



Council of the  
European Union

Brussels, 15 January 2015  
(OR. en)

---

---

**Interinstitutional File:**  
**2014/0079 (NLE)**

---

---

5263/15  
ADD 1

PECHE 19

**"I/A" ITEM NOTE**

---

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

---

Subject: Council Decision on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the Republic of the Seychelles on access for fishing vessels flying the flag of the Seychelles to waters and marine biological resources of Mayotte, under the jurisdiction of the European Union  
*- adoption*

---

**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 Fisheries Agreement with the Seychelles as regards waters around Mayotte, the Commission regrets the Council's amendment replacing the legal basis of Article 43(2) in conjunction with Article 218(6)a and (7) TFEU with article 43 (without mentioning the paragraph) in conjunction with article 218(6)a and (7) TFEU.

### **Statement by the United Kingdom**

The UK notes that the definition of 'EU waters' in Article 2(d) of the proposed Agreement is unclear, and inconsistent with the definition of 'Union waters' in Article 4.1(1) of the CFP Basic Regulation (1380/2013). The latter definition makes no reference to waters "under the jurisdiction of the EU", but makes clear that Union waters are those "under the sovereignty or jurisdiction of the Member States". It is not the EU, but Member States which exercise jurisdiction under UNCLOS. The UK notes that the proposed Agreement cannot change the division of competence between the EU and Member States. The definition of 'EU waters' in the proposed Agreement should be consistent with the definition of 'Union waters' in the CFP Basic Regulation.