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ANNEX 1

ANNEX

to the

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**

ANNEX

NEGOTIATING DIRECTIVES

1. Principles

In the framework of the negotiation of an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (hereinafter the "Instrument"), the Commission shall seek to ensure:

- that the provisions of the Instrument are fully consistent with international law and in particular with the provisions of the UNCLOS and that the balance of rights and obligations enshrined in the UNCLOS is not undermined by the future Instrument;
- that the provisions of the Instrument are consistent with relevant Union law and with relevant bilateral and multilateral agreements to which the Union is a party.

The Commission shall ensure that the negotiations are conducted in consultation with the special committee, meeting in Brussels or sur place. The Commission shall report regularly to the Council on the outcome of the negotiations.

2. Orientations

2.1. The Commission shall seek to ensure that:

- The scope of the negotiations covers, as a package, the elements specified in Resolution [...];
- The rules of procedure for the conducting of the negotiations in the intergovernmental conference allow for full participation of the EU in the negotiations and are consistent with past practice for the negotiation of implementing agreements to the UNCLOS;
- The Instrument provides for an effective framework for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- The Instrument is designed to implement, strengthen and elaborate a number of obligations already embodied in the UNCLOS while giving due regard to the rights and the freedoms set out in the UNCLOS;
- The Instrument provides for an express obligation on States to cooperate, individually and through competent international and regional organisations and arrangements, for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;
- The Instrument does not undermine existing legal instruments and frameworks and competent global, regional and sectoral bodies or prejudice the rights and obligations thereunder.
- The Instrument respects the mandates of competent global, regional and sectoral bodies, aims at synergies and avoids duplication of their activities;
- The Instrument is without prejudice to the rights and obligations of Parties to the UNCLOS including their entitlement to maritime zones under UNCLOS.

- The Instrument contains appropriate provisions enabling the Union to become a Party and to fully participate within the decision-making processes to be established in the Instrument, consistent with Article 305 and Annex IX of the UNCLOS.

2.2. More in particular, the Commission shall seek to ensure that the Instrument includes or reflects, inter alia, the following:

a) Cross-cutting issues

- General principles for good governance, such as: the protection and preservation of the marine environment, international cooperation, the use of science-based approach, the ecosystem approach, the precautionary principle, the polluter-pays principle, sustainable and equitable use of marine resources, public availability of information, transparent and open decision making processes and the responsibility of States as stewards of the global marine environment;
- An appropriate and cost-effective framework and mechanisms, whether new or already existing, including for the purpose of enhancing cooperation and co-ordination with and between existing competent global, regional, and sectoral bodies, in particular those mandated to regulate activities in areas beyond national jurisdiction or to protect the marine environment in those areas;
- Appropriate mechanisms to ensure compliance with the substantive provisions of the Instrument;
- Appropriate mechanisms for dispute settlement consistent with the UNCLOS.

b) Marine genetic resources (MGRs), including questions on the sharing of benefits

The Commission shall seek to ensure that the Instrument furthers the conservation and sustainable use of MGRs originating in areas beyond national jurisdiction. In particular, the Instrument should:

- Promote environmentally sound access to genetic resources in a manner consistent with their conservation and sustainable use, and not unduly restrict the freedom of marine scientific research as enshrined in the UNCLOS;
- Be designed so as not to regulate matters relating to intellectual property rights or other associated matters;
- Ensure legal certainty for users of MGRs and encourage biotechnological innovations which are not detrimental for biodiversity;
- Improve the transparency and the availability of information on genetic resources originating in areas beyond national jurisdiction;
- Address questions on the sharing of benefits arising from the use of MGRs from areas beyond national jurisdiction.

c) Measures such as area-based management tools, including marine protected areas (MPAs)

The Commission shall seek to ensure that the Instrument provides, inter alia, procedures/mechanisms for:

- The identification, designation and establishment of globally recognised MPAs, including relevant criteria based on the best available scientific information; the establishment of comprehensive conservation and management objectives for the designated areas; the monitoring and surveillance of activities aimed at achieving the conservation and management objectives;

- The global recognition of area-based management tools established by relevant regional organisations and conventions which meet adopted criteria;

Thereby, the Commission shall seek to ensure that the Instrument contributes to the implementation of the Union's international commitments related to the creation of a global network of effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures.

d) Environmental impact assessments (EIAs)

The Commission shall seek to ensure that the Instrument facilitates the evaluation of the cumulative impacts of different activities taking place in the same area, with a view to preventing adverse effects on marine biodiversity, including from new and emerging activities, and also taking due account of the current state of the environment as well as the cumulative effects of other threats such as climate change. In particular, the Commission shall seek to ensure that the Instrument clarifies, strengthens and elaborates the obligations under Article 206 of the UNCLOS so that:

- Individual and cumulative environmental impacts of activities under the jurisdiction or control of States Parties which may cause substantial pollution of or significant and harmful changes to the marine environment ("harmful effects"), including marine biodiversity, in areas beyond national jurisdiction are properly assessed through environmental impact assessments and strategic environmental assessments, as appropriate; and
- Any such harmful effects are identified and taken into account in any decision making process and such activities are consistent with States' obligations under the UNCLOS to protect and preserve the marine environment, including through the adoption of suitable measures to prevent and mitigate any such harmful effects.

e) Capacity-building and transfer of marine technology

The Commission shall seek to ensure that the Instrument:

- Includes provisions, in line with the UNCLOS, for capacity-building and transfer of marine technology for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction;
- Facilitates international cooperation on capacity building and the transfer of marine technology to achieve the objectives and requirements of the UNCLOS for the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction.