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2023/0119 (NLE)

Proposal for a

COUNCIL REGULATION

on the allocation of the fishing opportunities under the Protocol on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On the basis of the relevant negotiating directives[1], the Commission has conducted negotiations with Madagascar on concluding a new Sustainable Fisheries Partnership Agreement (SFPA) between the European Union and Madagascar, as well as a new Implementation Protocol to the Partnership Agreement. The objective is to allow Union vessels to access Madagascar's fishing zone and to fish for tuna and associated species there, under a management mandate from the Indian Ocean Tuna Commission (IOTC). Following these negotiations, a new text of the Agreement and a new text of the Implementation Protocol were initialled on 28 October 2022.

The new Agreement repeals and replaces the existing Agreement. It covers a period of four years from the date of provisional application laid down in Article 19, namely 1 July 2023, subject to its signature by the parties, or from the date of signature, if it falls after 1 July 2023. The new Protocol covers a period of four years from the date of provisional application laid down in Article 19, according to the same rules as the Agreement.

The Protocol provides for the following fishing opportunities:

– 32 tuna seiners;

– 13 surface longliners with a tonnage greater than 100;

– 20 surface longliners with a tonnage less than or equal to 100,

and support vessels in accordance with the relevant IOTC resolutions.

The method for allocating the fishing opportunities among the Member States should be established.

• Consistency with existing policy provisions in the policy area

The main aim of the new SFPA is to provide an updated framework that takes into account the priorities of the reformed common fisheries policy and its external dimension. This will help continue and strengthen the strategic partnership between the European Union and Madagascar. The new SFPA will enable them to work more closely together on promoting a sustainable fisheries policy in line with the objective, recognised in EU law, of conserving marine biological resources and a responsible exploitation of fishery resources in Malgasy waters, as well as Madagascar's efforts to develop its sustainable ocean economy, in the interests of both parties. This cooperation will also help promote decent working conditions in the fisheries sector.

The new Protocol provides for fishing opportunities for EU vessels in Malgasy waters, where appropriate within the limits of the available surplus. It is based on the best available scientific advice and recommendations made by the IOTC, the regional fisheries organisation managing the highly migratory fish stocks. The management measures adopted by the IOTC are also included in the relevant provisions of the common fisheries policy applicable to the

[1] 3622nd meeting of the Justice and Home Affairs Council of 4 June 2018 https://www.consilium.europa.eu/media/36284/st09680-en18.pdf.

IOTC Area, in particular those of the Fishing Opportunities Regulation[2]. The Commission has based its position in part on the results of an evaluation of the previous Protocol (2015-2018) and an ex ante evaluation of whether a new Protocol should be concluded. Both were carried out by external experts.

- **Consistency with other Union policies**

The negotiation of a new SFPA forms part of EU external action in relation to African, Caribbean and Pacific countries and takes into account in particular EU objectives on respecting democratic principles and human rights.

The EU and Madagascar are also Parties to the Interim Agreement, signed on 29 August 2009, establishing a framework for an Economic Partnership Agreement (EPA) between the Eastern and Southern Africa States, on the one part, and the European Union and its Member States, on the other. The negotiations for a new SFPA are in line with the EPA, which provides for cooperation between the Parties in fisheries trade and development covering marine fisheries, inland fisheries and aquaculture.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 43(3) of the Treaty on the Functioning of the European Union, 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 proposal falls within the exclusive competence of the European Union pursuant to Article 3(1)(d) TFEU.

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 2015-2018 Protocol to the Fisheries Partnership Agreement with Madagascar as well as an ex ante evaluation of a possible renewal of the Protocol[3].

The ex post evaluation of the 2015-2018 Protocol concluded that it complemented the other access arrangements established in the region, allowing EU vessels to optimise exploitation of migratory stocks within the regional rules set by the Indian Ocean Tuna Commission. It was relevant to the needs of EU stakeholders as it provided operators of EU vessels with predictable access to a fishing area of interest where the targeted species are abundant. Access to Malgasy waters provides the EU longline fleet based in La Réunion with opportunities to extend fishing areas to the neighbouring waters of this outermost region. The activities of the EU tuna fleet in Malgasy waters and in the wider Indian Ocean have generated substantial positive socio-economic benefits for Madagascar, which, thanks to its local processing

[2] OJ L 28, 31.1.2023, p. 1. See Section 5 and Annex IJ.

[3] Ex post and ex ante evaluation of the Protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar – Publications Office of the EU (europa.eu).

capacity, has captured some of the added value, and the EU financial contribution has been broadly aligned with the fishing opportunities exploited. As regards sectoral support, the evaluation noted that the implementation of the programme had been satisfactory, with a good mid-term disbursement rate, and that a future sectoral support programme should focus on strengthening monitoring, control and surveillance capacity, health inspection capacity to preserve export capacity, and support for professional training of seafarers. A future sectoral support programme could also help develop the national fishing sector through support to small-scale fishers and continued good coordination with activities financed by other donors and lenders. The evaluation also recommended earmarking part of the funding available for the recruitment of an external technical assistant to coordinate and facilitate the implementation of the sectoral support programme.

For the EU, it is important to maintain an instrument that allows close sectoral cooperation with a country that is a major partner, a fish product supplier to the EU and a stakeholder on the international scene and that has fishing grounds that are of interest to the EU fleet.

- **Consultation of interested parties**

As part of the abovementioned evaluation, the Commission consulted Member States, industry representatives and international civil society organisations, as well as Madagascar's fisheries administration and civil society. Consultations also took place in the framework of the Long Distance Fisheries Advisory Council. These consultations led to the conclusion that it is in the interest of the European Union and Madagascar to maintain an instrument allowing for in-depth sectoral cooperation with multiannual funding possibilities for Madagascar, while it is in the interest of the EU fleet to maintain access to an important fishing zone by means of a fisheries agreement. Since the 2018 evaluation, the fishing industry has confirmed its continued interest within the Long Distance Fisheries Advisory Council.

- **Collection and use of expertise**

The Commission used an independent consultant for the ex post and ex ante evaluations, in accordance with Article 31(10) of the Regulation establishing the common fisheries policy.

4. BUDGETARY IMPLICATIONS

The draft regulation does not affect the EU budget.

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, and the provisional application of the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar and of the Implementation Protocol thereto, and to the Council Decision on their conclusion. This Regulation shall apply once fishing activities become possible under the Agreement, i.e. on the date of provisional application of the Protocol.

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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 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Commission has negotiated on behalf of the European Union a new Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar ('the Partnership Agreement') as well as a new Implementation Protocol to the Partnership Agreement ('the Protocol').

(2) The Partnership Agreement and the Protocol were initialled at the end of those negotiations on 28 October 2022.

(3) The Partnership Agreement repeals the previous Fisheries Partnership Agreement between the same parties, which has applied since 19 December 2007[4].

(4) In accordance with Council Decision (EU) 2023/...[5], the new Partnership Agreement and the Protocol thereto were signed on [insert date of signature], subject to their conclusion at a later date.

(5) The fishing opportunities provided for in the Protocol for highly migratory fish stocks, established in accordance with the recommendations and resolutions adopted by the Indian Ocean Tuna Commission, should be allocated among the Member States for the entire period of its application.

(6) The urgency of these measures are related to the economic importance of Union fishing activities in the Madagascar fishing zone and the need to keep to a minimum the time such activity is interrupted for. The Protocol will therefore apply provisionally from 1 July 2023, subject to its signature, or from the date of its signature if this falls after 1 July 2023, in order to allow the fishing activities of Union vessels to take place as soon as possible. This Regulation should therefore apply from the same date,

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4 OJ L 331, 17.12.2007, p. 7.

5 Council Decision (EU) 2023/… of … 2023 on … (OJ C […], [date], p. […]).

HAS ADOPTED THIS REGULATION:

Article 1

The fishing opportunities established under the Implementation Protocol to the Sustainable Fisheries Partnership Agreement between the European Union and Republic of Madagascar ('the Protocol') shall be allocated among the Member States as follows:

a) Tuna seiners:

Spain:	16	vessels
France:	15	vessels
Italy:	1	vessel
Total	32 vessels;	

b) Surface longliners with a tonnage greater than 100;

Spain:	7	vessels
France:	5	vessels
Portugal:	1	vessel
Total	13 vessels;	

c) Surface longliners with a tonnage less than or equal to 100;

France:	20	vessels
Total	20 vessels.	

Article 2

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

It shall apply from the date of provisional application of the Protocol.

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

Done at Brussels,

For the Council
The President