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2025/0373 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Preparatory Commission and the first Conference of the Parties of the Agreement 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. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the final meeting of the Preparatory Commission and the first meeting of the Conference of Parties of the Agreement 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 in connection with the envisaged adoption of the rules of procedure of the Conference of Parties, the financial rules governing the funding of the Conference of Parties, the funding of the secretariat and any subsidiary bodies, and the operationalisation of the Agreement's financial mechanism.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement 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 Agreement 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 BBNJ Agreement') aims to better protect and manage marine biological diversity of areas beyond national jurisdiction. Such areas cover nearly two-thirds of the world's ocean and about 95% of its volume and comprise the high seas and the international seabed area. The BBNJ Agreement covers in particular issues relating to marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments, and capacity-building and the transfer of marine technology. The BBNJ Agreement will enter into force on 17 January 2026. The European Union is a party to the BBNJ Agreement.

The Commission conducted negotiations from 2016 to 2023 with a view to concluding the BBNJ Agreement on the basis of the relevant Council Decisions[1]. The final text of the BBNJ Agreement was adopted by the BBNJ Intergovernmental Conference[2] on 19 June 2023. The EU signed the BBNJ Agreement on 20 September 2023[3] and ratified it on 28 May 2025[4].

2.2. The Conference of Parties to the BBNJ Agreement

The Conference of the Parties to the BBNJ Agreement ('the Conference of Parties') is established by Article 47(1) of the BBNJ Agreement. Article 47(2) provides that the first meeting of the Conference of the Parties shall be convened by the Secretary-General of the UN no later than one year after the entry into force of the Agreement, i.e. by 17 January 2027.

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1 Adopted by the Council on 22 March 2016 (OJ L 79, 30.3.2016, pp. 32) and on 19 March 2018.

2 Intergovernmental Conference 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.

3 Council Decision (EU) 2023/1974 of 18 September 2023 on the signing, on behalf of the European Union, of the Agreement 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, OJ L 235, 25.9.2023, pp. 1.

4 Council Decision (EU) 2024/1830 of 17 June 2024 on the conclusion, on behalf of the European Union, of the Agreement 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, OJ L, 2024/1830, 19.7.2024.

According to the BBNJ Agreement, the Conference of Parties may be called upon to adopt acts having legal effects.

Pursuant to Article 47(4) of the BBNJ Agreement, at its first meeting, the Conference of Parties shall adopt, by consensus, rules of procedure for itself ('the rules of procedure') and the financial rules governing its funding and the funding of the secretariat and any subsidiary bodies ('the financial rules').

2.3. The Preparatory Commission for the entry into force of the Agreement 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 Preparatory Commission for the entry into force of the Agreement 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 Preparatory Commission') was established by the UN General Assembly[5] to prepare for the convening of the first meeting of the Conference of the Parties. At its final meeting, the Preparatory Commission will take decisions on any recommendations to the Conference of the Parties.

The Preparatory Commission is open to all States Members of the UN, members of the specialised agencies and parties to the UN Convention on the Law of the Sea ('UNCLOS'). After 20 September 2025, the taking of decisions by the Preparatory Commission shall only be by States and regional economic integration organisations that have signed the Agreement or have ratified, approved, accepted or acceded to the Agreement. The Preparatory Commission shall exhaust every effort in good faith to reach agreement on substantive matters by consensus[6]. It will cease to exist at the conclusion of the first Conference of the Parties.

The EU is a party to UNCLOS[7] and has ratified the BBNJ Agreement. Therefore, the EU is a party participating in the Preparatory Commission.

The next meeting of the Preparatory Commission is scheduled from 23 March to 3 April 2026.

2.4. The envisaged acts of the Preparatory Commission and the Conference of Parties

During its final meeting, the Preparatory Commission is to adopt a recommendation to the Conference of Parties to the BBNJ Agreement on the rules of procedure, on the financial rules, and on the operationalisation of the financial mechanism. During its first meeting, the Conference of Parties to the BBNJ Agreement shall adopt rules of procedure for itself and, financial rules governing its funding and the funding of the secretariat and any subsidiary bodies, and decisions on the operationalisation of the financial mechanism, based on the recommendations adopted by the Preparatory Commission.

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5 UNGA Resolution 78/272 adopted on 24 April 2024 on the Agreement 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.

6 UNGA Resolution 72/249 adopted on 24 December 2017 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, paragraph 17 (applicable to the Preparatory Commission as provided by paragraph 7 of UNGA Resolution 78/272)

7 OJ L 179, 23.6.1998, pp. 1

The rules of procedure are envisaged to address the frequency, location, organisation and conduct of meetings of the Conference of Parties, participation of observers, preparation of the agendas, representation and credentials, establishment and functioning of the bureau, the role of the secretariat, the role of the head of the secretariat, voting and decision-making, amendments to the rules of procedure, establishment of subsidiary bodies, specific procedures for subsidiary bodies as necessary, language regime, rules on elections, procedures for requesting advisory opinions from the International Tribunal for the Law of the Sea, cooperation mechanism with relevant legal instrument and frameworks and relevant global, regional, subregional and sectoral bodies, and any other relevant rules in line with the Agreement. The rules of procedure will influence the way decisions by the Conference of the Parties are made.

The financial rules will establish the rules governing the funding of the Conference of the Parties, of its secretariat and any subsidiary bodies, including the basis for the assessed contribution by the Parties, and the contribution of the Union to the budget of the Agreement and will be legally binding on the parties to the Agreement.

The operationalisation of the Agreement's financial mechanism established in Article 52 will define how the different elements of the financial mechanism will articulate and contribute to the provision of financial resources under the Agreement to assist developing States Parties in its effective implementation.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

To ensure the proper functioning of the BBNJ Agreement, the EU should support rules of procedure that provide for the efficient, cost effective, transparent and orderly functioning and organisation of meetings of the Conference of the Parties, and that allow for the full participation of the Union as a Party in accordance with the BBNJ Agreement.

To ensure that the BBNJ Agreement is correctly funded, the EU should support financial rules and the operationalisation of a financial mechanism in a way that establish a fair and transparent process, responsive to the circumstances of each Party, with a view to ensure that each Party contributes to the financial sustainability of the BBNJ Agreement and its implementation in a manner that is equitable and consistent with their ability to contribute.

The adoption of the rules of procedures and the financial rules is necessary for the implementation and functioning of the BBNJ Agreement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions '*establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[8].

4.1.2. Application to the present case

The Preparatory Commission is a body established by the UN General Assembly. The Conference of the Parties is a body established by the BBNJ Agreement.

The final meeting of the Preparatory Commission will adopt decisions for recommendations to the Conference of the Parties on the rules of procedure and on the financial rules. At its first meeting, the Conference of the Parties is set to adopt rules of procedure and financial rules based on the recommendations of the Preparatory Commission. The acts which the Preparatory Commission and the Conference of Parties are called upon to adopt at their final and first meetings respectively constitute acts having legal effects.

The rules of procedure have legal effects because they influence the way in which decisions of the Conference of Parties, that will be binding under international law or that are capable of decisively influencing the content of EU legislation, will be made.

The financial rules will determine the basis for the contribution of the Union to the budget of the BBNJ Agreement and will be binding under international law in accordance with Article 52 of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

In accordance with Article 191 and 192(1) TFEU, the EU is required to contribute to the pursuit of the following objectives: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

Considering the objectives and substantive provisions of the BBNJ Agreement as well as all applicable relevant EU policies, the centre of gravity approach indicates that the environmental legal basis is the most appropriate substantive legal basis of the proposed decision.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) TFEU, in conjunction with Article 218(9) TFEU.

[8] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

This Article 218(9) TFEU decision only covers matters of a procedural nature and does not alter the division of competences between the Union and Member States for the subject-matters governed by the BBNJ Agreement. This Article 218(9) TFEU decision does not concern the contributions of the Member States to the budget of the BBNJ Agreement, for which the Member States remain competent.

5. BUDGETARY IMPLICATION

The BBNJ Agreement creates a dedicated institutional structure. This includes a secretariat, a Scientific and Technical Body, a Clearing-House Mechanism, a capacity-building and transfer of marine technology committee, an access and benefit-sharing committee, a finance committee and a compliance committee. As established in Article 52(2) of the BBNJ Agreement, these institutions will be funded through assessed contributions of the Parties, based on the financial rules.

The financial institutional costs of the implementation of the BBNJ Agreement for the European Union will only be known after the first Conference of the Parties, where an initial budget should be agreed for the BBNJ Agreement. According to Article 47(6)(e) of the BBNJ Agreement, the Conference of Parties shall adopt a budget a such frequency and for such a financial period as it may determine.

In addition to institutional costs, implementation of the BBNJ Agreement is likely to generate financial needs to build capacity in developing countries and help the transfer of marine technology, but also, for instance, to generate the scientific knowledge needed to establish, monitor and review marine protected areas. The BBNJ Agreement provides in its Article 14(6) that, for that purpose, after the entry into force of this Agreement, developed Parties shall make annual contributions to the special fund referred to in Article 52 of the BBNJ Agreement equal to 50 per cent of that Party's assessed contribution to the budget adopted by the Conference of the Parties under Article 47(6)(e) of the BBNJ Agreement. Such payment shall continue until a decision is taken by the Conference of the Parties under Article 14(7) of the BBNJ Agreement. Potential global costs will be estimated under the BBNJ Agreement in due time, based on the operationalisation of the Agreement's financial mechanisms.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By virtue of Council Decision 98/392/EC[1], the European Community approved the United Nations Convention on the Law of the Sea of 10 December 1982 ('UNCLOS') and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof.

(2) The Agreement 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 Agreement'), was concluded by the Union by virtue of Council Decision 2024/1830[2] and [will enter] into force on 17 January 2026.

(3) The Conference of the Parties to the Agreement ('the Conference of the Parties') has been established by Article 47(1) of the Agreement. Pursuant to Article 47(4) of the Agreement, the Conference of Parties is to adopt by consensus, at its first meeting, the rules of procedure for itself ('the rules of procedure') and the financial rules governing its funding and the funding of the secretariat and any subsidiary bodies ('the financial rules').

(4) In its Resolution 78/272[3] adopted on 24 April 2024, the General Assembly of the United Nations decided to establish a preparatory commission to prepare for the entry into force of the Agreement and to prepare for the convening of the first meeting of the Conference of the Parties to the Agreement ('the preparatory commission'), at the conclusion of which the preparatory commission will cease to exist.

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1 Council Decision of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1, ELI: http://data.europa.eu/eli/dec/1998/392/oj).

2 Council Decision (EU) 2024/1830 of 17 June 2024 on the conclusion, on behalf of the European Union, of the Agreement 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, (OJ L, 2024/1830, 19.7.2024, ELI: http://data.europa.eu/eli/dec/2024/1830/oj).

3 UNGA Resolution 78/272 adopted on 24 April 2024 on the Agreement 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.

(5) , Pursuant to paragraph 9 of the General Assembly Resolution, the preparatory commission is envisaged to take decisions at its final meeting on recommendations to the Conference of the Parties on the rules of procedure and on the financial rules.

(6) The envisaged acts of the preparatory commission and the Conference of the Parties will have legal effects.

(7) It is therefore necessary to establish the position to be taken on the Union's behalf in the final meeting of the preparatory commission and the first Conference of Parties To ensure the proper functioning of the Agreement, the Union should support rules of procedure that provide for the efficient, cost effective, transparent and orderly functioning and organisation of meetings of the Conference of the Parties, and that allow for the full participation of the Union as a Party in accordance with the Agreement.

(8) To ensure that the BBNJ Agreement functioning and implementation is correctly funded, the EU should support the adoption of financial rules and operationalisation of a financial mechanism that establish a fair and transparent process, responsive to the circumstances of each Party, with a view to ensure that each Party contributes to the financial sustainability of the BBNJ Agreement and its implementation in a manner that is equitable and consistent with each Party's ability to contribute. The operationalisation of the financial mechanism established by the Union should also ensure the provision of assistance to developing States Parties in their efforts to implement the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the final meeting of the preparatory commission and the first meeting of the Conference of the Parties to the Agreement shall be the following:

(1) The Union shall support the adoption of rules of procedure that provide for the efficient, cost effective, transparent and orderly functioning and organisation of meetings of the Conference of Parties of the Agreement, that allow for the full participation of the Union as a Party in accordance with the Agreement.

(2) The Union shall support the adoption of financial rules and the operationalisation of a financial mechanism that establish a fair and transparent process, responsive to the circumstances of each Party, with a view to ensure that each Party contributes to the financial sustainability of the Agreement and its implementation in a manner that is equitable and consistent with each Party's ability to contribute, and where the financial mechanism also ensures the provision of assistance to developing States Parties in their efforts to implement the Agreement.

Article 2

Minor technical changes to the positions set out in accordance with this Decision and which are consistent with the Union position set out in Article 1UNCLOS, the Agreement, and Union law, may be agreed by the Union without further decision of the Council.

Article 3

This Decision enters into force on the date of its adoption.

Done at Brussels,

For the Council
The President