Environment;
- recommend that the open-ended intergovernmental working group concludes its work no later than 2020.

The proponents of the Pact have made it clear that during the negotiating process, the work carried out by the legal experts would not be considered as a 'zero draft'.

The French delegation informed the Council of the European Union and the European Commission about this initiative in the framework of meetings of the Working Party on International Environment Issues (WPIEI-Global), starting in September 2017.

2. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Given that only the general objectives of the initiative are known and the existing legal experts' draft text of the Pact has no official status, at this point in time, consulting on the initiative would be of limited value. A roadmap was published on 15 February 2018 to explain to stakeholders why this recommendation for a Council decision was being prepared and what it aimed to achieve. Stakeholders have had the opportunity to provide feedback during a period of 4 weeks after the roadmap was published. Citizens and stakeholders will be consulted after the process has been formally launched by the General Assembly. All appropriate means of consultation will be employed once the new international instrument is taking shape in the context of the United Nations working group. Relevant stakeholders include the representatives of the Member States' administrations, non-governmental organisations, EU citizens and the general public and may include other stakeholders depending on the developments of the negotiation process.

Similarly, no impact assessment has been carried out as the exact scope and content of the negotiations remain to be determined. The aim of EU participation in the negotiations is to maximise the international instrument's alignment with relevant EU and other international law.

3. LEGAL ELEMENTS OF THE RECOMMENDATION

The objective of this recommendation is to obtain from the Council the authorisation for the Commission to negotiate the future Global Pact on behalf of the EU. The legal basis for the Council to authorise the opening of negotiations is Article 218(3) and (4) TFEU.

The subject matter of the Pact would fall largely within EU policies and competences, in particular in the field of environmental protection (Article 192(1)) and, as a matter of EU law, negotiations could not be conducted without EU participation.

The rules of international law and of EU law on the protection of the environment need to remain consistent and there is thus a need for action within the meaning of Article 216(1) TFEU so as to protect the integrity of EU law.

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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 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Union is a party to numerous multilateral environmental agreements and contributes to their effective implementation through its internal and external policies and legislation.
- (2) On *[scheduled for March 2018 – insert actual date]*, the United Nations General Assembly adopted the resolution "Development of a Global Pact for the Environment to strengthen the implementation of international environmental law" *[check final title, add reference]*, establishing an open-ended *[intergovernmental]* working group to negotiate a Global Pact for the Environment ('the Pact'), and deciding that the open-ended *[intergovernmental]* working group is to meet from 2018.
- (3) Article 191 of the Treaty specifies Union competencies in the area of the environment. In order to protect the integrity of Union law and to ensure that the rules of international law and Union law on the protection of the environment remain consistent, it is necessary that the Union participates in the negotiations on the Pact.
- (4) The Commission should therefore be authorised to open negotiations on behalf of the Union.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, a Global Pact for the Environment.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the *[name of the special committee to be inserted by the Council]*.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*