



Council of the  
European Union

Brussels, 21 January 2015  
(OR. en)

---

---

**Interinstitutional File:**  
2014/0115 (NLE)

---

---

5262/15  
ADD 1 REV 1

PECHE 18

**"I/A" ITEM NOTE**

---

From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

---

Subject: Draft 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 Union and the Democratic Republic of São Tomé and Príncipe  
*- 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 Protocol to the Fisheries Partnership Agreement between the European Union and the Democratic Republic of São Tomé and Príncipe, 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 Council**

The Council disagrees with the Commission statement according to which it would flow from the judgment of 24 November 2014 November in the joined cases C-103/12 and C-165/12 that all decisions on the conclusion of external fisheries agreements fall within the scope of Article 43(2) TFEU.

The Council considers that no such a conclusion can be drawn from that judgment. The choice of the legal basis for a Union act must be based on objective factors which are amenable to judicial review and which include, in particular, the aim and content of the measure in question. In the specific case of the European Union Declaration to Venezuela, the Court took the view that the aim of the Declaration was not to ensure the fixing and allocation of fishing opportunities. However, the present Protocol contains a crucial element of fixing fishing opportunities available to the Union in the waters over which the Democratic Republic of São Tomé and Príncipe has sovereignty or jurisdiction.

Consequently, in view of the aim and the content of the Protocol, which includes the fixing and allocation of fishing opportunities within the meaning of Article 43(3) TFEU, it is appropriate that the substantive legal basis for the decision on the conclusion of the Protocol refers to Article 43 TFEU as a whole.

## **Statement by the United Kingdom and the Netherlands**

United Kingdom and the Netherlands recognise progress on areas of concern in the recently negotiated proposal for the renewal of the protocol to the Fisheries Partnership Agreement between the European Union and the Democratic Republic of São Tomé and Príncipe, such as benefits to the local fishing industry and the economic return for the European Union. However, both delegations regret that this protocol contains no clear management system to provide for the necessary protection of sharks.

Direct fishery and by-catches of shark are a concern in tuna fisheries in the Atlantic Ocean.

The United Kingdom and the Netherlands have decided to abstain and would wish to see the EU putting forward shark management measures in any future Joint Committee meetings under this protocol.