



Brussels, 21.3.2018
COM(2018) 151 final

Recommendation for a

COUNCIL DECISION

to authorise the Commission to open negotiations on behalf of the European Union for the amendment of the Fisheries Partnership Agreement and conclusion of a Protocol with the Kingdom of Morocco

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The Commission proposes to negotiate an amendment to the Fisheries Partnership Agreement (FPA) between the European Communities and the Kingdom of Morocco and to conclude a Protocol implementing this agreement that meet the needs of the Union fleet and are in line with Regulation (EU) No1380/2013 on the Common Fisheries Policy and the 19 March 2012 Council Conclusions on a Communication from the Commission on the External dimension of the Common Fisheries Policy.

This proposal is presented following the ruling by the Court of Justice of the European Union of 27 February 2018 in Case C-266/16 (Western Sahara Campaign UK) by which the Court holds that the waters adjacent to the territory of Western Sahara are not part of the fishing zone referred to in the Fisheries Agreement.

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

The current FPA between the European Union and the Kingdom of Morocco entered into force on 28 February 2007¹. This agreement was implemented by two successive Protocols enabling Union vessels targetting pelagic and demersal species to access the fishing zone of Morocco until 14 December 2011, which marks the termination date of the second implementing Protocol, as a result of the non consent by the Parliament to its conclusion. EP questioned the sustainability, value-for-money and international legality of the proposed instrument. A third Protocol, which took into account EP's concerns, was concluded in 2014² and will expire on 14 July 2018.

Overall, the FPA with Morocco allows vessels from 11 Member States to operate in six different fishing categories covering small pelagic, demersal and highly migratory species. The Moroccan fishing zone represents the northern limit of the distribution area of the small pelagic stock "C"³ which stretches over Mauritanian, Senegalese and Bissau-guinean waters, all of them included in the network of bilateral Sustainable Fisheries Partnership Agreements (SFPAs).

SFPAs contribute to promote the objectives of the CFP internationally, ensuring that Union fishing activities outside Union waters are based on the same principles and standards as those applicable under Union law. In addition, SFPAs strengthen the European Union's position in international and regional fishing organisations, in particular in the International Commission for the Conservation of Atlantic Tunas (ICCAT). Finally, SFPAs are based on the best available scientific advice and contribute to the improvement of compliance with international measures, including combatting illegal, unreported and unregulated (IUU) fishing.

Particular attention will be given to the execution and implementation of the financial compensation given to Morocco to support sustainable management of fisheries, in particular in the light of the recommendations of the Special European Court of Auditors Report n.11 of 2015 on SFPAs.

¹ OJ L 78 of 17.3.2007, p. 31

² OJ L 349 of 21.12.2013, p. 1

³ According to scientific classification in use.

- **Consistency with other Union policies**

Negotiation of a SFPA and Protocol with the Kingdom of Morocco is in line with the EU's external action towards neighbouring countries and in conformity with Union objectives regarding the respect of democratic principles and human rights.

Following the above mentioned ruling of the Court of Justice of the European Union, it is necessary to clarify the geographical scope of the Agreement.

The EU position is that it is possible to extend the bilateral agreements with Morocco to Western Sahara under certain conditions. However, it is understood that any arrangement will only be provisional for as long as the resolution of the conflict in the context of the United Nations and in accordance with relevant UN Security Council resolutions remains pending.

Negotiations will be conducted throughout the whole process in consultation with all interested Commission Services, the EEAS and with the support of the competent EU Delegation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the decision is provided by Article 218 of the Treaty on the Functioning of the European Union (TFEU), in Part Five on the Union's external action, Title V on international agreements, which sets out the procedure for negotiating and concluding agreements between the EU and third countries.

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

Not applicable, exclusive competence.

- **Proportionality**

The decision is proportional to the objective sought.

- **Choice of the instrument**

The instrument is provided for under Article 218(3) and Article 218(4) of the TFEU.

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

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

The Commission carried out in 2017 an *ex-post / ex-ante* evaluation of the opportunity to renew the fisheries Protocol with the Kingdom of Morocco. The conclusions of the evaluation are set out in a separate Staff Working Document⁴.

⁴ Evaluation rétrospective et prospective du Protocole à l'accord de partenariat dans le domaine de la pêche durable entre l'Union européenne et le Royaume du Maroc. Final report, september 2017 (F&S, Poseidon and Megapesca).

The evaluation report concluded that the EU fleets are firmly interested in continuing fishing in Morocco. Renewal of the Protocol will also help strengthen monitoring, control and surveillance and contribute to improved governance of the fisheries in the region. The evaluation demonstrates that a renewal of the Protocol would also be beneficial for Morocco in view of the importance of the financial contribution paid under the Protocol as a contribution to the Moroccan "Halieutis" strategy of development of the fisheries sector. Morocco has expressed its interest in opening negotiations with the EU on a renewed Protocol.

- **Stakeholder consultations**

Interested stakeholders, including industry representatives and civil society organisations have been consulted as part of the evaluation, in particular in the framework of the Long Distance Advisory Council.

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

The negotiating directives proposed as an annex to the decision recommend to authorise the opening of negotiations including a human rights and democratic principles clause which, if breached, can lead to the suspension of the Agreement and Protocol.

4. BUDGETARY IMPLICATIONS

The budgetary implications connected with the new Protocol include the payment of a financial contribution to the Kingdom of Morocco. The related budgetary allocations in terms of commitment and payment appropriations need to be included each year in the budget line for Sustainable Fisheries Partnership Agreements (11 03 01) as well as being compatible with the financial programming of the Multiannual Financial Framework for 2014-2020. The annual amounts for commitments and payments are established in the yearly budgetary procedure including the reserve line for protocols not entered into force in the beginning of the year.⁵

Negotiations are expected to be finalised before expiry of the current Protocol, i.e. by 14 July 2018.

⁵ Chapter 40 (reserve line 40 02 41) in line with the MFF interinstitutional agreement ((2013/C 373/01).

5. OTHER ELEMENTS

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

Negotiations are expected to open in the first quarter 2018.

- **Detailed explanation of the specific provisions of the proposal**

The Commission recommends that:

- The Council should authorise the Commission to open and conduct negotiations for the amendment to the Fisheries Partnership Agreement with the Kingdom of Morocco and the conclusion of a Protocol;
- The Commission should be nominated as the EU negotiator on this subject;
- The Commission should conduct the negotiations in consultation with the special committee, as set out in the Treaty on the Functioning of the European Union;
- The Council should approve the negotiating directives annexed to this recommendation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218 paragraphs 3 and 4,

Having regard to the recommendation from the Commission,

Whereas negotiations should be opened with the Kingdom of Morocco, with a view to amending the Fisheries Partnership Agreement between the European Communities and the Kingdom of Morocco⁶ and concluding a Protocol implementing this Agreement,

Whereas it is important that the partnership in the fisheries sector that has developed over the years between the European Union and the Kingdom of Morocco is not disrupted, while ensuring that there are appropriate guarantees for the protection of human rights and the sustainable development of the territories concerned,

Whereas the Union supports the efforts of the United Nations to find a mutually acceptable political solution which would provide for the self-determination of the people of Western Sahara consistent with the principles and purposes of the Charter of the United Nations,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to open negotiations with the Kingdom of Morocco with a view to amending the Fisheries Partnership Agreement between the European Communities and the Kingdom of Morocco and concluding a Protocol implementing this agreement.
2. The Commission shall be the head of the negotiating team, which shall also comprise the High Representative of the Union for Foreign Affairs and Security Policy.

Article 2

These negotiations shall be conducted in consultation with the Council Working Party on External Fisheries Policy on the basis of the negotiating directives of the Council and set out in the addendum to this Decision.

⁶ OJ L 141, 29.05.2006, p. 4.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*