



Council of the  
European Union

Brussels, 10 December 2014  
(OR. en)

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**Interinstitutional Files:**

2014/0318 (NLE)  
2014/0319 (NLE)

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ADD 1 REV 1

PECHE 565

**"I/A" ITEM NOTE**

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From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 1)/Council

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No. prev. doc.: 14958/14 PECHE 507 + ADD 1 - COM(2014) 682 final  
14959/14 PECHE 508 + ADD 1 and 2 - COM(2014) 683 final

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Subject: 1) Proposal for a COUNCIL DECISION on the signature, on behalf of the European Union, and provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Madagascar  
*- adoption*

2) Proposal for a COUNCIL DECISION on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Madagascar  
*- request of the consent of the EP*

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## Statement by the Commission

By its judgement of 24 November 2014 on the joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council), the Court of Justice annulled the Council Decision 2012/19/EU of 16 December 2010 on the Declaration on the granting of fishing opportunities in EU waters to Venezuelan fishing vessels in the exclusive economic zone off the coast of French Guiana, 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) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

Therefore, in relation to the decision on the conclusion of the Protocol to the Fisheries Partnership Agreement with the Republic of Madagascar, the Commission regrets the Council's amendment replacing the legal basis of Article 43(2) in conjunction with Article 218(6)a TFEU with article 43 (without mentioning the paragraph) in conjunction with article 218(6)a TFEU.

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