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European Union

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**DRAFT MINUTES**  
COUNCIL OF THE EUROPEAN UNION  
(Foreign Affairs/Trade)  
11 November 2021

## CONTENTS

**Page**

### Non-legislative activities

3.	WTO reform and preparations for the 12th WTO Ministerial Conference.....	3
4.	Trade relations with the US.....	3
5.	Any other business.....	3
	a) Commission report on the implementation and enforcement of EU's trade agreements	
	b) Review of implementation and enforcement of sustainable development chapters in trade agreements	
	ANNEX - Statements for the Council minutes.....	4

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## Non-legislative activities

### 3. **WTO reform and preparations for the 12th WTO Ministerial Conference**

#### *State of play*

The Council discussed the state of preparations for the 12th WTO Ministerial Conference, in particular the possible outcomes. The Council would meet again from 29 November to 3 December in Geneva, in the margins of the WTO Ministerial Conference to adopt the Council conclusions and the Decision on the position to be taken on behalf of the EU at MC12.

### 4. **Trade relations with the US**

#### *State of play*

Based on a presentation by the Commission, the Council took stock of the latest developments and prospects for future engagement with the US. The Council discussed, in particular, the work on a positive EU-US trade agenda and the efforts towards definite settling of the outstanding disputes as well as preventing the emergence of new disputes and/or irritants.

### 5. **Any other business**

- |    |   |                  |
|----|---|------------------|
| a) | <b>Commission report on the implementation and enforcement of EU's trade agreements</b>                 | 13290/21 + ADD 1 |
| b) | <b>Review of implementation and enforcement of sustainable development chapters in trade agreements</b> | 13410/21         |
- Request by the Netherlands delegation*

- a) The Commission presented its report on the implementation and enforcement of the EU's trade agreements.
- b) At the request of the Netherlands delegation, the Council addressed issues related to the Commission's review of implementation and enforcement of sustainable development chapters in EU's trade agreements.
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Statements to the non-legislative "A" items set out in doc. 13438/21

Ad "A" item 5:

**Council Regulation on the allocation of fishing opportunities under the Protocol on the implementation of the Sustainable Fisheries Partnership Agreement (SFPA) with Mauritania**

*Adoption*

Ad "A" item 6:

**Council Decision on the conclusion of the Sustainable Fisheries Partnership Agreement (SFPA) with Mauritania and Implementing Protocol thereto**

*Agreement in principle*

*Request for the consent of the European Parliament*

Ad "A" item 7:

**Council Decision on the signing and provisional application of the Sustainable Fisheries Partnership Agreement (SFPA) with Mauritania and Implementing Protocol thereto**

*Adoption*

**STATEMENT BY THE COMMISSION**

“By its judgement in joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council) the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)(a)(v) for the decisions on the conclusion of the agreements) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

In relation to the Decision on the signing and provisional application as well as on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania and of the Implementing Protocol thereto, the Commission regrets the Council’s amendment replacing the substantive legal basis of Article 43(2) TFEU with Article 43 (without mentioning the paragraph).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.”

## STATEMENT BY THE COMMISSION 2

“The Commission considers that the Decision on the signing and provisional application of the Sustainable Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania and of the Implementing Protocol thereto, should refer to the person designated by the negotiator as the one to be empowered to sign the Protocol. Therefore, the changes to Article 2 that provide for the President of the Council to designate the person who is to sign the agreement on behalf of the Union are not in accordance with the Treaties.

The Decision on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania and of the Implementing Protocol thereto, should indicate the Commission as responsible for the notification of the Union’s consent to be bound by the Protocol. The changes to Article 3 that provide for the President of the Council to make this notification are thus also not in accordance with the Treaties.

Both the signature of an international agreement and the subsequent notification of the consent to be bound by it are acts of external representation of the Union, which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties ‘cannot alter the rules of the Treaties that the institutions are obliged to respect’ (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.”

- Ad “A” item 8:** **Council Regulation on the allocation of fishing opportunities under the Protocol on the implementation of the Sustainable Fisheries Partnership Agreement (SFPA) with the Cook Islands**  
*Adoption*
- Ad “A” item 9:** **Council Decision on the conclusion of the Protocol on the implementation of the Sustainable Fisheries Partnership Agreement (SFPA) with the Cook Islands**  
*Agreement in principle*  
*Request for the consent of the European Parliament*
- Ad “A” item 10:** **Council Decision on the signing and provisional application of the Protocol on the implementation of the Sustainable Fisheries Partnership Agreement (SFPA) with the Cook Islands**  
*Adoption*

#### **STATEMENT BY THE COMMISSION**

“By its judgement in joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council) the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)(a)(v) for the decisions on the conclusion of the agreements) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

In relation to the Decision on the signing and provisional application as well as on the conclusion of the Protocol (2021-2024) on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands, the Commission regrets the Council’s amendment replacing the substantive legal basis of Article 43(2) TFEU with Article 43 (without mentioning the paragraph).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.”

#### **STATEMENT BY THE COMMISSION 2**

“The Commission considers that the Decision on the signing and provisional application of the Protocol (2021-2024) on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands, should refer to the person designated by the negotiator as the one to be empowered to sign the Protocol. Therefore, the changes to Article 2 that provide for the President of the Council to designate the person who is to sign the agreement on behalf of the Union are not in accordance with the Treaties.

The Decision on the conclusion of the Protocol (2021-2024) on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands, should indicate the Commission as responsible for the notification of the Union's consent to be bound by the Protocol. The changes to Article 3 that provide for the President of the Council to make this notification are thus also not in accordance with the Treaties.

Both the signature of an international agreement and the subsequent notification of the consent to be bound by it are acts of external representation of the Union, which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties 'cannot alter the rules of the Treaties that the institutions are obliged to respect' (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard."

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