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2019/0173 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community[1] (hereinafter 'the Agreement') entered into force on 29 August 2011[2] and has since been renewed automatically. The previous Protocol to the Agreement, which entered into force on 23 May 2014, expired on 22 May 2018.

On the basis of the relevant negotiating directives[3], the Commission conducted negotiations with the Government of the Democratic Republic of São Tomé and Príncipe (hereinafter 'São Tomé and Príncipe') with a view to concluding a new Protocol to the Agreement. Following these negotiations, a new Protocol was initialled on 17 April 2019. The Protocol covers a period of five years from the date of its provisional application, i.e. from the date on which it is signed, as stated in Article 15 thereof.

The purpose of this proposal is to authorise the conclusion of the Protocol.

• Consistency with existing policy provisions in the policy area

In accordance with the priorities of the Fisheries Policy reform[4], the new Protocol provides fishing opportunities for Union vessels in São Tomé and Príncipe waters, on the basis of the best available scientific advice and following the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). This new Protocol takes into account the results of an evaluation of the previous Protocol (2014-2018) and of 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 São Tomé and Príncipe to work more closely on promoting sound exploitation of fisheries resources in São Tomé and Príncipe waters and to support efforts by São Tomé and Príncipe to develop its fisheries sector, in the interests of both parties.

The Protocol provides for fishing opportunities in the following categories:

- 28 freezer tuna seiners,

- 6 surface longliners.

• Consistency with other Union policies

The negotiation of a new protocol to the Fisheries Partnership Agreement with São Tomé and Príncipe forms part of the Union's external action in relation to countries in the African, Caribbean and Pacific (ACP) Group of States and takes into account, in particular, Union objectives on respecting democratic principles and human rights.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis chosen is the Treaty on the Functioning of the European Union, Article 43(2) of which establishes the Common Fisheries Policy, Article 218(6)(a)(v) the stage for the

[1] OJ L 205, 7.8.2007, p. 36.
[2] OJ L 31, 31.1.2013, p. 1.
[3] Adopted at the Transport, Telecommunications and Energy Council on 18 December 2017.
[4] OJ L 354, 28.12.2013, p. 22.

conclusion of agreements between the Union and third countries, and Article 218(7) the provisions concerning the authorisation of amendments to the Protocol.

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

The proposal falls under the exclusive competence of the European Union.

- **Proportionality**

The proposal is proportionate to the objective of establishing a legal, environmental, economic and social governance framework for fishing activities carried out by Union vessels in third-country waters, as set out in Article 31 of the Regulation establishing the Common Fisheries Policy. It complies with those provisions as well as with those on financial assistance to third countries laid down in Article 32 of that Regulation.

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 current Protocol to the Fisheries Partnership Agreement with São Tomé and Príncipe, along with an ex-ante evaluation of a possible renewal of the Protocol. The conclusions of the evaluation are presented in a separate working document[5].

The evaluation report concluded that the Union's tuna fishing sector has a strong interest in fishing in São Tomé and Príncipe 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. The importance of the EEZ in the Gulf of Guinea contributes to the relevance of the envisaged new Protocol, both for the Union's tuna fishing sector and for the partner country.

- **Stakeholder consultation**

The Member States, industry representatives and international civil society organisations, as well as São Tomé and Príncipe's fisheries administration and civil society representatives, were consulted as part of the evaluation. Consultations also took place in the framework of the Long Distance Advisory Council.

- **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 annual financial contribution from the European Union is EUR 840 000, based on:

a) a reference tonnage of 8 000 tonnes per year, for which an amount linked to access has been set at EUR 400 000 per year for the entire duration of the Protocol.

b) support for the development of São Tomé and Príncipe's sectoral fisheries policy amounting to EUR 440 000 per year for the entire duration of the Protocol. This support meets the objectives of São Tomé and Príncipe's national policy on the sustainable

[5] SWD(2017) 434 final, 1.12.2017.

management of its continental and maritime fishery resources for the entire duration of the Protocol.

The annual amount for commitment and payment appropriations is established during the annual budgetary procedure, including for the reserve line for protocols not having entered into force at the beginning of the year[6].

5. OTHER ELEMENTS

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

The monitoring arrangements are provided for in the Protocol.

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 Protocol to the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community.

[6] In accordance with the Interinstitutional Agreement on cooperation in budgetary matters (2013/C 373/01).

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on the conclusion, on behalf of the European Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof, in conjunction with Article 218(6)(a)(v), and Article 218(7),

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[1],

Whereas:

(1) In accordance with Council Decision 2019/.../EU[2], the Protocol on the implementation of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community (hereinafter 'the Protocol') was signed on [*insert date of signature*], subject to its conclusion at a later date.

(2) The objective of the Protocol is to enable the Union and São Tomé and Príncipe to work more closely on promoting a sustainable fisheries policy and sound exploitation of fisheries resources in São Tomé and Príncipe waters and to support efforts by São Tomé and Príncipe to develop its fisheries sector.

(3) The Protocol should be approved on behalf of the European Union.

(4) Article 9 of the Agreement establishes a Joint Committee responsible for monitoring its implementation. Furthermore, in accordance with that article and Articles 6 and 7(2) of the Protocol, the Joint Committee may approve certain amendments to the Protocol. In order to facilitate the approval of such amendments, the Commission should be empowered, subject to specific substantive and procedural conditions, to approve them on behalf of the Union under a simplified procedure.

(5) The Union's position on the envisaged amendments to the Protocol should be established by the Council. The proposed amendments should be approved, unless a blocking minority of Member States objects in accordance with Article 16(4) of the Treaty on European Union,

(6) The position to be adopted on other matters by the Union in the Joint Committee should be determined in accordance with the Treaties and established practices.

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1 OJ C , , p. .

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HAS ADOPTED THIS DECISION:

Article 1

The Protocol on the implementation of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community (hereinafter 'the Protocol') is hereby approved on behalf of the Union.

The text of the Protocol is attached to this Decision in Annex I.

Article 2

In accordance with the provisions and conditions laid down in Annex II to this Decision, the Commission is authorised to approve, on behalf of the Union, amendments to the Protocol to be adopted by the Joint Committee established in Article 9 of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community.

Article 3

The President of the Council shall designate the person(s) empowered to carry out, on behalf of the European Union, the notification provided for in Article 16 of the Protocol, in order to express the Union's consent to be bound by the Protocol.

Article 4

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

Done at Brussels,

For the Council
The President