



Brussels, 30 June 2016  
(OR. en)

10753/16  
ADD 1

PECHE 253

**'I/A' ITEM NOTE**

---

From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 1)/Council

---

Subject: Recommendation for a COUNCIL DECISION to authorise the Commission to open negotiations on behalf of the European Union for the conclusion of a Sustainable Fisheries Partnership Agreement and protocol with the Republic of Kenya

- *Adoption of the Council Decision*
- = *Statements by the Commission*

---

**Statement 1 by the Commission**

The Commission does not consider it necessary that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

**Statement 2 by the Commission**

Following article 31(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, the Commission fully recognizes the importance of the sustainable exploitation of marine biological resources and the consequent need to ensure a proper implementation of the concept of surplus, as expressed in article 62(2) of the UNCLOS, particularly when Sustainable Fisheries Partnership Agreements and associated protocols rule the access of the EU external fleet to resources distributed in waters of the partner country.

However, regarding article 64 of the UNCLOS and article 31(4) of the R(EU) N° 1380/2013, the Commission considers that the concept of surplus applies to a lesser degree to fishing activities exploiting highly migratory species, where management objectives and management measures – priority access rules, catch, capacity or effort limits, and sharing keys where relevant – have to be primarily fixed at regional or sub-regional levels by the Contracting Parties to competent Regional Fisheries Management Organisations, taking in due account the relevant scientific advice.

---