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THE EUROPEAN UNION**

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**2013/0316 (NLE)**

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**ADD 1**

**PECHE 505**

**"A" ITEM NOTE**

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From:	Permanent Representatives Committee (Part 1)
To:	Council

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Subject: Proposal for a Council Decision on the signing, on behalf of the European Union, of the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement in force between the two Parties

- Adoption

Proposal for a Council Regulation on the allocation of the fishing opportunities under the Protocol agreed between the European Union and the Kingdom of Morocco setting out fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two Parties currently in force

- Adoption

Proposal for a Council decision on the conclusion, on behalf of the European Union, of the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement in force between the two Parties

- Request by the Council for the consent of the European Parliament

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### **Statement by Denmark**

Denmark emphasizes the importance of EU's contribution towards resource conservation and environmental sustainability through fishing only on surplus resources and preventing the overfishing of stocks within the fisheries partnership agreements. Denmark recalls the negotiating directives set out in the Council decision of 14 February 2012 to grant the Commission a mandate to open negotiations for a new protocol to the Fisheries partnership Agreement with Morocco.

Denmark finds that it is not sufficiently documented in the text of the protocol that a sustainable management of fishing resources is ensured, especially that fishing only must take place on a surplus. Thus, a sustainable management seems to fully depend on the fisheries management in Morocco, regional management measures and the collaboration between the EU and Morocco.

Denmark also stresses that the Union must promote the respect of human rights and democratic principles when entering into bilateral agreements. However, these aspects are not as clearly stated in the Morocco protocol as in other fisheries protocols within fisheries partnership agreements.

It is imperative that international law is respected, including that the fisheries resources benefit the local population, including West Sahara. In the opinion of Denmark the compliance with international law and the respect of human rights depend on the concrete implementation of the protocol by Moroccan authorities.

For these reasons, Denmark votes against the proposals for signature, conclusion of the new Protocol and allocation of fishing opportunities.

### **Statement by Germany, Austria and Ireland**

Germany, Austria and Ireland are of the opinion that the proposals for the renewal of the Protocol to the Fisheries Partnership Agreement with the Kingdom of Morocco include elements that address concerns expressed previously.

Germany, Austria und Ireland attach fundamental importance to respect for democratic principles and human rights pursuant to Art. 2 of the Protocol.

In principle, Germany, Austria und Ireland welcome the introduction of provisions to the Protocol on the planning and reporting duties of Morocco in respect of the regional distribution of funds, especially with regard to the expected economic and social benefits and the geographical distribution of these benefits.

Germany, Austria and Ireland ask the Commission to inform the Council comprehensively and regularly on the returns received by the West Saharan population as a result of the agreement. It must be ensured that the West Saharan Sahrawi population is also given an appropriate stake, and a stake that is in line with their interests, in the financial resources ensuing from the agreement.

The sustainable use of fish stocks is of the highest priority to Germany, Austria and Ireland. Germany, Austria and Ireland ask the Commission to ensure that, with regard to sustainable management, regular controls of stocks and fishing opportunities are carried out and the Council is informed of the results of these controls accordingly.

The signature of the Protocol is without prejudice to the EU's longstanding position in relation to the status of Western Sahara. Against this background and in view of the possibilities granted under Art. 8 of the Protocol, Germany, Austria and Ireland consider it acceptable to sign the Protocol.

## **Erklärung Deutschlands, Österreichs und Irlands**

Deutschland, Österreich und Irland sind der Auffassung, dass die Vorschläge zur Erneuerung des Protokolls zum partnerschaftlichen Fischereiabkommen mit dem Königreich Marokko Elemente enthalten, die bislang geäußerte Bedenken aufgreifen.

Deutschland, Österreich und Irland messen der Achtung demokratischer Prinzipien und der Menschenrechte gemäß Artikel 2 des Protokolls grundlegende Bedeutung zu.

Deutschland, Österreich und Irland begrüßen im Grundsatz die Aufnahme von Bestimmungen im Protokoll über die Planungs- und Berichtspflicht Marokkos zur regionalen Verteilung der Mittel, vor allem was die erwarteten wirtschaftlichen und sozialen Vorteile und ihre geographische Verteilung betrifft.

Deutschland, Österreich und Irland bitten die Kommission, den Rat regelmäßig und umfassend über die Rückflüsse aus dem Abkommen an die Bevölkerung der Westsahara zu informieren. Es ist sicherzustellen, dass auch die sahrauischen Bewohner der Westsahara in angemessener und einer ihren Interessen entsprechenden Weise an der finanziellen Gegenleistung aus dem Abkommen beteiligt werden.

Die Nachhaltigkeit der Nutzung der Fischbestände hat für Deutschland, Österreich und Irland höchste Priorität. Deutschland, Österreich und Irland bitten die Kommission, im Hinblick auf die nachhaltige Bewirtschaftung eine regelmäßige Überprüfung der Bestände und der Fischereimöglichkeiten sicherzustellen und den Rat entsprechend darüber zu unterrichten.

Die langjährige EU-Position hinsichtlich des Status der Westsahara bleibt durch die Unterzeichnung des Protokolls unberührt. Vor diesem Hintergrund und der in Art. 8 des Protokolls gegebenen Möglichkeiten halten Deutschland, Österreich und Irland dessen Unterzeichnung für akzeptabel.

### **Statement by Ireland**

Ireland has joined with Germany and Austria in a separate statement with regard to the decision on the signature of the Protocol to the Fisheries Partnership Agreement with the Kingdom of Morocco. That statement highlights the fundamental importance of respect for democratic principles and human rights, including regional distribution of funds. Ireland reserves its position on the overall Conclusion of the Protocol to the Fisheries Partnership Agreement with the Kingdom of Morocco.

### **Statement by Finland**

With regard to the Proposal for a Council Decisions on the signing and conclusion, on behalf of the European Union, of the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement in force between the two Parties and the Council Regulation on allocation of the fishing opportunities, Finland cannot support the Council Decisions and the Regulation, and abstains.

In accordance with the principles of international law, including the right to self-determination, permanent sovereignty over natural resources and the protection of human rights and fundamental freedoms, Finland emphasizes the need to take into account the interests and opinion of the people in Western Sahara. The economic gains resulting from the implementation of the Protocol should benefit the people in Western Sahara region.

Finland finds it essential that the European Commission timely and comprehensively reports to the Member States of the European Union on the implementation of the Protocol. In this regard, specific attention should be given to projects selected in the Joint Committee and to the benefits created by these projects in the Western Sahara region.

## **Statement by the Netherlands**

The Netherlands has assessed the new fisheries protocol between the EU and the Kingdom of Morocco on three criteria: compliance with international law with regard to the fishing opportunities under the protocol in the waters of the non self-governing territory of the Western Sahara, sustainability and economic profitability.

### **International Law**

The protocol does not explicitly refer to the Western Sahara, but allows for its application to maritime areas adjacent to the Western Sahara that are not under the sovereignty or jurisdiction of Morocco. Morocco, as the administering power of the Western Sahara, may not disregard the interests and wishes of the people of the Western Sahara, when applying the protocol to such maritime areas. The Netherlands notes that the protocol does not contain any provisions ensuring that Moroccan authorities will use the amount paid for access to the resource in accordance with their obligations under international law owed to the people of the Western Sahara. The Netherlands considers that, under international law, a proportionate share of this amount should benefit the people of the Western Sahara. Compliance with international law will therefore depend on the implementation of the protocol by Moroccan authorities.

### **Sustainability**

The Netherlands welcomes the flexibility with regard to the adjustment of fishing opportunities and the financial compensation. Article 3 of the document clearly establishes the role of the Council in this procedure. However, the Netherlands questions the current increase in fishing opportunities for the pelagic sector in light of the available scientific advice.

## Economic Profitability

The Netherlands estimates that the category pelagic constitutes eighty per cent of the value of the protocol. In this regard the Netherlands is concerned that the adjustments of the technical conditions for the EU pelagic sector will hamper an optimal uptake of the fishing possibilities.

In general, the Netherlands is of the opinion that a fishery within the framework of a partnership agreement constitutes a better guarantee for sustainability than private agreements. Nevertheless, taking into account all of the above, the Netherlands will abstain from voting on both the Council decision on the signing and the conclusion of the protocol.

### **Statement by Sweden**

#### Röstförklaring

Sverige har sedan länge ifrågasatt huruvida EU:s fiskepartnersavtal med Marocko är förenligt med folkrätten. Eftersom Västsahara inte är en del av Marockos territorium, krävs enligt folkrätten att nyttjandet av fiskeresurserna sker till förmån för det sahariska folket i Västsahara och i enlighet med deras intresse och vilja.

Sverige noterar de ansträngningar som gjorts från Kommissionens och Marockos sida för att säkerställa en bättre regional fördelning av intäkterna från avtalet. Trots ansträngningar i rätt riktning är bedömningen att de förändringar som skett inte är tillräckliga för att tillse att de folkrättsliga förpliktelseerna är uppfyllda i relation till det sahariska folket i Västsahara.

Den sammantagna bedömningen är därför att Sverige inte kan ställa sig bakom protokollet till fiskepartnerskapsavtalet och Sverige kommer att rösta nej till samtliga tre förslag som rör det nya protokollet, det vill säga förslagen om undertecknande, om ingående av det nya protokollet och om fördelning av fiskemöjligheter.

### **Statement by the United Kingdom**

The UK recognises progress on areas of concern since the 2011 negotiating mandate to extend the Fisheries Partnership Agreement with Morocco. This includes the agreement by the European Union and Moroccan authorities to a new requirement to report on the geographical impact of the protocol. While acknowledging that these are steps in the right direction, the UK still has concerns with this protocol regarding value for money and the sustainability of stocks to be fished.

Furthermore, the UK believes the protocol should also clarify Moroccan obligations, ensuring that the people of Western Sahara would benefit from this protocol appropriately. The UK is therefore abstaining on the decision to sign this Protocol as this does not fully satisfy these concerns.

### **Commission statement**

on the Proposal for a Council Decision on the conclusion of the Protocol

The Commission emphasises that the consent of the European Parliament will in any event be required for the conclusion of the new Fisheries Protocol with Morocco and that, for this reason, the precise material legal basis of Article 43(2) TFEU as it had proposed was most appropriate in conjunction with the procedural legal basis of Article 218(6)(a) and (7) of the TFEU.

Yet, in order to facilitate a swift conclusion of the intended new Protocol in the now prevailing circumstances of urgency, the Commission would not oppose a Presidency compromise, by way of which the legal basis would be changed to "Article 43 TFEU in conjunction with Article 218(6)(a) and (7) TFEU" with the same consent procedure still to be applied.

This shall not in any way constitute a precedent.

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