Council of the European Union

Brussels, 6 October 2021
(OR. en)

12401/21

Interinstitutional File: 2021/0310(NLE)

PECHE 337

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 October 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 611 final
Subject:	Proposal for a COUNCIL REGULATION on the allocation of fishing opportunities under the Protocol (2021-2024) on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands

Delegations will find attached document COM(2021) 611 final.

Encl.: COM(2021) 611 final

EUROPEAN
COMMISSION

Brussels, 6.10.2021
COM(2021) 611 final

2021/0310 (NLE)

Proposal for a

COUNCIL REGULATION

on the allocation of fishing opportunities under the Protocol (2021-2024) on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Sustainable Fisheries Partnership Agreement (SFPA) between the European Union and the Government of the Cook Islands was signed on 3 May 2016 and on 14 May 2016 respectevely, and entered into provisional application on 14 May 2016 for a duration of eight years. It is tacitly renewable and is still in force. The first 4-year Protocol on the implentation of the SFPA entered into provisional application on 14 October 2016 and expired on 13 October 2020. Both the Agreement and the Protocol entered into force on 10 May 2017.

On 7 July 2020, the Council adopted a mandate[1] authorising the European Commission to open negotiations for a new Protocol to the SFPA between the European Union and the Government of the Cook Islands (the Cook Islands) and for the possible prolongation of Protocol[2] to that Agreement, which was due to expire on 13 october 2020.

During the first round of negotiations (16 July 2020), negotiators from the EU and the Cook Islands agreed that due to the complex nature of the negotiations, a number of rounds would be needed in order to complete the negotiations. Both parties therefore agreed to extend the Protocol for a maximum period of one year, in line with the mandate from the Council. The extension was established by way of an Agreement in the form of an exchange of letters which was initialled on 29 July 2020 in Brussels and Rarotonga (the Cook Islands).

The Protocol was extended for one year from the following date of the signature of the exchange of letters by both parties, i.e. the 14 November 2020. Consequently the current protocol will expire on 13 November 2021.

On the basis of the relevant negotiating directives[3], the Commission conducted negotiations with the Cook Islands with a view to concluding a new SFPA implementing Protocol on behalf of the European Union. Following these negotiations, a Protocol was initialled by the negotiators on 28 July 2021. The new Protocol covers a period of 3 years from the date of provisional application laid down in Article 11 thereof, that being the date on which it is signed by both parties.

The aim of the Protocol is to grant fishing opportunities to Union vessels in the Cook Islands' fishing areas in accordance with scientific advice and the recommendations of the Western and Central Pacific Fisheries Commission (WCPFC), within the limits of the available surplus. The aim is also to strenghten cooperation between the European Union and the Cook Islands, thereby creating a partnership framework within which to develop a sustainable fisheries policy and sound exploitation of fishery resources in the Cook Islands' fishing areas, in the interests of both parties.

---

1 COUNCIL DECISION authorising the opening of negotiations for a new protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and for the possible prolongation of the current protocol to that Agreement (ST 8848/20).

2 Protocol on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands (OJ L 131, 20.05.2016, p. 10).

3 Adopted at the 3418th Agriculture and Fisheries Council on 22 October 2015.

The new EU-Cook Islands Protocol allows the EU fleet to fish in the Cook Islands' fishing areas for tuna species and provides for fishing opportunities as follows:

– 4 tuna purse seine vessels, with access to Cook Islands' fishing areas for 100 days per year;

– possible additional 110 days per year can be made available to the EU fleet, upon request.

The purpose of this proposal is to establish the distribution among the Member States of the fishing possibilities offered by the Protocol on the implementation of the SFPA between the EU and the Cook Islands.

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

In accordance with the priorities of Regulation establishing the common fisheries policy (CFP Regulation)[4], the Protocol provides fishing opportunities for Union vessels in the Cook Islands' fishery areas, on the basis of the best available scientific advice and following WCPFC recommendations. The Protocol also enables the European Union and the Cook Islands to work more closely together on promoting sound exploitation of fishery resources in the Cook Islands' fishing areas and to support efforts by the Cook Islands to develop its fisheries sector, in the interests of both parties.

- **Consistency with other Union policies**

The negotiation of a new Protocol implementing the SFPA – part of which involves this proposed extension – forms part of the EU's external action in relation to African, Caribbean and Pacific (ACP) countries and takes into account, in particular, EU objectives on respecting democratic principles and human rights.

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 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 CFP Regulation. It complies with those provisions as well as with those on financial assistance to third countries laid down in Article 32 of that Regulation.

[4] 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

Stakeholders were consulted during the evaluation of the Protocol for the period 2016-20. Experts from the Member States were also consulted in technical meetings. These consultations led to the conclusion that it would be beneficial to renew the Protocol with the Cook Islands.

• Stakeholder consultations

Member States, industry representatives, international civil society organisations and the fisheries administration and civil society representatives of the Cook Islands 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 ante* and *ex post* evaluations, in accordance with Article 31(10) of the CFP Regulation.

• Impact assessment

Not applicable

• Regulatory fitness and simplification

Not applicable

• Fundamental rights

The negotiated agreement includes a clause on the consequences of violating the essential elements regarding human rights laid down in Article 9 of the Cotonou Agreement[5], or the corresponding article of the agreement which will succeed it.

4. BUDGETARY IMPLICATIONS

The draft regulation does not affect the Union budget.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

The monitoring arrangements are provided for in the SFPA and its implementing Protocol.

[5] OJ L 317 15.12.2000, p. 3.

2021/0310 (NLE)

Proposal for a

COUNCIL REGULATION

on the allocation of fishing opportunities under the Protocol (2021-2024) on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands

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 Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands[6] ('the Agreement'), approved by Council Decision (EU) No 2017/418[7] entered into force on 10 May 2017. The Protocol on the implementation of the Agreement ('the Protocol'), was provisionally applied since 14 October 2016[8], for a period of four years.

(2) The Protocol was extended for one year and is set to expire on 13 November 2021[9].

(3) On 7 July 2020, the Council authorised the Commission to open negotiations with the Cook Islands for the conclusion of a new Protocol implementing the Sustainable Fisheries Partnership Agreement.

(4) As a result of those negotiations, the Protocol was initialled on 28 July 2021.

(5) On [...], the Council adopted Decision (EU) 2021/ ..[10] on the signing and provisional application of the new Protocol, subject to its conclusion at a later date.

(6) The fishing opportunities provided for in the Protocol should be allocated among the Member States for the entire period of application of the Protocol.

---

6 OJ L 131, 20.05.2016, p. 3.

7 Council Decision (EU) 2017/418 of 28 February 2017 on the conclusion on behalf of the European Union of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto (OJ L 64, 10.3.2017, p. 1).

8 OJ L 289 of 25.10.2016, p.1.

9 OJ L 395 of 25.11.2020, p.1.

10 Council Decision (EU) 2021/… of … 2021 on … (OJ C […], […], p. […]).

(7) This Regulation should enter into force as soon as possible in view of the economic importance of Union fishing activities in the Cook Islands' fishing areas and the need to avoid interrupting those activities upon the expiration of the current protocol.

(8) The Protocol will apply on a provisional basis as from the date of its signature in order to allow for the fishing activities of Union vessels. This Regulation should therefore apply from the same date,

HAS ADOPTED THIS REGULATION:

Article 1

The fishing opportunities established under the Protocol on the implementation to the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands ('the Protocol') shall be allocated among the Member States as follows:

– Tuna seiners:

  – Spain: 3 vessels

  – France: 1 vessel

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[*OPOCE, please insert the date of signature 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