



2023/2170

16.10.2023

COUNCIL DECISION (EU) 2023/2170

of 28 September 2023

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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(2), in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 23 November 2022, the Committee of Ministers of the Council of Europe set up and mandated the Committee of Experts on the protection of the environment through criminal law to draft a new Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172) (the 'new Convention') by 30 June 2024.
- (2) The new Convention is intended to provide for common rules on purpose and scope, terminology and definitions, serious criminal offences, persons liable and penalties, procedural rights and cooperation, preventive measures and civil society participation. Certain parts of the new Convention fall in an area covered to a large extent by Union law, in particular Directive 2008/99/EC of the European Parliament and of the Council ⁽¹⁾ and the proposal for a new Directive which would replace it. This could result in Union law being affected or altered in scope by the new Convention within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (TFEU).
- (3) In order to protect the integrity of Union law and to ensure consistency between the rules of international law and Union law, it is necessary that the Commission participate in the negotiations on the new Convention, for matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules or the adoption of which is expected in the foreseeable future.
- (4) This Decision should be without prejudice to the division of competences between the Union and its Member States as defined by the Treaties, to the participation of Member States in the negotiations on matters falling outside the mandate granted to the Commission, and to any subsequent decision to conclude the new Convention.
- (5) The negotiating directives set out in the addendum to this Decision are addressed to the Commission and may be revised and further developed if appropriate depending on the evolution of the negotiations.
- (6) In view of the fact that all Member States are also Members of the Council of Europe, the Member States participating in the negotiations should support the Union negotiator in carrying out the tasks following from the Treaties, in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the Treaty on European Union (TEU), in full mutual respect.
- (7) In accordance with the principle of sincere cooperation, the Commission and the Member States should cooperate closely during the negotiation process, including via regular contact with the Member States' experts and their representatives in Strasbourg.

⁽¹⁾ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

- (8) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to participate, on behalf of the Union, in negotiations as regards matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules or the adoption of which is expected in the foreseeable future, on the new Convention on the protection of the environment through criminal law superseding and replacing the 1998 Council of Europe Convention on the Protection of the Environment through Criminal Law (ETS No. 172).

2. The negotiations shall be conducted on the basis of the negotiating directives set out in the addendum to this Decision. The Council may subsequently issue additional directives to the Commission.

Article 2

The negotiations shall be conducted in consultation with the Council Working Party on Judicial Cooperation in Criminal Matters (the 'COPEN Working Party'), which is hereby designated as the special committee within the meaning of Article 218(4) of the Treaty on the Functioning of the European Union.

The Commission shall regularly report to the COPEN Working Party on the progress of the negotiations and shall forward all negotiating documents to it as early as possible.

Whenever so requested by the Council, the Commission shall report to the Council on the conduct and the outcome of the negotiations, including in writing.

Article 3

This Decision is addressed to the Commission.

Done at Brussels, 28 September 2023.

For the Council
The President
F. GRANDE-MARLASKA GÓMEZ