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From:	Presidency/General Secretariat of the Council
To:	Delegations
Subject:	Negotiations on the draft Council of Europe Convention on the Protection of the Environment through Criminal Law - Exchange of views on the preparation and coordination of the upcoming negotiations

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**Introduction - Council of Europe draft Convention on the Protection of the Environment through Criminal Law**

On 17 May 2023, the secretariat of the Council of Europe Committee on Crime Problems (CDPC) submitted a draft Convention on the Protection of the Environment through Criminal Law.

The CDPC invited the Member States of the Council of Europe (CoE) to send written comments on this draft no later than 28 July 2023. The first substantive discussions on the draft Convention are scheduled to take place in Strasbourg on 16-18 October 2023.

When the CDPC secretariat submitted the draft, they indicated that previous and current work carried out in the field of the protection of the environment through criminal law by other relevant international and supranational organisations had been duly taken into account, notably the ongoing work at the level of the European Union (in particular regarding the provisions on substantive criminal law related to the offences) and the United Nations.

## **EU position with regard to the negotiations**

By the end of June 2023, and in the light of Article 218 TFEU, the Commission intends to adopt a recommendation for a Council Decision authorising the Commission to participate, on behalf of the European Union, in negotiations on the draft Convention. It is likely that the Commission will also propose negotiating directives.

Subsequently, the Council will have to examine and adopt the Decision, accompanied by the negotiating directives. Following checks by the lawyer-linguists, the Commission will be notified of the Decision.

## **Questions to Member States**

The situation as described above raises several questions, which are hereby submitted to the Member States for consideration and an exchange of views:

- 1) In view of the subject matter, should the Commission (Union) be considered to have exclusive competence to conduct negotiations in the CoE on the draft Convention on the protection of the environment through criminal law, given that a number of elements in the new Convention are already covered by Union legislation (Environmental Crime Directive), or should it be considered that the negotiations fall under the mixed competence of the Commission (Union) and the Member States?
- 2) What would be the appropriate legal basis for the Council Decision? Determining this legal basis is important, because if it also includes a provision contained in Part Three, Title V TFEU (Area of freedom, security and justice), such as Article 83(2) TFEU, the opt-in / opt-out provisions of Protocols 21 and 22 kick in.
- 3) Taking into account the replies to the above questions, how would the invitation to provide comments on the draft Convention by 28 July 2023 be best handled?

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