

Brussels, 11 January 2024  
(OR. en)

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Interinstitutional File:  
2023/0147(NLE)

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**NOTE**

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| From:    | General Secretariat of the Council                                                                                                                                                                                                                                         |
| To:      | Delegations                                                                                                                                                                                                                                                                |
| Subject: | Council Decision on the conclusion, on behalf of the Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (2023-2028)<br>- Commission statement |

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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 conclusion of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (2023-2028), 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.