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PROPOSAL

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 8 October 2018 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |

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| Subject: | Proposal for a COUNCIL REGULATION on the allocation of fishing opportunities under the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto |
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Delegations will find attached document COM(2018) 679 final.

Encl.: COM(2018) 679 final



Brussels, 8.10.2018
COM(2018) 679 final

2018/0350 (NLE)

Proposal for a

COUNCIL REGULATION

on the allocation of fishing opportunities under the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

A Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco entered into force on 28 February 2007¹. The last Implementation Protocol to this Agreement² entered into force on 15 July 2014 and expired on 14 July 2018. More generally, the current Partnership Agreement is part of the relations between the Union and Morocco under the Euro-Mediterranean Agreement establishing an Association on 26 February 1996 between the European Communities and their Member States, of the one part, and the Kingdom of Morocco³, of the other part, which entered into force in 2000. The aim of the Agreement is to ensure the sound management and sustainability of fisheries resources from the ecological, economic and social point of view.

On the basis of the negotiating directives adopted by the Council⁴, the Commission conducted negotiations with the Government of Morocco with a view to amending the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco and agreeing on a new Implementation Protocol thereto.

These negotiations and the resulting texts take full account of the judgment of the Court of Justice of the European Union of 27 February 2018 in Case C-266/16⁵, whereby the Fisheries Agreement and the Protocol thereto do not apply to the waters adjacent to the territory of Western Sahara. In view of the considerations set out in the Court of Justice's judgment, and in accordance with the wishes of both parties, during the negotiations it was nonetheless possible to include that territory and the waters adjacent thereto in the Fisheries Partnership for several reasons. Firstly, from an economic point of view, it is important for the Union fleet to carry out its fishing activities, including in those waters, within a legally secure framework with a clearly specified geographical scope. Another objective is to ensure that this territory and its population benefit from the economic and social impacts of the Agreement, in a way that is proportionate to the fishing activities, in particular through the catches landed by the EU fleet, the employment of seamen, as well as investments and other support for the sector made possible by the financial contribution provided for in the Protocol to the Fisheries Agreement. In addition, it should be noted that the Kingdom of Morocco, which administers this territory (at least the greater part), is the only entity with which such an agreement can be concluded in the light of the fact that no other entity could guarantee the sustainable exploitation of those resources and the management and monitoring of the funds of the sectoral support available for the territory of Western Sahara and its population.

In addition, the proposal for a new Agreement and a new Protocol complies fully with international and Union law. The Union has constantly reaffirmed its commitment to the settlement of the dispute in Western Sahara and supports the efforts of the UN Secretary-General and his personal envoy to assist the parties in reaching a just, lasting and mutually acceptable political solution. In this respect, the exchange of letters accompanying this proposal reiterates the Union's position with regard to Western Sahara.

¹ OJ L 141, 29.5.2006, p.1. OJ L 78, 17.3.2007, p.31.

² OJ L 328, 7.12.2013, p.2. OJ L 228, 31.7.2014, p.1.

³ OJ L 70, 18.3.2000, p.2.

⁴ Adopted during the 3612th Meeting of the Agriculture and Fisheries Council of 16 April 2018

⁵ Judgment of the Court of Justice of 27 February 2018, Western Sahara Campaign UK, C-266/16, EU:C:2018:118.

The texts agreed upon by the negotiators following a number of meetings include the Agreement itself, which establishes a Sustainable Fisheries Partnership between the European Union and the Kingdom of Morocco ('the Fisheries Agreement') and replaces the 2007 Agreement, a new Implementation Protocol, an Annex and Appendices, and an exchange of letters. These texts were initialled on 24 July 2018.

The Protocol covers a period of four years as from the date of its application, as defined in Article 16 thereof. The new Fisheries Agreement repeals the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco that entered into force on 28 February 2007. It provides for the possibility of its provisional application prior to its conclusion; however, it is not considered necessary to propose such a provisional application. The new Agreement aims to reflect the principles of the 2009 reform: good fisheries governance and sustainability, respect for human rights, transparency and non-discrimination. Amending the Agreement is necessary also in order to comply with the Court's judgment of 27 February 2018 and provide the legal basis for applying the Agreement to the waters adjacent to the territory of Western Sahara.

In accordance with the negotiating directives, the Fisheries Agreement provides guarantees for a fair geographical distribution of the socio-economic benefits, in a way proportionate to the fishing activities, resulting from the use of the total financial contribution under the Agreement (i.e. financial compensation for access, sectoral support and fees paid by shipowners). These guarantees include, in particular, monitoring the allocation of such funds and their use, which is the duty, above all, of the Joint Committee set up by the Agreement and where both parties are represented. There are also provisions whereby Morocco is to submit regular reports on the activities carried out under this Agreement.

Finally, this proposal is accompanied by a Commission staff working document (SWD) entitled 'Report on the evaluation of the benefits for the population of Western Sahara resulting from the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto and on the consultation of that population'. That report includes an assessment of the potential implications of the Agreement and the Protocol thereto for sustainable development, in particular regarding the impact on the population concerned and the exploitation of the natural resources of the territories concerned, and a summary of the consultation of these populations, in accordance with the negotiating directives, under which inclusion of these populations is a decisive element when renewing the Fisheries Agreement. The Protocol provides for fishing opportunities for 128 vessels in 6 categories:

- two categories of small-scale fishing in the north: pelagic fishing with seines (category 1, 22 vessels) and with bottom-set longlines (category 2, 35 vessels);
- small-scale fishing in the south with pole-lines (category 3, 10 vessels);
- demersal fishing in the south with bottom trawls and with bottom-set longlines (category 4, 16 vessels);
- small-scale tuna fishing with poles (category 5, 27 vessels);
- industrial pelagic fishing with pelagic or semi-pelagic trawls and with purse seines (category 6, 18 vessels). In this category, authorised catches by Union vessels are limited to different amounts depending on the year of application of the Protocol.

These fishing opportunities should be allocated among Member States.

• **Consistency with existing policy provisions in the policy area**

The main objective of the Fisheries Agreement and the new Protocol thereto is to establish, through a partnership, sustainable fisheries and to offer fishing opportunities to Union vessels in the fishing zone defined in the Fisheries Agreement. The opportunities offered are based on the best available scientific advice and, for fisheries catching highly migratory species, comply with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The new Protocol takes account of the results of an evaluation of the previous Protocol (2014-2018) and a forward-looking assessment of whether a new Protocol should be concluded. Both were carried out by external experts. The Protocol will also enable the European Union and the Kingdom of Morocco to strengthen their partnership in order to promote sound exploitation of fisheries resources in the fishing zone and to support the Kingdom of Morocco's efforts to develop its blue economy. These elements are consistent with the objectives and obligations of the Common Fisheries Policy⁶.

• **Consistency with other Union policies**

The negotiation of the Fisheries Agreement forms part of the Union's external action and takes into account, in particular, Union objectives on respecting democratic principles and human rights. It is consistent with the Union's position to support the efforts made by the UN Secretary-General and his personal envoy to assist the parties in achieving a just, lasting and mutually acceptable political solution which will allow the self-determination of the people of Western Sahara as part of arrangements consistent with the objectives and principles set out in the Charter of the United Nations and enshrined in United Nations Security Council resolutions, and in particular UNSCR 2152 (2014), UNSCR 2218 (2015), UNSCR 2385 (2016), UNSCR 2351 (2017) and UNSCR 2414 (2018). The conclusion of the Fisheries Agreement in no way prejudices the outcome of the political process relating to the final status of Western Sahara.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• **Legal basis**

The legal basis chosen is the Treaty on the Functioning of the European Union, Article 43(3) of which establishes that the Council, on a proposal from the Commission, shall adopt measures on the allocation of fishing opportunities.

• **Subsidiarity (for non-exclusive competence)**

The policy area is an exclusive competence.

⁶ OJ L 354, 28.12.2013, p.22.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

In 2017, the Commission carried out an ex-post evaluation of the 2014-2018 Protocol to the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, along with an ex-ante evaluation of a possible renewal of the Protocol. The conclusions of the evaluation are presented in a separate working document⁷.

The evaluation concluded that the EU fishing sector is firmly interested in carrying out its activity in the fishing zone referred to in the Protocol and that a renewal of the Protocol would help strengthen monitoring, control and surveillance and contribute to improved governance of the fisheries in the region.

- **Consultation of interested parties**

The Member States, industry representatives and international civil society organisations, as well as the Kingdom of Morocco's fisheries administration and civil society representatives, were consulted as part of the evaluation. Furthermore, consultations took place within the framework of the Long Distance Advisory Council, and the Commission and the European External Action Service (EEAS) arranged consultations with the relevant populations in Western Sahara in order to ensure that they can express their views on the extension of the partnership to the waters adjacent to Western Sahara and that they benefit from the socio-economic impacts of the Fisheries Agreement in a way that is proportionate to the fishing activities. A report on the benefit assessment for these populations and on the consultations conducted is attached to this proposal as a Commission staff working document. The report concludes that the socio-economic impacts of the Fisheries Agreement will benefit the populations concerned and that it will have a positive impact on the sustainable development of natural resources. Similarly, the socio-economic and political actors who participated in the consultations were clearly in favour of concluding the Fisheries Agreement, even though the Polisario Front and some other parties refused to take part in the consultation process as a matter of principle. It can therefore be concluded that the Commission together with the EEAS took all reasonable and feasible measures in the current context to properly involve the populations concerned.

- **Collection and use of expertise**

The Commission used an independent consultant for the ex-post and ex-ante evaluations, in accordance with the provisions of Article 31(10) of the Regulation establishing the Common Fisheries Policy.

4. BUDGETARY IMPLICATIONS

The draft Regulation does not affect the Union budget.

⁷ https://ec.europa.eu/fisheries/sites/fisheries/files/docs/publications/evaluation-report-morocco_fr.pdf
SWD(2018) 1 final: <https://eur-lex.europa.eu/legal-content/FR/TXT/?qid=1535624240760&uri=CELEX:52018SC0001>

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

This procedure is being initiated in parallel with the procedures relating to the Council Decision on the signing, on behalf of the Union, of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and to the Council Decision on its conclusion. This Regulation must be applied once fishing activities become possible under the Agreement, i.e. on the date of application of the Implementation Protocol to the Agreement.

Proposal for a

COUNCIL REGULATION

on the allocation of fishing opportunities under the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Commission negotiated on behalf of the European Union a new Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco ('the Fisheries Agreement') as well as a new Implementation Protocol to the Fisheries Agreement and an exchange of letters accompanying the said Agreement.
- (2) In accordance with Council Decision (EU) 2018/xxx⁸, the new Fisheries Agreement, the new Implementation Protocol thereto and an exchange of letters accompanying the Fisheries Agreement were signed on [insert date of signature] subject to their conclusion at a later date.
- (3) The Implementation Protocol covers a period of four years as from the date of its application, as defined in Article 16 thereof.
- (4) The fishing opportunities should be allocated among the Member States for the full duration of application of the Implementation Protocol to the Fisheries Agreement.
- (5) This Regulation should apply from the same date as the Implementation Protocol to the Fisheries Agreement.

HAS ADOPTED THIS REGULATION:

Article 1

1. The fishing opportunities established pursuant to the Implementation Protocol to the Sustainable Fisheries Agreement between the European Union and the Kingdom of Morocco shall be allocated among the Member States as follows:

⁸ OJ L xx, xx.xx.xxxx, p. xx.

| Fishing category | Type of vessel | Member State | Licences or quota |
|---|--|------------------|-------------------|
| Small-scale fishing in the north, pelagic species | Seiners < 150 GT | Spain | 22 |
| Small-scale fishing in the north | Bottom longliners, < 40 GT | Spain | 25 |
| | | Portugal | 7 |
| | Bottom longliners, \geq 40 GT < 150 GT | Portugal | 3 |
| Small-scale fishing in the south | Pole-lines < 150 GT per vessel Total \leq 800 GT | Spain | 10 |
| Demersal fishing | Bottom longliners \leq 150 GT | Spain | 7 |
| | | Portugal | 4 |
| | Trawlers \leq 750 GT Total \leq 3 000 GT | Spain | 5 |
| | | Italy | 0 |
| | | | |
| Tuna fishing | Pole-and-line vessels | Spain | 23 |
| | | France | 4 |
| Industrial fishing for pelagic species | 85 000 t in the first year | Year 1: 85 000 t | |
| | 90 000 t in the second year | Germany | 6 871.2 t |
| | 100 000 t in the third and fourth year | Lithuania | 21 986.3 t |
| | Distribution of vessels authorised to fish: 10 vessels \geq 3 000 GT and < 7 765 GT 43 vessels \geq 150 and < 3 000 GT 4 vessels < 150 GT | Latvia | 12 367.5 t |
| | | Netherlands | 26 102.4 t |
| | | Ireland | 3 099.3 t |
| | | Poland | 4 807.8 t |
| | | United Kingdom | 4 807.8 t |
| | | Spain | 496.2 t |
| | | Portugal | 1 652.2 t |
| | | France | 2 809.3 t |
| | | Year 2: 90 000 t | |
| | | Germany | 7 275.4 t |

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|-------------------------|------------|
| Lithuania | 23 279.6 t |
| Latvia | 13 095.0 t |
| Netherlands | 27 637.9 t |
| Ireland | 3 281.6 t |
| Poland | 5 090.6 t |
| United Kingdom | 5 090.6 t |
| Spain | 525.4 t |
| Portugal | 1 749.4 t |
| France | 2 974.5 t |
| Year 3 and 4: 100 000 t | |
| Germany | 8 083.8 t |
| Lithuania | 25 866.3 t |
| Latvia | 14 550.0 t |
| Netherlands | 30 708.8 t |
| Ireland | 3 646.3 t |
| Poland | 5 656.3 t |
| United Kingdom | 5 656.3 t |
| Spain | 583.8 t |
| Portugal | 1 943.8 t |
| France | 3 305.0 t |

2. Regulation (EU) 2017/2403 shall apply without prejudice to the Agreement and to the Protocol.

Article 2

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

It shall apply from the date of application of the Implementation Protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President