



Council of the  
European Union

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**"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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Subject: Draft 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*

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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 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 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 Agreement contains a crucial element of fixing fishing opportunities available to Seychelles in the waters of Mayotte.

Consequently, in view of the aim and the content of the Agreement, 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 Agreement refers to Article 43 TFEU as a whole.

## 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.

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