



Brussels, 4.1.2018  
COM(2017) 812 final

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE RECOMMENDATION**

#### **• Reasons for and objectives of the recommendation**

The UN General Assembly, in its Resolution 68/70, paragraph 198, requested the UN Ad-Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereinafter "the UN BBNJ Working Group") to make recommendations on the scope, parameters and feasibility of an international instrument under the United Nations Convention on the Law of the Sea (hereinafter, "UNCLOS").

Building on its work since 2006, the UN BBNJ Working Group adopted recommendations at its final meeting in January 2015, which stressed the need for a comprehensive global regime to better address the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction through the development of an international legally-binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (hereinafter, "the Instrument").

Resolution 69/292 of the UN General Assembly, adopted on 19 June 2015, established a Preparatory Committee (hereinafter, "PrepCom"), open to all States Members of the United Nations, members of specialised agencies and parties to the UNCLOS, to make substantive recommendations to the General Assembly on the elements of a draft text of the Instrument. It also set out that the UN General Assembly should further decide on the convening of an intergovernmental conference (hereinafter, "IGC") for the negotiation of such Instrument as well as its starting date, taking into account the report of the PrepCom, before the end of its seventy-second session.

The Council, in March 2016, decided to authorise the Commission to negotiate, on behalf of the Union (Decision 6862/16 of 15 March 2016), as regards matters falling within the Union's competence and in respect of which the Union has adopted rules, on the elements of a draft text of the Instrument. This negotiating authorisation and the directives were explicitly limited to the meetings of the PrepCom.

The PrepCom held four sessions in 2016 and 2017, the last one between 10th and 21st July 2017. The negotiations in the four sessions of the PrepCom addressed the topics identified in the recommendations from the 2011 meeting of the BBNJ Working Group, namely: marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity building and the transfer of marine technology; as well as more general cross-cutting issues including principles, decision making and dispute-settlement procedures, relationship with other instruments, participation, etc. Final recommendations were adopted by consensus on 21st July 2017 (and are included in the Report of the PrepCom – [http://www.un.org/depts/los/biodiversity/prepcom\\_files/Procedural\\_report\\_of\\_BBNJ\\_PrepCom.pdf](http://www.un.org/depts/los/biodiversity/prepcom_files/Procedural_report_of_BBNJ_PrepCom.pdf)). Among other things, the PrepCom recommended that the UN General Assembly take a decision on the convening of the IGC as soon as possible to elaborate the text of the Instrument.

It is likely that the decision to convene the IGC will be taken by the UN General Assembly by the end of 2017. The IGC could then begin its work and hold its first meeting during the first semester of 2018.

As a Party to the UNCLOS and one of the main proponents for the need for such an Instrument since the commencement of discussions at the UN in 2006, the EU should continue to actively participate in this process at the UN, thereby contributing to better conservation and sustainable use of marine biological resources of areas beyond national jurisdiction within the legal framework constituted by the UNCLOS. The EU should also ensure that provisions are included enabling it to become a Party to this Instrument.

- **Consistency with existing policy provisions in the policy area**

The Commission should ensure that the negotiations on the text of the future Instrument are fully consistent with relevant Union rules and policies in the areas which will be covered by it (environment policy, maritime transport policy, common fisheries policy, internal market policy, common commercial policy, research and technological development policy, climate policy and other relevant policies) and with relevant bilateral and multilateral agreements to which the Union is already a party.

Since the Instrument will be an implementing agreement to the UNCLOS and the UNCLOS is already part of the Union acquis, the Commission will have to ensure that the provisions and the balance of rights and obligations enshrined in the UNCLOS and reflected in the Union acquis are fully respected and that the outcome of the negotiations is fully consistent with the UNCLOS.

## **2. 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 Instrument on behalf of the EU. The legal basis for the Council to authorise the opening of negotiations is Article 218(3) and (4) TFEU.

## **3. RESULTS OF CONSULTATIONS WITH INTERESTED THIRD PARTIES**

Stakeholders have not been consulted for the elaboration of the draft recommendation.

In accordance with the provisions of UNGA resolution 69/292, the decision on the convening of the intergovernmental conference was to be taken by the UN General Assembly by September 2018. However, it was decided to accelerate the work of the UN in order to convene the intergovernmental conference as soon as possible, with a first meeting already in 2018, thereby maintaining the momentum of the discussions. It is necessary to adopt the negotiating directives before the commencement of the conference and thus, it was not possible to undertake a public consultation, nor publication of a roadmap for feed-back by stakeholders and citizens in line with established practice.

In actual fact, the EU has been politically committed to this process for many years and regular consultations with relevant stakeholders, in particular civil society organisations and other organisations represented in the UN context, have taken place.

Involvement of and feed-back from stakeholders will also be sought during the negotiating process when more concrete (substantive) negotiating positions will be required and it will be necessary to ensure that the negotiating positions are informed by stakeholders' views.

Recommendation for a

## COUNCIL DECISION

### **authorising the opening of negotiations on an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction**

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 ratified the United Nations Convention on the Law of the Sea (hereinafter referred as "UNCLOS") by Council Decision 98/392/EC of 23.03.1998<sup>1</sup>, being the only international organisation which is a party to that Convention within the meaning of Article 305(1)(f) and Article 1 of Annex IX of the UNCLOS to date.

(2) As a party to the UNCLOS, the Union has participated in the UN Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction that met from 2006 to 2015; the Union also participated in the four sessions, in 2016 and 2017, of the Preparatory Committee which was mandated to make substantive recommendations to the General Assembly on the elements of a future international legally-binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (hereinafter referred to as "the Instrument").

(3) The Preparatory Committee adopted its report on 21 July 2017 and recommended to the General Assembly to consider the elements contained in its recommendation and to take a decision, as soon as possible, on the convening of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the Preparatory Committee and to elaborate the text of an international legally-binding instrument under the UNCLOS.

(4) On the basis of these recommendations, the United Nations General Assembly decided on [...] to convene an intergovernmental conference to elaborate the text of an international legally-binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

(5) The Union, as a Party to the UNCLOS, should fully participate in the negotiations of the Instrument.

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<sup>1</sup> OJ L 179, 23.06.1998

HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is hereby authorised to negotiate, on behalf of the Union, an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

*Article 2*

The negotiating directives are set out in the Annex.

*Article 3*

These negotiations shall be conducted in consultation with the special committee to be designated by the Council.

*Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*