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European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations

Subject:	1. Proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of a Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar and the Implementing Protocol thereto (2023-2027) - Adoption 2. Proposal for a Council Decision on the conclusion, on behalf of the European Union, of a Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar and the Implementing Protocol thereto (2023-2027) - Agreement in principle - Request for the consent of the European Parliament 3. Proposal for a Council Regulation on the allocation of the fishing opportunities under the Protocol on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar - Adoption - Statements
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Delegations will find in the Annex statements by the Commission.

Statements by the Commission

On Council Decision on the conclusion of a Sustainable Fisheries Partnership Agreement (SFPA) with the Republic of Madagascar and the Implementing Protocol thereto (2023-2027)
(statement to be added to the minutes of both Coreper and Council, at the time of adoption)

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 Decisions on the signing and provisional application as well as on the conclusion of a Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar and the Implementing Protocol thereto (2023-2027), 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.

On Council Decision on the signing and provisional application of a Sustainable Fisheries Partnership Agreement (SFPA) with the Republic of Madagascar and the Implementing Protocol thereto (2023-2027) (statements to be added to the minutes of both Coreper and Council, at the time of adoption)

Statement 1

The Commission considers that the Decision on the signing and provisional application of the Sustainable Fisheries Partnership Agreement and the Implementing Protocol thereto should refer to the person designated by the negotiator as the one to be empowered to sign. Therefore, the changes 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.

All acts of external representation in the process of treaty-making, including the signature of an international agreement and the subsequent expression of the consent to be bound by it are in accordance with Article 17(1) TEU the institutional prerogatives of the Commission, with the exception of such acts pertaining to agreements falling exclusively or predominantly within the common foreign and security policy of the Union, where it is the High Representative who represents the Union externally according to Article 27(2) TEU. Without prejudice to this exception, when the Commission and another actor designated by the Council, co-sign an international agreement on behalf of the Union, only the signature of the Commission commits the Union.

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.”

Statement 2

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 Decisions on the signing and provisional application as well as on the conclusion of a Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar and the Implementing Protocol thereto (2023-2027), 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.