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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2023) 419 final

Subject: ANNEX to the recommendation for a COUNCIL DECISION authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172), as well as a draft Explanatory Report thereto

Delegations will find attached document COM(2023) 419 final - Annex.

Encl.: COM(2023) 419 final - Annex



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to the recommendation for a

COUNCIL DECISION

authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172), as well as a draft Explanatory Report thereto.

ANNEX

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (1) The Convention is compatible with Union law on the protection of the environment through criminal law, including the ongoing negotiations on the Commission Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC¹.
- (2) The Convention ensures respect for the fundamental rights and freedoms as enshrined in the European Union Treaties and the Charter of Fundamental Rights of the European Union.

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (3) The specific objectives set out in detail below are reached, while ensuring that the outcome of the negotiations is compatible with the relevant Union's internal rules on environmental crime. These internal rules, as they evolve in the Union legislative procedure and eventually in their final adopted form, will serve as the baseline for the Union's negotiating position.
- (4) The negotiations lead to a common understanding of environmental crime categories and sanctions for natural and legal persons in the EU Member States and Member States of the Council of Europe and will on this basis facilitate international cooperation.
- (5) The envisaged new Convention is compatible with the Union acquis, which contributes to the pursuit of the objectives of the Union policy protecting the environment and reflects as much as possible the scope of the new Environmental Crime Directive that is currently being negotiated. The new Environmental Crime Directive and the new Convention mutually reinforce and strengthen each other in their objectives to increase the level of environmental protection and to achieve an improvement of the quality of the environment.
- (6) Environmental offences in the Convention and their scope are clearly defined and are compatible with the list of criminal offences in Article 3(1) of the Commission proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC² and take account of the progress in the negotiations between Union co-legislators and – eventually - the final version of the Directive.
- (7) The Convention contains a definition of the liability of legal persons which is compatible with the definition in the Union acquis.
- (8) The Convention ensures the availability of effective, dissuasive, and proportionate sanctions for natural and legal persons.

¹ COM (2021) 851 final, 2021/0422 (COD)

² See footnote 1

- (9) The Convention contains appropriate rules on jurisdiction that ensure that Member States have – at least - jurisdiction regarding environmental offences committed by their nationals or that occur on their territory or on board of ships flying their flag.
- (10) The Convention fosters international cooperation and mutual and promotes that existing mechanism to cooperation, exchange information and provide mutual assistance are used.
- (11) The Convention contains provisions to strengthen national enforcement chains regarding environmental crime to enable them to successfully detect, investigate, prosecute and sanction environmental offences.
- (12) The role of the citizens in detecting and bringing to justice environmental crime is acknowledged and their rights defended.
- (13) Member States take measures to raise awareness of the harmfulness of environmental offences. The precautionary principle aiming to avoid environmental offences is recognised.

Regarding the functioning of the Convention, the Union should aim to achieve that:

- (14) The amended Convention will take account of existing global and regional instruments, and ongoing international cooperation in the global fight against environmental crime.
- (15) The amended Convention preserves its implementation mechanism and final provisions, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension, and denunciation.