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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1) / Council
Subject:	Recommendation for a COUNCIL DECISION authorising the Commission to open negotiations on behalf of the European Union for the renewal of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Sustainable Fisheries Partnership Agreement between the European Union and the Union of Comoros - Statements

Joint statement of the Council and the Commission

The current Protocol to the Fisheries Partnership Agreement between the European Union and the Union of Comoros expires at the end of December 2016. In order to ensure continuation of fishing activities of Union vessels in Comorian waters after that date, the Council agrees to the Commission's recommendation that the Commission should be authorised to open negotiations on behalf of the Union for renewal of the current Protocol.

Although the Council and the Commission are concerned that the calendar of negotiations for the new Protocol coincides with an ongoing process that could lead to an identification, by the Commission, of the Union of Comoros as a non-cooperating third country pursuant to Article 31 of the IUU Regulation¹, they consider that, given the approaching expiry of the validity of the current Protocol, it is appropriate to open negotiations for the new Protocol at this stage.

¹ Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Nevertheless, the Council notes that should the Commission adopt a proposal to list the Union of Comoros as a non-cooperating third country pursuant to Article 33 of the IUU Regulation, the Commission will suspend at that moment further negotiations and refrain from submitting any proposals concerning the signing/provisional application and/or conclusion of a new Protocol, until the legal circumstances change.

Statement 1 by the Commission

The Commission does not consider it necessary that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

Statement 2 by the Commission

Following article 31(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, the Commission fully recognizes the importance of the sustainable exploitation of marine biological resources and the consequent need to ensure a proper implementation of the concept of surplus, as expressed in article 62(2) of the UNCLOS, particularly when Sustainable Fisheries Partnership Agreements and associated protocols rule the access of the EU external fleet to resources distributed in waters of the partner country.

However, regarding article 64 of the UNCLOS and article 31(4) of Regulation (EU) No 1380/2013, the Commission considers that the concept of surplus applies to a lesser degree to fishing activities exploiting highly migratory species, where adequate management objectives and appropriate management measures – priority access rules, catch, capacity or effort limits, and sharing keys where relevant – have to be primarily fixed at regional or sub-regional levels by the Contracting Parties to competent Regional Fisheries Management Organisations, taking in due account the relevant scientific advice.