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From:	General Secretariat of the Council
To:	Council
No. Cion doc.:	11329/22 + ADD 1 - COM(2022) 342 final
Subject:	Council Decision authorising the opening of negotiations on behalf of the European Union for an international agreement on plastic pollution - Adoption = Statement

Statement from the European Commission

The Commission welcomes the swift progress by the Council of the preparation and adoption of its decision to authorise the entering into negotiations on behalf of the European Union for an international agreement on plastic pollution.

The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission reserves all its rights in this regard.

The Commission also considers that the scope of the authorisation as set out in Article 1 of the Decision should extend to matters falling within all Union's competences, as defined by the Treaties. In this respect, the Commission considers it incorrect and contrary to case law of the Court to limit the authorisation to solely matters in respect of which the Union has exclusive competence. We understand this authorization covers areas where the Union has exercised competence to date, thus at least the sizeable number of Union rules on plastics set out in the Explanatory Memorandum of the Commission's recommendation to the Council which could be affected or altered in scope depending on what is negotiated. It also covers areas that are largely covered by Union rules. Further, we understand that the authorization also includes matters covered by foreseeable future developments of Union law on plastics, such as forthcoming proposals by the Commission on intentionally added microplastics, review of packaging and waste packaging directives and similar. Since the foreseeable developments of Union law fall within Union's exclusive competence, the Commission, as guardian of the Treaties, will monitor that there is no violation thereof.

The Commission will therefore pursue the negotiations in full respect of the above-mentioned provisions and principles.

The Commission reserves all its rights in this regard.