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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)/Council
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Subject:	Memorandum of Understanding on the Conservation of Migratory Sharks (Sharks MoU), Preparation of the Second Meeting of the Signatories (San José, Costa Rica, 15-19 February 2016) - Statement

Statement from the Commission

The Commission recalls that since the primary object and purpose of the Memorandum of Understanding for the conservation of migratory sharks is to address the conservation of shark species as marine biological resources, this instrument entirely falls within the Union's exclusive competence. Even though this is considered as a non-legally binding instrument, the Union's exclusive competence prevents Member States from entering into any political undertakings in this field. This also encompasses action destined to address the functioning of the instrument in issue.

Consequently, a decision by the Council that would endorse a position to be submitted on behalf of the "Union and its Member States" does not respect the EU exclusive competence in the area of conservation of marine biological resources as defined in Article 3(1)(d) of the Treaty on the Functioning of the European Union.

Also a decision by the Council that would allow Member States to vote at the Meeting of Signatories not only does not respect the EU exclusive competence, but in addition is in contradiction with the Commission's prerogative to represent the EU externally, including by voting, as laid down in Article 17 of the Treaty on the European Union.

In addition, a decision by the Council that foresees that decision making shall be by consensus does not respect the principle that Union decision making is to be done by qualified majority.

Therefore the Commission reserves its rights to avail itself of legal remedies.
