



Council of the
European Union

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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Council Decision authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law
- *Adoption*

Commission statement

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 a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law.

However, as the Council is aware, 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 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 also considers that the scope of the authorisation as set out in Article 1 of the Decision should extend to all matters falling within the Union's competences, as defined by the Treaties. In this respect, the Commission considers it legally incorrect to limit the authorisation solely to "matters falling under the exclusive Union competence". This could adversely impact the effectiveness of Union's action on international scene should matters arise in the course of the negotiations in relation to other areas of Union competence. Notwithstanding the above, based on the zero draft of the convention, it appears that the entire convention may fall within exclusive Union competence. In particular, the conclusion of the convention may affect common rules or alter their scope in the meaning of Article 3(2) TFEU given its significant overlap with the proposed AI Act as well as other relevant existing EU legislation.

The Commission also considers the possible revision or further development of negotiating directives as set out in Article 2 of the Decision to be subject to the Commission's right of initiative for those matters.

As regards the addition in Article 3 addressing situations of partially Union and partially Member States competence, the Commission notes that it appears that, based on the zero draft of the Convention, the entire convention may fall within the Union competence, and not within the Member States exclusive competence.

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

The Commission reserves all its rights and looks forward to good cooperation with the Member States in the implementation of the decision in compliance with the duty for sincere cooperation.
