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Proposal for a

COUNCIL REGULATION

on the allocation of fishing opportunities under the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community on the one hand, and the Republic of Kiribati, on the other (2023-2028)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Fisheries Partnership Agreement ('FPA')¹ between the European Community, on the one hand, and the Republic of Kiribati, on the other, was signed on 28 April 2008, and entered into force on 30 April 2008 for a duration of six years². Unless terminated by one of the parties, it is to be tacitly renewed for additional periods of six years.³ Given that neither of the parties has notified their intention to terminate the FPA, it is still in force. The first Protocol⁴ on the implementation of the FPA expired on 15 September 2012. The second such Protocol⁵ expired on 15 September 2015.

On 26 January 2015, the Council authorised the Commission to open negotiations for a new Protocol to the FPA between the European Union and the Republic of Kiribati ('Kiribati') ('the new Protocol')⁶.

Based on the relevant negotiating directives, the Commission conducted negotiations⁷ with Kiribati with a view to concluding a new Protocol on behalf of the Union. Following these negotiations, the new Protocol was initialled by the negotiators on 18 December 2022. The new Protocol covers a period of 5 years from the date of provisional application laid down in Article 22 thereof, that date being the date on which the new Protocol is signed by both parties.

The new Protocol allows Union vessels to fish in Kiribati waters for tuna species and provides for fishing opportunities as follows:

- 4 tuna purse seine vessels, with an access to Kiribati waters for 160 days per year;
- possible additional days per year can be made available to Union vessels, upon request.

¹ Fisheries Partnership Agreement between the European Community on the one hand, and the Republic of Kiribati, on the other, OJ L 205, 7.8.2007, p. 3.

² <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2007060&DocLanguage=en>

³ Article 11 of the FPA.

⁴ Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati for the period from 16 September 2006 to 15 September 2012 (OJ L 205, 07.08.2007, p. 8).

⁵ Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (OJ L 300, 30.10.2012, p. 3.).

⁶ Council Decision authorising the Commission to open negotiations on behalf of the European Union for the renewal of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other hand, 26.01.2015, 5059/15

⁷ Negotiations slowed down between 2016 and 2021, inter alia by effect of the Commission Decision (2016/C 144/05) of 21 April 2016 on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing (OJ C 144, 23.4.2016, p. 4). The negotiation process could resume after the "Notice of information (2020/C 424/04), of the termination of the demarches with a third country notified on 21 April 2016 of the possibility of being identified as a non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing" (OJ C 424, 8.12.2020, p. 29).

The purpose of this proposal is to distribute the fishing opportunities among the interested EU Member States.

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

In accordance with the objectives set out in Article 28 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁸, the new Protocol provides fishing opportunities for Union vessels in Kiribati waters, on the basis of the best available scientific advice and following the WCPFC recommendations. Highly migratory fish stocks (including tropical tuna) conservation and management in the Western and Central Pacific Ocean (WCPO) falls under the remit of the WCPFC. WCPFC's objective is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the ocean in accordance with the 1982 Convention and the Agreement (UNCLOS). In order to conserve and manage highly migratory fish stocks in the WCPO, the members of the WCPFC adopt Conservation and Management Measures (CMMs) to ensure long-term sustainability of highly migratory fish stocks in the WCPFC Convention Area and promote the objective of their optimum utilization. These CMMs are binding for all members, cooperating non-members and participating territories of WCPFC. Decisions of the WCPFC are generally taken by consensus. As a member of the WCPFC, the Union is bound by the CMMs adopted by it.

In particular, for bigeye, yellowfin and skipjack tuna in the WCPO, the WCPFC has adopted CMM 2021-01 relating to the allocation of the total allowable catch or the total level of fishing effort for each member of the WCPFC and for each fishery (purse seine, longline, pole and line and other commercial fisheries), as well as technical measures intended to ensure the sustainable exploitation of the tropical tuna stocks.

The Technical and Compliance Committee (TCC) is the “enforcement” committee of the WCPFC. Every year, the TCC reviews members' adherence to CMMs and monitors individual countries' implementation of those measures.

The new Protocol also enables the Union and Kiribati to work more closely together on promoting sound exploitation of fishery resources in Kiribati waters and to support efforts by Kiribati to develop its fisheries sector, in the interests of both parties. This cooperation will help promote decent working conditions in the fisheries sector.

- **Consistency with other Union policies**

The negotiation of a new Protocol implementing the FPA 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) TFEU, which establishes that the Council, on a proposal from the Commission, shall adopt measures on the allocation of fishing opportunities.

⁸ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22)..

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

The proposal falls under the exclusive competence of the European Union, as referred to in Article 3(1), point d, TFEU. The subsidiarity principle therefore does not apply.

- **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 Regulation (EU) No 1380/2013 establishing the common fisheries policy. It complies with Article 32 of that Regulation on financial assistance to third countries.

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

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

The ex-post evaluation⁹ of the Protocol for the period 2012-2015 was carried out prior to the negotiation of the new Protocol. The evaluation led to the conclusion that it would be beneficial to conclude a new Protocol with Kiribati. In particular, the ex-ante evaluation concludes that the continuation of the FPA is in the interest of both parties, with a clear added value of EU involvement to support its strategy focused on promotion of responsible fishing practices and fight against IUU fishing in the Pacific Region.

- **Stakeholder consultations**

Member States, industry representatives, international civil society organisations and the fisheries administration and civil society representatives of Kiribati were consulted as part of the evaluation. Consultations also took place in the framework of the Long Distance Advisory Council. These consultations led to the conclusion that it would be beneficial to conclude a new Protocol with Kiribati.

- **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 Regulation (EU) No 1380/2013.

⁹ Maritime Affairs and Fisheries: Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Republic of Kiribati, and ex-ante evaluation including an analysis of the impact of the future Protocol on sustainability. <https://webgate.ec.testa.eu/publications/studiesdb/Consultation.action?studyProjectId=5911>

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The new Protocol includes a clause on the consequences of violating the essential elements on human rights laid down in Article 9 of the Cotonou Agreement¹⁰, or the corresponding article of the agreement that will succeed it.

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 proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of the Implementing Protocol to the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati, and the proposal for a Council Decision on its conclusion. This Regulation should apply as soon as fishing activities become possible under the Protocol, i.e. from the date of signature that will trigger its provisional application.

¹⁰ Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 - Protocols - Final Act – Declarations (OJ L 317, 15.12.2000, p. 3).

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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) On 23 July 2007, the Council adopted Regulation (EC) No 893/2007¹ on the conclusion of a Fisheries Partnership Agreement between the European Community, on one hand, and the Republic of Kiribati, on the other ('the Agreement').
- (2) The first Protocol² to the Agreement set out, for a period of six years, the fishing opportunities granted to Union vessels in the fishing zone in Kiribati waters and the financial contribution granted by the Union. The period of application of that Protocol expired on 15 September 2012.
- (3) The second Protocol³ to the Agreement set out, for a period of three years, the fishing opportunities granted to Union vessels in the fishing zone in Kiribati waters and the financial contribution granted by the Union. The period of application of that Protocol expired on 15 September 2015.
- (4) On 28 January 2015, the Council authorised the Commission to open negotiations with Kiribati for the conclusion of a new Protocol implementing the Agreement⁴. Those negotiations were concluded and a new Protocol implementing the Agreement for a period of five years (2023-2028) was initialled on 18 December 2022.
- (5) In accordance with Council Decision [XXX] of [...], the Protocol (2023-2028) implementing the Fisheries Partnership Agreement between the European Community

¹ Council Regulation (EC) No 893/2007 of 23 July 2007 on the conclusion of a Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (OJ L 205, 07.08.2007, p. 1)

² Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati for the period from 16 September 2006 to 15 September 2012 (OJ L 205, 07.08.2007, p. 8).

³ Council Decision 2012/669/EU of 9 October 2012 on the signing, on behalf of the European Union, and provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (OJ L 300, 30.10.2012, p. 2)

⁴ Council Decision authorising the Commission to open negotiations on behalf of the European Union for the renewal of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other hand, 26.01.2015, 5059/15

and the Republic of Kiribati ('the Protocol') was signed on [insert date], subject to its conclusion at a later date.

- (6) The Protocol provides for fishing opportunities for Union vessels in Kiribati waters, on the basis of the best available scientific advice and following the conservation and management measures adopted by the Western and Central Pacific Fisheries Commission.
- (7) The fishing opportunities provided for in the Protocol should be allocated among relevant Member States for the entire period of its application.
- (8) The Protocol should be implemented as soon as possible in view of the economic importance related to Union fishing activities in Kiribati waters and the need to minimise as much as possible the time period before such activities can resume.
- (9) 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 of the Fisheries Partnership Agreement between the European Community on the one hand, and the Republic of Kiribati, on the other (2023-2028) 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 [insert date of the 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*