

Special Report

Are the Fisheries Partnership Agreements well managed by the Commission?



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Special Report**Are the Fisheries
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(pursuant to Article 287(4), second subparagraph, TFEU)

The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Audit Chamber I — headed by ECA Member Augustyn Kubik — which specialises in preservation and management of natural resources spending areas. The audit was led by ECA Member Jan Kinšt, supported by the head of his private office, Alejandro Ballester Gallardo; Colm Friel, head of unit; Maria Luisa Gómez-Valcárcel, principal auditor; Oana Dumitrescu, auditor and Frédéric Soblet, auditor.



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Reply of the Commission

- DG:** Directorate-general
- ECA:** European Court of Auditors
- EDF:** European Development Fund
- EEZ:** Exclusive economic zone
- ERS:** Electronic reporting system (or electronic logbook)
- EU:** European Union
- FAO:** Food and Agricultural Organisation
- FPA:** Fisheries Partnership Agreement
- IOC:** Indian Ocean Commission
- IOTC:** Indian Ocean Tuna Commission
- MSY:** Maximum sustainable yield
- PC:** Partner countries
- RFMO:** Regional fisheries management organisation
- STECF:** Scientific, Technical and Economic Committee for Fisheries
- Unclos:** United Nations Convention on the Law of the Sea
- VMS:** Vessel monitoring system

I The European Union (EU) negotiates agreements with coastal countries in order to obtain access rights for the EU external fleet to these countries' fishing grounds. These agreements have evolved from the simple access agreements of the 1980s into Sustainable Fisheries Partnership Agreements (SFPAs) which seek to sustain fishing resources, while also developing the partner country's fishing sector through the provision of sectoral support. The Commission is looking to extend the network of agreements as they offer significant advantages not only to the EU fleet, but also to the partner countries.

II The Court audited fisheries agreements for which a financial contribution is made from the EU budget (i.e. agreements based on fishing quota exchanges were excluded). The Court examined four of the 12 agreements in force at the time of the audit: Mauritania (a multi-species agreement in the Atlantic Ocean), Madagascar, Mozambique and the Seychelles (tuna agreements in the Indian Ocean). These four FPAs represented 77 % of FPA payments in 2013.

III The objective of this audit was to evaluate whether FPAs are well managed by the Commission. This involved examining the negotiation of FPAs, and the implementation of access rights and sectoral support. The audit concluded that FPAs are generally well managed by the Commission, but that there are still several areas for improvement, as regards the negotiation process and the implementation of the protocols.

IV The procedures for negotiating and renewing FPAs are often complex and lengthy, yet the Commission handled these difficulties well and, with few exceptions, managed to avoid interrupting the fleet's fishing activities. The network of agreements negotiated was relevant to the needs and priorities of the EU fleet concerned.

V Where lengthy negotiations of new protocols jeopardised the continuation of fishing activities, vessels were allowed, as provided for in Article 9 of Regulation (EC) No 1006/2008, to apply to the third party country concerned for fishing authorisations through the Commission, pending the signature of the new protocol. However, this is not consistent with another regulatory requirement, namely 'the exclusivity clause', and its application led to misunderstandings between a partner country and the Commission.

VI The FPAs are presented as instruments that ensure the sustainability of the fisheries concerned. As established in the basic common fisheries policy regulation, the fishing opportunities negotiated should allow EU vessels to fish only the surplus resources of partner countries. However, the concept of surplus is very difficult to apply in practice due to a lack of reliable information on fish stocks and the fishing effort of domestic fishing fleets, or of other foreign fleets which have also been granted access by the partner countries.

VII

The actual unit cost paid for a tonne of fish was frequently higher than the unit price negotiated. While the negotiations considered catches reported from previous protocols, the reference tonnage agreed in the most recent protocols often remained higher, leading to their regular underutilisation. However, the EU financial contribution was paid in full regardless of the fishing opportunities used. The underuse of the protocols and resulting high costs could be partly attributable to the technical conditions negotiated with the partner countries to comply with their national legislation or to ensure the sustainability of fishing activities.

VIII

The information given in independent *ex post* evaluations of FPAs is not always sufficiently complete, consistent or comparable, thus reducing its usefulness in informing decisions when negotiating the protocols.

IX

The audit concluded that the management of the implementation of the access conditions was not sufficiently robust. The Commission did not appropriately monitor the workflow of lengthy and cumbersome licensing processes to identify the reasons for delays and areas for improvement.

X

The audit identified shortcomings in catch data management, as illustrated by differences between the catch data provided by Member States, the Commission and the *ex post* evaluations. Since payments under the FPAs are based on catch data, this gives rise to financial risk.

XI

While the planning of sectoral support has improved, the Commission's role in monitoring the implementation of the protocols audited was still limited. There is no clear framework laying down eligibility and traceability rules for the actions funded. Furthermore, the Commission does not have sufficient control rights; for example, partner countries have in some instances implemented different actions than those planned, and these may not contribute effectively to the achievement of the FPA's objectives.

XII

Finally, the protocols allow for a suspension of payments, but not for partial reductions of sectoral support payments when agreed actions or results are only partially achieved. Moreover, despite sharing the same development concept, the conditions for payment of sectoral support are different from those for European Development Fund (EDF) budget support, which sometimes led to inconsistencies.

XIII

The Court has the following recommendations.

To improve the negotiation of new FPAs and protocols, the Commission should:

- (a) review dormant agreements and consider how to address the interruption of fishing activities imposed by the exclusivity clause while respecting the principles of the common fisheries policy. Furthermore, the Commission should clarify and include in the protocols appropriate provisions to ensure the continuity of fishing operations between two protocols;
- (b) define regional strategies for the development of fisheries governance and ensure that protocols negotiated within the same region are consistent with the relevant regional strategy and with other EU funds;

- (c) when negotiating the fishing possibilities of new protocols, consider the utilisation rates of previous protocols and endeavour to better link payments for access rights to actual catches, while ensuring that the fishing activities are not adversely affected;
 - (d) better analyse the potential impact of SFPA clauses on the use of the protocol, while safeguarding the mutual benefits for the EU and the partner countries concerned, perhaps by consulting the relevant stakeholders to identify where more detailed assessments of critical clauses are necessary;
 - (e) better focus *ex post* evaluations to obtain a consistent and comparable analysis of the return on public money spent under the protocols as well as a comprehensive and critical analysis of their effectiveness for the EU and the partner country concerned.
- To improve the implementation of FPAs, the Commission should, without delay:
- (f) establish procedures to monitor each of the steps in the licensing process, including time taken by Member States, partner countries, and the Commission services, in order to identify and follow up on weaknesses in the procedure;
 - (g) promote the acceptance of electronic licences or of a list of authorised vessels for the whole period of validity of the licences;
 - (h) ensure that the new catch database is fully used by flag Member States and provides reliable catch data which can be consolidated, monitored and kept up to date;
 - (i) for new protocols, propose the introduction of eligibility requirements to assess actions being considered for sectoral support funding (other requirements could relate to traceability, selection, reporting and performance measurement, and control rights for the Commission);
 - (j) ensure effective coordination on the subject of FPA sectoral support with other development partners active in the fisheries sector;
 - (k) ensure that sectoral support disbursements are consistent with other EU budget support payments and based on the results achieved by the partner countries in the implementation of the matrix of commonly agreed actions.

The need for international fisheries agreements

01

The principle of free access to the high seas gradually disappeared from the mid-1970s onwards and in the wake of the third United Nations Conference on the Law of the Sea (Unclos III). Entering into force in 1982 after 9 years of negotiations, the Convention established in international law the right of states to claim sovereignty over waters up to 200 nautical miles from their shorelines (the exclusive economic zone (EEZ)), for the purpose of exploring and exploiting, conserving and managing the natural resources in these waters. More and more countries decided to extend their sovereignty to the 200 mile limit and, as a result, about 90 % of fish resources came under the control of coastal countries. Many distant water fleets¹, which had previously fished these waters, were then obliged to enter into access agreements with coastal states.

02

As a result of this, the EU (or 'the European Community' as it was at that time) began to negotiate bilateral fisheries agreements with coastal states, mostly developing countries. These agreements were initially simple access agreements, providing fishing opportunities for the EU distant water fleet and an important revenue source for these developing states. The agreements were commercial in nature and generally based on the 'pay, fish and go' principle.

03

Since 1981, the EU has also negotiated a number of 'northern agreements'. These are reciprocal agreements involving an exchange of fishing opportunities between EU fleets and those of Norway, Iceland and the Faeroe Islands, with no financial contribution. This report does not cover these agreements.

Fisheries Partnership Agreements (FPAs)

04

The simple access agreements were subject to criticism, notably with regard to their effect on over-exploited stocks, their lack of transparency and of enforcement and compliance with regulations, their exploitation of the weak negotiation and enforcement capacity of developing coastal states, and for not being an appropriate means of delivering development cooperation in fisheries.

05

In response to these criticisms, the 2002 reform of the common fisheries policy introduced the concept of 'partnership' to emphasise the EU's objectives of supporting the development of the national fisheries sector in its partner countries (PCs), fostering and enhancing policy dialogue between the EU and developing countries, and promoting sustainable fisheries. This new generation of agreements were called Fisheries Partnership Agreements (FPAs) (see **Box 1**). The financial contribution was split into two distinct parts: access rights to the EEZ and 'sectoral' financial support, which aims to promote sustainable fisheries development in the partner countries.

¹ Fishing vessels that fish outside their national waters.

Box 1

Objectives of the FPAs²

- To ensure the rational and sustainable exploitation of living marine resources in the partner countries (introducing the notion of surplus from the United Nations Convention on the Law of the Sea)³
- To safeguard employment in the regions of the Union dependent on fishing
- To secure the continued existence and competitiveness of the EU fisheries sector
- To ensure an adequate supply for the Union market
- To generate added value for the Union
- To improve the administration of partner countries' fisheries by developing their fisheries resource management and control capacities
- To promote the economic development of the fisheries sector in partner countries, as well as employment, health conditions and the business environment within the sector

- 2 Conclusions of the Agriculture and Fisheries Council, 19 July 2004 and 19-20 March 2012. Most of these objectives were also in Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the Common Fisheries Policy and in the area of the Law of the Sea (Article 7) (OJ L 160, 14.6.2006, p. 1). Article 31 of 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) sets out the principles and objectives of Sustainable Fisheries Partnership Agreements.
- 3 Article 62(2) of the United Nation Convention on the Law of the Sea (Unclos) refers to this surplus as the share of the allowable catch which the coastal state cannot or does not wish to exploit itself.

06

The Commission considers that FPAs offer significant advantages over other ways for the European distant water fleet to gain access to third countries' waters and resources. In particular:

- FPAs give the European fleet access to fishing grounds under a clearer, uniform and more stable legal framework, offering greater legal certainty than private agreements between European vessel owners and non-EU countries. European shipowners have also expressed a preference for FPAs and asked the Commission to extend the network of agreements, even at the cost of an increase in their contribution to access rights.
- FPAs foster scientific cooperation between the EU and its partner countries. The protocols provide for scientific committee meetings to review stock levels and consider resolutions of the regional fisheries organisations. The partner countries sometimes collaborate with EU scientists working on fleet activities in their countries.

Introduction

- In order to ensure a level playing field for the various distant water fleets in the coastal countries' EEZ, the protocols also provide for a non-discrimination clause. This means that the technical standards and other sustainability principles which apply to FPAs, should also apply to agreements between the partner countries concerned and other fleets present in their EEZ. This should also foster the sustainable management of fishing resources.
- In the partner countries, FPAs encourage improved governance and management of the local fisheries sector by supporting the monitoring, control and surveillance of national and foreign fleets' activities. FPAs provide significant funding to contribute to the sustainable development of local fishing activities.

07

The 2014 reform of the common fisheries policy introduced the concept of the sustainable fisheries partnership agreement (SFPAs). The reform aims to improve some aspects of FPAs, such as the amount of information available on the basis of which to determine the available surplus in the EEZ of partner countries, the promotion of sustainable fishing in the partner countries' waters by better targeting and regular monitoring of EU sectoral support, and the inclusion of a human rights clause. The main objective for SFPAs is to provide a legal, environmental, economic and social governance framework for fishing activities carried out by Union fishing vessels in third country waters, where similar standards to those applicable to Union fishing vessels in EU waters should apply.

08

The Commission has for several years introduced an exclusivity clause, applicable to all FPAs in force, to tighten the governance framework for the fishing activities of the EU's distant water fleet. Once an agreement is in force between the EU and a partner country, EU fishing vessels can only operate in the waters of the partner country if they possess a fishing authorisation which has been issued under the framework of a protocol for this agreement (see paragraph 10).

The European distant water fleet and FPAs

09

Although the distant water fleet constitutes less than 1 % of the EU fleet, with just 335 vessels out of the 86 283 registered in the EU, it is much more significant in terms of fishing capacity, with 18 % of the gross tonnage and 7 % of the engine power⁴ of the total EU fishing fleet. The distant water fleet is an important supplier of fish to the European market as it is estimated to provide 15 % of the total catches of the EU fleet. It also accounts for 4 % of EU fleet employment. Around half of the distant water fleet's catches are made under fisheries partnership agreements.

4 Data from the 2014 Annual Economic Report on the EU Fishing Fleet (STECF 14-16), corresponding to the 2012 distant water fleet. The European distant water fleet is defined in this report as comprising all EU-registered vessels over 24 metres operating in Other Fishing Regions (OFR), including some EU outermost regions.

10

In drawing up an FPA, the EU and its partner countries negotiate an agreement and its implementing protocols. This agreement provides a framework for long-term cooperation in fisheries, and the protocols set out detailed terms and conditions. Protocols are generally negotiated every 3 to 6 years, in agreement with the partner country. When referring to FPAs, this report mainly concerns the protocols. More details on negotiation processes and responsibilities under FPAs are given in **Annex I**.

11

In 2014, payments of 69 million euro were made from the EU budget for FPAs, which represents a significant decrease from the over 200 million euro paid out in the 1990s. This is explained partly by the expiry of the protocol with Mauritania in December 2014, for which no payments were made in 2014, but 67 million euro was paid out in 2013. Morocco alone represented over 40 % of the 2014 total. In addition, the operators also make financial contributions to these FPAs in exchange for the fishing authorisations they receive. Their contribution has increased steadily in recent years.

12

Annex II shows the 13 FPAs in force for 2015, with an annual financial contribution of 71 million euro. Three of the 13 agreements in force are mixed agreements allowing the EU fleet access to different fish stocks in the EEZ of the partner country. The remainder are tuna agreements granting fishing rights in the partner country's EEZ to EU vessels which follow migratory tuna stocks and other highly migratory species in their movements around Africa, and the Indian and Pacific Oceans.

13

Other FPAs without current protocols are Gambia (since 1.7.1996), Equatorial Guinea (since 30.6.2001), the Solomon Islands (since 9.10.2012), Micronesia (since 25.2.2010), Mauritania (since December 2014)⁵ and Mozambique (since January 2015). When an agreement is still in force but its protocols have yet to be renewed, as is the case with these agreements ('dormant agreements'), the EU fleet has no access to that country's fishing area, in accordance with the exclusivity clause (see paragraph 8).

⁵ Negotiations between the European Commission and Mauritania in view of the establishment of a new protocol were successfully concluded on 10 July 2015. This 4-year protocol amounts to 59.125 million euro per year. It still needs the approval of Council and the consent of the European Parliament.

14

The objective of the audit was to evaluate whether FPAs are well managed by the Commission by addressing the following questions:

- (1) Does the Commission manage the negotiations of FPAs and their protocols well?

In order to answer this question, the Court reviewed the negotiation process for the four FPAs audited and looked at whether the Commission negotiated or renewed the protocols in time to ensure the continuation of European fleet activities. Furthermore, the audit assessed whether the negotiation of fishing possibilities and the financial contributions were consistent with the FPAs' objectives of ensuring the sustainability of fish stocks at a reasonable cost for the EU, improving partner countries' fisheries governance and fostering the economic development of their fisheries sector.

- (2) Does the Commission manage the implementation of FPAs well?

In order to answer this question, the Court reviewed the Commission's management of the licensing process and the reliability of the catch data reporting system. Furthermore, the audit assessed whether the Commission appropriately designed, controlled and monitored the actions funded under the sectoral support component of the FPAs.

15

The audit approach involved meetings with relevant stakeholders⁶, the analysis of information obtained from the Commission, and on-the-spot visits in selected Member States (Spain and France) and in four partner countries with which the EU has concluded FPAs. Three of the partner countries chosen for this audit were in the Indian Ocean (Madagascar, Mozambique and the Seychelles) in order to obtain a regional perspective. In addition, Mauritania was chosen as an example of a multi-species agreement and as it is the most financially significant agreement. In total, the four FPAs audited represented 77 % of FPA payments in 2013.

16

The audit evidence was supplemented by a survey addressed to the operators of the EU distant water fishing fleet. Ship owners representing 70 % of this fleet replied⁷.

- 6 Stakeholders included the European Parliament, and NGOs in the area of employment on vessels and in the marine environment. The Court also visited associations of vessel operators and fish processors in Spain and France.
- 7 Twenty-one fishing vessel owners/associations answered the Court's survey, together operating 319 vessels (of which, 233 flagged in EU Member States) fishing outside European waters. The 233 vessels represented 70 % of the 335 vessels that make up the European distant water fleet. 79 % of the vessels included in the survey, operated in the Atlantic and Indian Ocean regions, of which 32 % are demersal fishing vessels, 22 % are pelagic trawlers, 7 % are seiners, 7 % are longliners of high capacity, 7 % are black hake trawlers and bottom longliners, and 4 % are tuna pole-and-line vessels.

Part I Negotiation of the FPAs

The Commission negotiated and renewed the FPAs in time to avoid any interruption in fishing activities

17

Negotiations of agreements granting the EU fleet access to EEZ coastal states' fishing grounds should aim to ensure that access is continuous, in order to avoid any negative impact on the sector. The Council has asked the Commission to prevent any interruption in fishing activities after the expiry of an agreement or protocol. Similarly, when negotiating a protocol, the Commission tries to introduce the possibility of provisional application from the date of signature until the date of final ratification.

18

The Court reviewed the Commission's negotiation process for the four FPAs included in the audit and in force at that time. The audit considered whether the protocols were renewed in a timely manner and so as to avoid interrupting the EU distant water fleet's fishing activities.

19

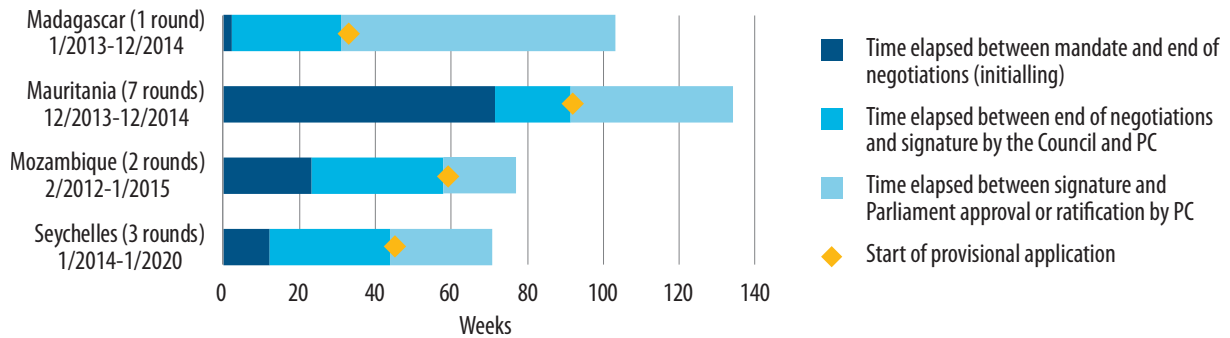
The negotiation of new protocols is a long and complex process. The Commission negotiates on the basis of a mandate from the Council, which signs the protocol with the partner country. The Parliament must then give its consent. More details on the negotiation process are given in *Annex I*. Therefore for continuity of fleet activities, the Commission has to start the process of negotiating a new protocol well in advance of the expiry of the current one.

20

The whole negotiation process for the four protocols included in the audit — from the Council's mandate, to the date of entry into force after the Parliament's consent or ratification by the partner country — lasted between 71 weeks and 134 weeks (as illustrated in *Figure 1*). The duration of negotiations depends on factors that negotiators cannot fully anticipate or control. The Commission has estimated that it needs a minimum of 12 weeks from the finalisation of negotiations (the 'initialling' of the protocol) to preparation of the protocol for signature by the Council, and that the Council needs an additional 6 to 8 weeks for scrutiny. The amount of time expected to elapse between finalisation of negotiations and signature by the Council is therefore a minimum of 20 weeks considering that there may be possible delays during discussions in the Council to adopt the protocol, but in the case of Madagascar, Mozambique and the Seychelles the time frame ranged from 29 to 35 weeks.

Figure 1

Duration of the negotiation process



Source: ECA, based on negotiation documents and EU legislation.

21

The Court found that the Commission manages the negotiation process well, wherever possible using the available legislative tools to avoid interrupting fishing activities. However, 83 % of operators who replied to the Court’s survey, representing around 30 % of the distant water fleet, declared having been affected by delays in the negotiation of protocols, mostly with Mauritania and Morocco, which are two significant but exceptional cases.

22

In the case of Mauritania, negotiations were lengthy (seven rounds of negotiations lasting a total of 71 weeks) and the previous protocol expired almost 5 months before a new one was signed. Since provisional application was not possible before signature by the Council, and in order to avoid any interruption of EU fleet activities, the Commission applied the provisions of EU law⁸ and proposed to the Mauritanian authorities that it continue to submit applications for fishing authorisations during this 5-month period. This possibility was used only by ship-owners of four categories of fisheries⁹ between 1 August 2012 and 15 December 2012. Fishing was thus able to continue for these categories, but not for the remaining categories, in which fishing had to cease temporarily. The Court notes that, while the application for fishing authorisations in the absence of a signed protocol was meant to protect the interests of the EU fleet, it was not consistent with the exclusivity clause (see paragraph 8).

8 Article 9 of Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (OJ L 286, 29.10.2008, p. 33). This article provides that where a protocol has expired, and where a new protocol has been initialled by the Commission but was not signed by the Council or it does not provide the provisional application, the Commission may, for a period of 6 months from the expiration date of the previous protocol, transmit applications for fishing authorisations to the third country concerned.

9 Categories 2 (black hake), 3 (demersal other than black hake), 5 (tuna) and 6 (pelagic freezer trawlers).

Observations

23

Furthermore, even while exploiting all the possibilities provided by the legislation, the Commission could not prevent the interruption of fishing activities. The Mauritanian authorities considered the activity in the period August to December 2012 to have taken place under the provisional application of the new protocol. Consequently, they enforced an early closure of the fishing activities in the four categories that had been authorised to continue fishing before the new protocol's signature. This caused losses for those shipowners who had also paid for licences until the actual expiration date of 15 December 2014.

24

In the case of Morocco, the protocol was signed in February 2011 and provisionally applied until December 2011, when the European Parliament rejected its conclusion¹⁰. Following fresh negotiations, another protocol was initialled on 24 July 2013 and ratified by the European Parliament on 10 December 2013, with no provisional application clause due to the fact that the Moroccan negotiators did not agree to its introduction. It only entered into force on 15 July 2014 due to the late ratification by Morocco, which led to additional expenditure from the EU budget¹¹ and also to a direct financial impact on shipowners and the EU industry as fishing activities were interrupted.

25

With respect to the Indian Ocean protocols audited, the continuity of fishing activities in the EEZ of Madagascar and the Seychelles was assured since

the new protocols were signed before the expiry of the previous protocols and included a provisional application clause. In the case of Mozambique, there was no protocol in force for a period of 1 month (time elapsed between the expiration date of the previous protocol (1.1.2012) and the provisional application of the new one (1.2.2012)), but this had no significant impact on the EU fleet, as the tuna stocks were not available to be fished in Mozambique waters during this period.

The Commission has negotiated a relevant network of agreements, but consistency within the Indian Ocean region could be improved

26

The Court considers a coherent and relevant regional network of agreements to be important. First, under improved conditions of legal certainty, the EU fleet can follow migratory species. Second, such a network enhances the Commission's negotiating position by reducing the pressure to reach an agreement when fleet activities risk being interrupted. Furthermore, the intended positive impact in terms of governance for the partner countries due to sectoral support and EU control over its own fleet can have a catalytic impact on regional fishing activities. This impact is heightened by the extent of European fleet activities in certain regions (for example EU purse seiners accounted for 66 % of purse seiner catches in the West Indian Ocean in 2011¹², while purse seiner catches in turn accounted for 49 % of the total catch in the region that year).

10 European Parliament Legislative Resolution of 14 December 2011 (P7_TA(2011)0569).

11 According to the Spanish authorities, the amount paid to the Spanish fleet in compensation for the losses incurred due to the disruption of their activities in Morocco was of 4,5 million euro (of which 4,3 million euro was paid from the European Fisheries Fund).

12 Tables 4.2 and 4.4 of the 'Review of tuna fisheries in the western Indian Ocean' final report, 2014, POSEIDON, MRAG, NFDS and COFREPECHE.

Observations

27

The current Commission strategy aims to address these needs by enlarging the network of agreements in line with the industry's requirements and priorities. In their replies to the audit survey, the shipowners expressed a primary interest in Angola, Guinea-Bissau and Sierra Leone, followed by Guinea-Conakry, Liberia, Tanzania, Kenya and Senegal. The Commission had started initial discussions with Tanzania, completed negotiations with Liberia and revived the agreements with Gabon, Morocco, Mauritius (for which the protocols had already entered into force at the time of the survey), Guinea-Bissau and Senegal (for which the protocols had already been signed). However, at the time of the audit, negotiations for the renewals with Mozambique and Mauritania had been suspended due to a lack of consensus between the Commission and the two partner countries.

28

However, the audit in the Indian Ocean found that there was room for improvement in the consistency between FPAs and their complementarity with other EU regional actions and funding sources in the fisheries sector. For example, this was the case with the fisheries monitoring centres. An agreement is in place for the regional exchange of vessel monitoring system (VMS) data between the Indian Ocean Commission (IOC) countries (Comoros, Mauritius, Madagascar, Réunion and the Seychelles) via the server developed with the support of the IOC with EDF regional funds. Mozambique is

not part of the IOC and, despite being an important partner in the regional network of FPAs, does not currently have access to this data. Instead of supporting Mozambique's access to the existing regional VMS data exchange system the Commission supports Mozambique in developing a regional fisheries monitoring centre by financing its feasibility study through the ACP FISH II, financed by the EDF. In parallel, the Commission has also supported the country's national VMS through FPA sectoral support.

The FPAs' objective of ensuring that the negotiated fishing opportunities concern only surplus fisheries resources was difficult to achieve

29

The key sustainability principle of the FPA is that the fishing opportunities negotiated in the protocols (quantities and number of licences) should only allow EU vessels to fish surplus resources¹³. This requires reliable information on stocks (based on the best available scientific advice), and on the fishing effort¹⁴ of coastal states and other agreements. The protocols should then grant access rights to a specific part of this surplus. The Commission should also ensure that the FPAs reflect the principle of maximum sustainable yield (MSY)¹⁵, and resolutions and recommendations of the regional fisheries management organisations (RFMOs) on the state of fish stocks.

13 Article 31 of Regulation (EU) No 1380/2013.

14 Fishing effort is the product of the capacity and the activity of a fishing vessel; for a group of vessels, it is the sum of the fishing effort exerted by each vessel in the group.

15 The MSY, which is an indicator of the optimum rate of exploitation, is defined by the Food and Agricultural Organisation (FAO) of the UN as the maximum catch that can be obtained on a sustainable basis.

Observations

30

The Court reviewed how the surplus was calculated and whether or not the quantities of fish to be caught under the agreement respected the surplus concept. The various FPAs negotiated were also analysed and compared for textual consistency.

31

The audit found that the surplus concept is extremely difficult to apply in practice. Article 61 of Unclos provides that responsibility for determining the surplus, taking into account the best scientific evidence available, lies with the partner country. However, the audit noted that partner countries do not have the capacity to determine the surplus. This is particularly relevant for mixed agreements (e.g. Mauritania) or widely dispersed fishing resources, like small pelagic or highly migratory species, due to the difficulty of determining a surplus in the EEZ of a particular coastal country, especially where there is no system of fishing quotas in place at regional level¹⁶. Moreover, information about the fishing effort of domestic fishing fleets or of other foreign fishing fleets which have also been granted access by the partner countries¹⁷ is not always reliable. It is therefore very difficult for the Commission to calculate the proportion of the total fishing effort represented by the EU fleet and, by extension, the catch limits for the EU fleet in accordance with the surplus approach.

32

In the Indian Ocean region, the Indian Ocean Tuna Commission (IOTC) has recommended maximum sustainable yields (MSY) for some species (e.g. swordfish) as part of its scientific advice¹⁸ and has adopted resolutions for the protection of two species of shark. The MSY standard can, however, only be applied with difficulty at individual country level for highly migratory species, such as those targeted by the FPAs.

The cost of the FPAs negotiated by the Commission was relatively high, considering past rates of use

33

When negotiating, the Commission should ensure that the clauses of the protocols with an economic impact on the European fleet and the partner countries' economies (i.e. the duration of the protocol, price, quantities, species, technical conditions, vessel owner contributions, reporting and landing requirements) enable the European fleet to make efficient use of the agreements and grant it access to an appropriate share of the available surplus at a fair price for the partner countries. The Commission should also ensure that the principles of economy, efficiency and effectiveness are taken into account when preparing FPA negotiations. The Council has asked¹⁹ the Commission, in cooperation with Member States, to commit to optimising the use of fishing opportunities in order to ensure value for money and compliance with the principles of sound financial management.

- 16 IOTC Resolution 14/02 foresees the introduction of a quota system at the regional level.
- 17 At the regional fishery management organisation level, the EU is calling for greater transparency, notably through requiring parties to provide all data in relation to third country fishing activities and access to their respective EEZs. The IOTC has adopted Resolution 14/05, relating to a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information.
- 18 IOTC scientific reports from 2013 and 2014.
- 19 3155th Agriculture and Fisheries Council meeting in Brussels, held on 19 and 20 March 2012.

Observations

34

The EU's financial contribution to the partner countries has two components: access rights to the EEZ and 'sectoral' financial support (see paragraph 5). While the partner country has no restrictions as regards the use of the first component, which strictly governs access to the national fishing areas, the payment of sectoral support funds should be conditional upon the realisation of the actions agreed, namely concerning the fisheries sector governance, between the EU and the partner country. This conditionality has been enshrined in the new common fisheries policy and in the subsequently signed FPAs. The distribution of the total financial contribution between the two components is an important aspect of the negotiation process.

The negotiation of the access rights component

35

The protocols determine the type of fish to which access is granted and the conditions governing this access in terms of number of licences, type of vessel and reference tonnage. This 'reference tonnage' represents the catch volume in respect of which a minimum payment for access rights²⁰ has to be paid by the EU. Should this level be surpassed, a supplementary payment for additional catches will be made by the EU. The protocols also specify technical and operating conditions.

36

When negotiating the 'access rights' component, the Commission tries to obtain the number of licences requested by the Member States (subject to the available limits²¹), considering also the external factors that may have an impact on the uptake of the fishing licences. The partner country usually seeks to obtain the greatest possible financial contribution, which is then 'converted' into a reference tonnage.

37

Figure 2 below shows the historic use of fishing opportunities (fish catches) in the partner countries visited in the Indian Ocean region in terms of reference tonnage. Despite the underutilisation of the fishing opportunities negotiated in previous protocols, the reference tonnage agreed in the most recent protocols has remained relatively stable.

38

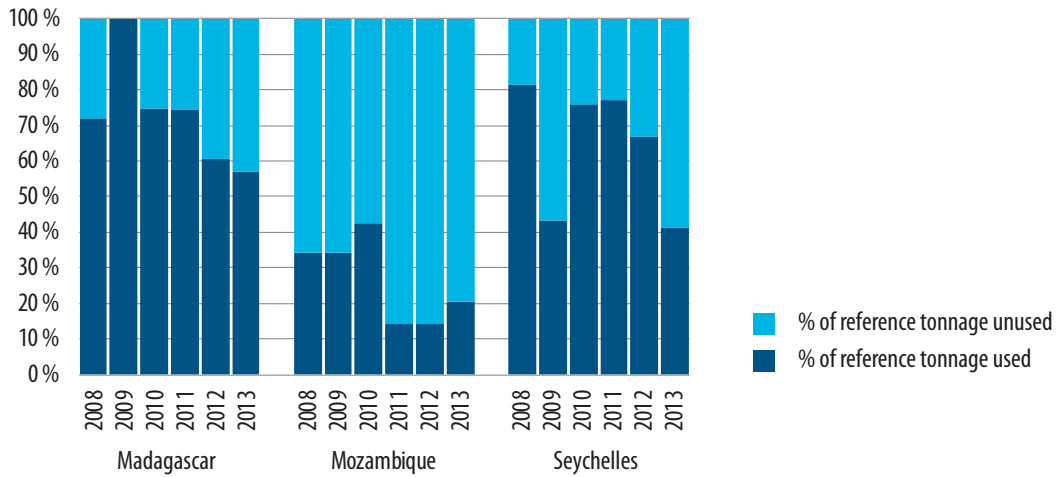
As the EU's financial contribution is based on reference tonnage rather than actual catches, the regular under-use of the protocols leads to an actual unit cost paid which is frequently higher than the unit price used as a basis for negotiations. **Figure 3** shows the actual cost of each tuna agreement when taking into account the total FPA financial contribution. It shows, for example, that the real cost per tonne of tuna caught in Mozambique in 2013 was about six times higher than the prices negotiated. This is explained by a very high financial contribution (which was increased further in the 2/2012-1/2015 protocol from 900 000 to 980 000 euro) combined with very low utilisation of the fishing opportunities.

20 The minimum financial contribution for access rights is calculated by multiplying the reference tonnage by the unit price agreed.

21 In the Indian Ocean region, the number of vessels and the gross tonnage were frozen at the 2006 level for vessels fishing tropical tuna and at the 2007 level for vessels fishing swordfish and albacore, according to Resolution 12/11 of the IOTC on the implementation of a limitation of fishing capacity of contracting parties and cooperating non-contracting parties.

Figure 2

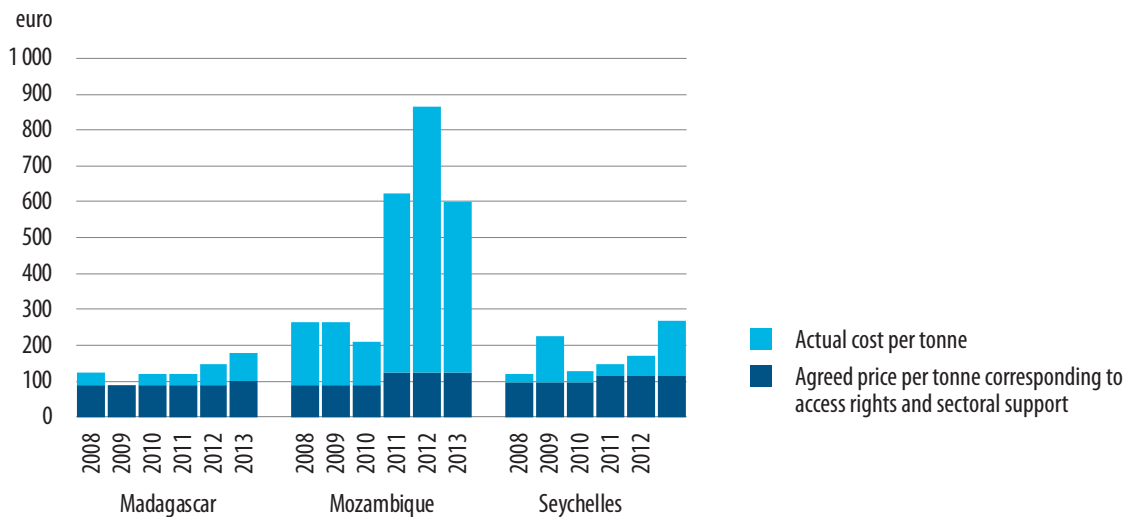
Use of tuna fishing opportunities in the partner countries visited in the Indian Ocean region



Source: ECA, based on DG Maritime Affairs and Fisheries data on the use of the fishing opportunities.

Figure 3

Unit cost per tonne of tuna paid by the EU



Source: ECA, based on protocols and DG Maritime Affairs and Fisheries data on the use of the fishing opportunities.

Observations

39

The market value of the fish stocks negotiated in the protocols has a direct influence on the value of the protocol. The Commission should therefore consider this when negotiating the overall price of the protocols. However, this was not always the case. In the most recent protocol (2013-2014) with Mauritania, the cephalopods category, which has a high commercial value and was used at an average rate of 93 % in the 2008-2012 protocol, was withdrawn from the protocol due to the application of the surplus concept and the national authorities' decision to reserve cephalopods for the national fleet. Due to the category's high value and high utilisation rate, this decision had a significant negative impact on the EU fleet. The fishing opportunities for the pelagic species in the 2013-2014 protocol, which have a lower commercial value, were increased. The financial contribution for access was increased from an average

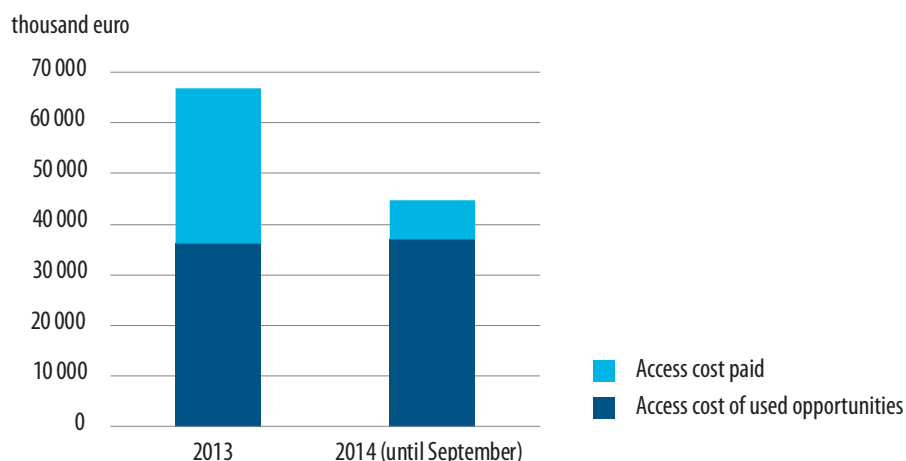
of 60 million euro per year in 2008-2012 (and only 50 million euro per year in 2012) to 67 million euro per year for 2013 and 2014. The new protocol was, therefore, relatively more expensive for the EU. The *ex post* evaluation of the protocol (which covered the first 11 months) noted that the direct added value for all the beneficiaries was 0.8 euro. However the direct added value for the EU, which represents the wealth created for the EU for each euro invested was only 0.39 euro²². This ratio was on average 0.63 euro in the period 2006-2009.

40

Overall, in Mauritania, the final unit price per tonne paid was much higher than the theoretical access cost based on full utilisation. **Figure 4** shows the estimated cost of access rights for the EU based on the actual use of the fishing opportunities²³.

- 22 As shown in **Table 3** this ratio is 5.53 for the Seychelles, 4.09 for Madagascar and 0.91 for Mozambique.
- 23 Data for 2014 is only available until September and amounts were adjusted on a pro-rata-temporis basis. In order to estimate the breakdown of the access rights payment per category, the Court has taken into account the reference tonnage and the fish market price (from the *ex post* evaluation and DG Maritime Affairs and Fisheries' data). This breakdown is not presented for the previous protocol as the categories were not comparable.

Figure 4 Estimated cost of fishing opportunities used in Mauritania



Source: ECA, based on the 2013-2014 protocol, DG Maritime Affairs and Fisheries data, *ex post* evaluation 2014.

Observations

41

The acceptance of some clauses that led to implementation problems, in particular in Mauritania and Mozambique, might have contributed to the underutilisation of the protocols. In Mozambique, the main issue was the requirement for 33 % of vessels to undergo pre-fishing inspections²⁴.

42

In Mauritania, the main issues were restrictive technical conditions, including a narrow definition of fishing areas, in the 2013-2014 protocol. Most of these conditions were designed to protect overexploited stocks, avoid unwanted catches and protect the ecosystems. Over the period August 2012 to December 2013, the EU fleet segments most affected by the technical conditions²⁵ had very low utilisation rates: e.g. zero for crabs and extremely low for the category 'non-freezer pelagic' and 'crustaceans'.

This was confirmed by the replies to the Court's survey where 70 % of the operators who replied in relation to the Mauritanian protocol said that the technical conditions negotiated were inadequate and 58 % said that profitability was affected.

The negotiation of the sectoral support component

43

Sectoral support is an important tool for achieving the objectives of improving partner countries' fisheries governance and fostering the economic development of their fisheries sector. During negotiations, the Commission, in an attempt to obtain the country's commitment to improving governance in the fisheries sector, seeks to increase sectoral support. However it is capped at 50 % of the total EU contribution (see **Table 1**).

24 Pre-fishing inspections are required for 33 % of the EU vessels authorised to fish in Mozambican waters. In their replies to the Court's survey, vessel operators considered that this requirement was excessively costly.

25 The technical conditions were very restrictive and following very low utilisation rates for the first months, the Joint Committee agreed to ease these restrictions, while maintaining the environmental considerations. The issue with the technical conditions has delayed the actual implementation of the protocol by almost 1 year.

Table 1 Importance of sectoral support in the two most recent protocols reviewed for each partner country visited

Protocol ¹ and ²	Madagascar	Mauritania	Mozambique	Seychelles
Total contribution ¹ (euro)	1 525 000	76 250 000 ³	650 000	5 600 000
% sectoral support	36.1 %	21.3 %	38.5 %	39.6 %
Total contribution ² (euro)	1 526 875 ³	70 000 000	980 000	5 116 667 ³
% sectoral support	45.8 %	4.3 %	45.9 %	49.5 %

1 Previous protocols referred to: Madagascar (2005-2011), Mauritania (2008-2012), Mozambique (2008-2011) and Seychelles (2011-2013).

2 Protocols in force at the time of the audit referred to: Madagascar (2013-2014), Mauritania (2013-2014), Mozambique (2012-2014) and Seychelles (2014-2020).

3 An average was calculated for this protocol since the annual contribution changes each year.

Source: ECA, based on the text of the protocols.

Observations

44

The Court considers that increasing the proportion of sectoral support is consistent with the FPA objectives of improving the governance of third countries' fisheries and promoting the economic development of their fisheries sector.

45

Mauritania was the only exception to this positive trend of increasing the share of the total EU financial contribution to go to sectoral support. In this case, the Commission agreed to significantly reduce the sectoral support component from 21 % of the total FPA contribution in the 2008-2012 protocol to only 4 % in the 2013-2014 protocol. This reduction was introduced as a result of the problems encountered by the Commission in obtaining information from the Mauritanian authorities regarding the actions financed by sectoral support in the 2008-2012 protocol (as illustrated in **Box 2**). As shown in **Table 1** above, the total annual financial contributions negotiated

by the Commission in the two protocols are similar. This means that the Commission reduced the share of the sectoral support component and increased proportionally the access rights component, for which partner countries have limited transparency or reporting obligations. In the Court's view, this response was not consistent with the development objective of FPAs.

46

Moreover, during negotiations the Court considers that it is important to take into account the total EU financial contribution to the partner countries. The amounts involved play an important role in the development of the partner countries, as indicated in **Table 2**. However, FPA and EDF contributions, objectives and implementation arrangements are negotiated independently. The Court considers that this does not facilitate the Commission's position during negotiations with the partner countries.

Table 2 EU contributions to the partner countries visited during the audit and their significance in relation to the fisheries budgets and total national budgets (2013)

2013	Madagascar	Mauritania	Mozambique	Seychelles
FPA contribution in relation to the national fisheries budget	41 %	689 % ¹	20 %	250 % ²
Total EU contribution in relation to the total national budget	5 %	11 %	2 %	2 %

1 Budget of the Fisheries Ministry as it appears in the Mauritanian Finance law. It does not include significant expenses such as port expenses.

2 Seychelles Fishing Authority operating costs only, excluding capital investments.

Source: ECA, based on national documents, Commission DG International Cooperation and Development documents, and the FPAs.

Observations

The information provided by *ex post* evaluations was not always useful in the decision-making process and negotiations

47

Ex ante and *ex post* evaluations²⁶ are used by the Council, Parliament and Commission in the decision-making process. They are intended to provide reliable information on the use of the agreement and the added value for the EU and the partner country, assess the environmental, economic and social impact of a partnership agreement and verify that the results achieved by the FPAs are consistent with the objectives set for them, in accordance with the requirements laid down by the Council²⁷ and the new common fisheries policy²⁸.

48

Before providing the Commission with a mandate to negotiate a new protocol, the Council requires the Commission to carry out both an independent *ex post* and *ex ante* evaluation where a protocol is already in place, and an *ex ante* evaluation where there are no prior FPAs. This obligation has been reinforced by including it in the new common fisheries policy.

49

The stakeholders consulted during the audit indicated their appreciation that an *ex post* report was available. They consider it to be a useful tool as it gives an overall picture of the use of fishing opportunities under

an agreement (licences taken up and catches) and of the agreement's functioning and added value. However, the catch data presented in the report are not the most up to date, although it is the role of the Commission, as data manager, to make this data available to the decision-making stakeholders in a timely manner.

50

The time needed to perform the evaluation must then be added to what is already a long negotiation process. Prior to the introduction of the new common fisheries policy, most of the protocols had a very short lifespan (of around 3 years²⁹). The evaluations could therefore only cover a short operating period, of 1 year or less, of the evaluated protocol. This reduced the usefulness of the evaluations as a tool for decision-making. A positive change has been the longer lifespan (of 4 to 6 years) of the most recent protocols, which may have a positive impact on the completeness of data contained in their *ex post* evaluations.

51

The *ex post* evaluations of the FPAs in the Indian Ocean present information on stocks and catches at a regional level and include non-essential descriptive information which is repeated from one evaluated period to the next and makes the report too extensive.

26 Drawing up an *ex ante* and *ex post* evaluation of the FPAs is an obligation under Financial Regulation (EU) No 966/2012 (OJ L 298, 26.10.2012, p. 1) for all programmes and activities that entail significant spending (more than 5 000 000 euro) in order to verify that the resources allocated and the results achieved were consistent with the objectives set.

27 2599th Council Meeting, Agriculture and Fisheries, Brussels, 19 July 2004.

28 Article 31 of Regulation (EU) No 1380/2013.

29 The short duration was determined by the fact that the Commission did not want the existing protocols to be applied well beyond the entry into force of the new common fisheries policy, so that the changes brought by this policy would be applied as soon as possible.

52

On the other hand, the audit found that evaluations do not sufficiently assess the extent to which the FPAs meet all of their objectives (see paragraph 5 and **Box 1**) (e.g. no reference to employment in EU regions depending on fishing, no information on the supply of fish on the EU market). Furthermore, the evaluations in the Indian Ocean did not calculate the value added of the FPAs in a consistent manner. This did not facilitate the decision-making process as the methodologies used to calculate value added were not comparable between protocols and, in the case of Mozambique, produced a very different result (**Table 3**).

53

During the audit and following an internal audit of the evaluation process, the Commission developed a new value-added evaluation methodology, which has been applied since January 2015. The methodology used to evaluate the protocols with Madagascar (February 2014) and Mozambique (April 2014) was also relatively new (January 2014), but the methods used for the calculation of the value added were still not comparable.

Table 3 Inconsistencies in the calculation of the return on EU public investment per country, as presented in the *ex post* evaluations of the Indian Ocean protocols

	Calculated return per euro of public money invested by the EU (<i>ex post</i>)	Comments
Madagascar (issued in February 2014)	4.09	The model includes benefits and costs only in broad categories (e.g. fuel, maintenance, port fees, insurance, etc.) which are not always consistent with the categories used in other evaluations (e.g. in the Seychelles, they additionally specify crew, depreciation of vessels and gear, overheads). However, this model ¹ was considered by the Court to assess costs and benefits well.
Mozambique (issued in April 2014)	2.08	The evaluators did not divide the benefits between the EU and Mozambique and not all the public costs incurred by the EU were included in the calculation (sectoral support was excluded). When recalculated by the Court using the same model as for Madagascar, the return on public investment would be only 0.91 euro per euro invested by the EU.
Seychelles (issued in January 2013)	4.5	The shipowners' payments were included, unlike in the other evaluations, where only public money was considered; the costs were correctly distributed among parties and all public costs were considered. When recalculated by the Court using the same model as for Madagascar, the return on public investment would be higher, at 5.53 euro per euro invested by the EU.

1 Ratio: Direct added value delivered to the EU/Total EU Contribution (access rights and sectoral support).

Source: *Ex post* evaluations.

Part II Implementation of the FPAs' access rights and sectoral support components

54

The implementation of FPAs involves two main aspects: access of EU vessels to fishing opportunities (see paragraphs 55 to 65), and support for the development of partner countries' fishing sectors (see paragraphs 66 to 83). In order for each aspect to function well (i.e. to ensure that the fleet can fish under good conditions, and that sectoral support improves fisheries governance in the partner countries), the Commission needs appropriate systems in place to monitor implementation. The audit examined these monitoring systems.

The fishing authorisation (licensing) process was lengthy and cumbersome, yet the Commission had not taken measures to identify what could be improved

55

The licensing process by which vessels obtain permission to fish under the protocols should not be unnecessarily complex or time-consuming for fishing operators. The Commission should review the various phases of the licensing process and assess whether efficiency gains can be made. The Court considers that a complete overview of the time needed for the various stages of the process is essential in order to identify and correct inefficiencies. The audit found that the Commission does not have sufficient information on the licensing process timeline.

56

The protocols establish the licensing process between the partner countries and the EU, such as the submission of applications to the relevant public authority. The protocols also provide for an electronic exchange of information on fishing activities. The process involves the Commission, the Member States, the EU Delegations and the partner countries. More details are given in **Annex I**. The Court's audit focused on the data available in order to monitor this process and analyse any delays.

57

There are indications that delays in the licensing process negatively affected fishing activities: 78 % of the respondents to the Court's survey raised concerns about these delays, which were also expressed in communications from fishing operators' representatives to the Commission.

58

The audit noted that the partner countries visited were either reluctant or unable, due to national legal requirements, to accept electronic fishing authorisations, and they all required the original of the licence to be kept on board the authorised vessel during fishing activities.

59

As shown in **Figure 5**, while in Mozambique and Seychelles the Delegations and the fisheries attachés had information on the amount of time that elapsed from the request by the operator to the issue date by the partner country, in Madagascar the information kept at the Delegation only related to the time that elapsed from the receipt of the application file by the Delegation to its forwarding to the Commission. In Mauritania, the monitoring table was not available.

60

The Court noted that in some cases significant delays occurred before the licence application file reached the partner countries' authorities. However, for the protocols examined,

the Commission had no information system to help it keep track of the time required for each of the steps in the licence application workflow it had developed and, consequently, it could not identify where delays had occurred (whether at Member State, partner country, or Commission level). Furthermore, while the fishing authorisations database required by Regulation (EC) No 1006/2008 exists and contains up-to-date information on existing licences, it does not contain sufficient data to analyse any delays. The Court was therefore unable to identify the reasons for the delays. The revision of the fishing authorisation regulation, announced in 2011, may help to identify and reduce procedural bottlenecks, but the Commission's proposal has not yet been finalised and submitted for co-decision.

Figure 5 Known duration of the licensing process

	Operator - Member State	Member State - Commission	Commission - Delegation	Delegation - Partner Country	Partner Country authorities	Partner Country - Delegation	Delegation Commission	Commission - Member State	Member State - Operator
Madagascar	No information available			41 days			No information available		
Mauritania	No monitoring table available								
Mozambique	Over 5 months				1 day ¹	No information available			
Seychelles	No information available				19 days		No information available		
	126 days						Not applicable (the licence is sent directly to the operators)		

¹ The fact that the fishing authorisations were issued on the same day as when the application files they were registered casts doubts on the reliability of the registration date.

Source: Monitoring tables provided by the Delegation and the fisheries attachés.

Observations

The central monitoring of catches was not adequate, putting at risk the timely identification of problems and the correct calculation of payments

61

The Commission and Member States need to monitor and verify the accuracy of data regarding actual catches, in order to identify implementation problems, allow for informed decisions when negotiating new protocols, and ensure the correct calculation of payments for additional catches, whenever this may occur.

62

Regulation (EC) No 1006/2008 requires vessels to submit catch data to their Member States on a weekly basis. On the basis of this information, the Member States must then submit all catch data to the Commission each month, broken down by fishing area across all EEZs (whether subject to an agreement or otherwise) and international waters. More details on the role of Member States in this area are provided in **Annex I**. The Commission should maintain a catch database with this information. This regulation also requires the Commission to host a database of fishing authorisations that should be updated regularly by the Member States.

63

The audit identified shortcomings in the Commission's catch data management for the protocols reviewed. The Court found several significant differences among the catch data provided by the various sources: from Member States, from DG Maritime Affairs and Fisheries and from the *ex post* evaluations. Such differences are illustrated in **Table 4**. There was a lack of reliable, consistent and complete data on actual fish catches taken under the FPAs at the level of the Commission.

64

Similar differences were noted between the data the Court received from the Member States and that from the Commission. These differences may also be explained by the fact that Member States sent catch data (broken down by vessel and species) to the Commission in different formats. The Commission then processed the data manually, but did not consolidate it in a central database. The Commission has recently taken measures to remedy this situation. In January 2015, data management was transferred to the service responsible for the FPAs. In addition, historic data on catches has been consolidated, although this consolidated information was not available for the period covered by the protocols audited. Finally, the Commission has put a database (catch data since 2013) in place, although this was not operational at the time of the audit as Member States were not yet compliant with their reporting requirements.

Table 4 Examples of differences in catch data between DG Maritime Affairs and Fisheries and *ex post* evaluations for the Indian Ocean protocols

	2009	2010	2011	2012
Madagascar				
Total catches <i>ex post</i> evaluation	14 596	10 055	10 282	8 053
Total catches DG Maritime Affairs and Fisheries	14 653	9 916	9 870	8 083
Difference (t)	- 57	139	412	- 30
Difference (%)	0 %	1 %	4 %	0 %
Mozambique				
Total catches <i>ex post</i> evaluation	3 840	4 261	2 330	1 156
Total catches DG Maritime Affairs and Fisheries	3 426	4 261	1 442	1 132
Difference (t)	414	0	888	24
Difference (%)	12 %	0 %	62 %	2 %
Seychelles				
Total catches <i>ex post</i> evaluation	na	na	40 545	na
Total catches DG Maritime Affairs and Fisheries	23 762	41 668	40 078	34 779
Difference (t)	na	na	467	na
Difference (%)	na	na	1 %	na

na: not available.

Source: DG Maritime Affairs and Fisheries at the time of the audit and *ex post* evaluations.

65

The lack of consolidated and verified data can have negative consequences. For example, if the final catch is higher than the reference tonnage, an additional payment may be required, thus giving rise to financial risk. In fact, the Court has already identified a case where inadequate monitoring

of catches resulted in unforeseen expenditure for the Commission³⁰. In addition, the regular monitoring and updating of catch information would allow up-to-date information to be used and facilitate decision-making in negotiations where the information in the *ex post* evaluations is not the most recent (see paragraph 49).

30 As reported in the Court's 2011 Annual Report, section 4.46 concerning the 2008-2012 protocol with Mauritania. In this case, the national authorities informed the Commission that the 300 000 tonne quota for the year ending 31 July 2010 had been exceeded. The Commission had to pay 1.9 million euro to Mauritania for 47 346 tonnes caught in excess of the quota. Better monitoring of fish catches would have allowed the Commission services to consider taking preventative action to avoid making additional payments.

Observations

The Commission and the partner countries agreed on the relevant activities to be funded using sectoral support, but coordination with other partners in the sector was lacking

66

According to the provisions of the FPAs, the Joint Committee should establish a multiannual sectoral programme in the form of a matrix in line with the partner countries' needs and priorities for the fisheries sector. The Commission's guidelines for the management of sectoral support indicate that the actions included in this matrix should take account of the objective of improving governance through the development of an effective management and control system for the fisheries sector and of the sustainable

exploitation of fisheries resources. The sectoral support matrix should be accompanied by clear objectives, criteria, procedures and indicators for evaluating the results of the agreed actions. The fisheries sectoral support should be coordinated with other financial partners' actions in the partner countries.

67

In all four countries visited, the Court found that the actions proposed for sectoral support were in line with national strategies. Most planned actions related to governance and investments in the fisheries sector. This provided a good basis for the planned sectoral support, and was consistent with actions planned under the previous protocols. This is illustrated in **Table 5**.



Picture 1 — Fuelling station for the artisanal fishing fleet in the Seychelles.
Source: ECA.

Table 5

Main actions financed and proportion of total sectoral support (SS) (2013 budgeted costs)

Main actions as planned for 2013	Madagascar ¹ % of SS	Mauritania ² % of SS (2012-2013)	Mozambique ^{1,5} % of SS	Seychelles ¹ % of SS
Monitoring, control and surveillance activities (patrols, inspections, VMS, ERS)	52 %	38 %	7 %	16 %
Monitoring, control and surveillance activities (observers)	4 %	-	4 %	2 %
Scientific research for stocks	-	3 %	63 %	10 %
Laboratories, food safety (exports)	44 %	2 %	Actions executed in the past	3 %
Capacity building and participation in meetings	-	3 %	22 %	22 %
Infrastructure directly linked to fisheries activities/sector	-	53 %	38 % of balance of previous protocol, spent in 2012 ⁵	38 %
Infrastructure not linked to fisheries activities	- ^{3,4}	-	46 % of balance of previous protocol, spent in 2012 ⁵	-
Loan fund for the local fisheries sector	-	-	-	10 %

- 1 Calculation based on budgeted costs.
- 2 Calculation based on payments in the 2012-2013 period.
- 3 Actions were executed in the past.
- 4 The amount is not available.
- 5 The sum of the costs proposed by the PC does not match the total EU budget for the year.

Source: Matrices and activity reports.

68

However, the protocols do not include formal eligibility conditions for actions to be funded by sectoral support. There is no evidence in the minutes of the Joint Committees of the Indian Ocean protocols audited that the criteria, procedures and indicators for

evaluating the results of the sectoral support were discussed in detail. The positive example of the 2008-2012 protocol with Mauritania, which established specific areas of activity and indicators, was not emulated by the Indian Ocean protocols which were approved at a later date.



Picture 2 — Fisheries school vessels financed by sectoral support in the Seychelles.
Source: ECA.

69

The audit also found that, in the Indian Ocean countries visited, coordination among the development partners active in the fisheries sector was weak. Sectoral support is not discussed at the regular coordination meetings between the representatives responsible for EDF support in the EU Delegation and the other financial partners, and the fisheries attaché does not take part in these meetings. This is despite the fact that the Cotonou Agreement³¹ identifies the sustainable development of the fisheries sector as being a priority for general economic development.

70

In addition, in none of the countries visited was FPA sectoral support included in a global matrix together with the other partners' funds intended for use in the fisheries sector. For example in Mozambique, where different partners are funding similar actions, there is a risk of double financing, particularly with regard to participation in meetings and inspection activities. Although Mozambique does have a global matrix in place, it includes neither all the relevant partners nor sectoral support. This was also the case in Madagascar.

31 The Partnership Agreement between African, Pacific and Caribbean States and the European Union, Articles 23 and 23a, as revised on 11 March 2010.

The Commission's control of sectoral support actions was limited and the actions actually implemented by the partner countries were in some cases different from those agreed

71

For reassurance that the objectives of the sectoral support element of FPAs are being achieved and that EU funds are being used as intended, the Commission should monitor the effectiveness of the actions carried out and check whether they correspond to those approved by the Joint Committee. This would also require the partner country to provide sufficient information to enable the Joint Committee to assess the results and cost-effectiveness of the supported actions. The Commission has developed guidelines for the follow-up of sectoral support. These guidelines provide that the fisheries attaché is responsible for the on-the-spot checking of the implementation of actions, policy dialogue, monitoring other financial partner's activities and maintaining a country file.

72

In practical terms, the Commission monitors the implementation of agreed sectoral support actions through its participation in the annual Joint Committee. However, the audited protocols contained no requirements specifying which documentation the partner countries were to provide for monitoring purposes, nor did they establish procedures on how to deal with implementation problems within the Joint Committee. In the absence of specific monitoring rules and of control rights in the protocols, the task of monitoring sectoral support was complicated. Furthermore, in practice, the fisheries attaché in the Indian Ocean does not have the necessary resources to carry out in-depth monitoring in five partner countries (i.e. on-the-spot visits to supported projects), particularly in cases where cooperation with the authorities is complex.

73

Apart from the difficulties caused by the lack of a comprehensive monitoring framework, the Commission's control of sectoral support expenditure was further hindered by the fact that the information provided by partner countries, aside from normally being limited to outputs, was not always verifiable. Indeed, most actions were not traceable in the budget, and the Commission had limited assurance that the claimed actions were actually undertaken and that the cost is reasonable.

74

The Court found that the Joint Committee did not systematically verify the cost-effectiveness of the sectoral support actions, as it did for the 2011-2013 protocol with the Seychelles. In this particular case, a performance audit was carried out to assess the sectoral support-funded actions implemented in 2012, for which 8.45 million euro was budgeted. The audit concluded that only a few actions had been well executed (e.g. VMS), some were in progress (e.g. databases, studies, infrastructure projects for the industrial and semi-industrial fleet), and others had either an average completion rate of below 50 % (management plans, research studies) or had not been implemented at all (e.g. observers on board, sea communication equipment, artisanal infrastructures, etc.). The audit's findings were discussed at the following Joint Committee meeting, together with the progress made in implementing the recommendations and further actions. In the case of Mozambique, although a provision to assess the value for money of EU-funded investments was introduced in the text of the 2012-2014 protocol, no evidence was found that this assessment had been carried out.

75

Furthermore, the audit found that the Commission paid insufficient attention to the partner countries difficulties in absorbing the sectoral support funds, which affected three of the four audited protocols. **Table 6** below shows the outstanding balance of the sectoral support budgets at the end of the four audited protocols. Despite the significance of the proportion of unspent funds, the Commission only became aware of the amount of funding left unused and of the actions to be implemented using these funds once the protocols were close to expiry. Such a scenario creates the risk that, especially towards the end of a protocol, the partner countries will spend the balance of the sectoral support on actions capable of absorbing a significant proportion of the unspent funds, but which are not in line with the FPA priorities of improving fisheries governance, in order not to lose the available funds.

Table 6 Outstanding balance of sectoral support at the end of the previous protocols, spent during the protocols in force at the time of the audit

Country	Madagascar	Mauritania	Mozambique	Seychelles
Outstanding balance at the end of the previous protocol (euro)	0	25 000 000	788 555	5 568 928
Proportion of balance corresponding to total sectoral support during the protocol	0 %	38 %	63 %	63 %

Source: Protocols, Joint Committees' minutes and implementation report.

76

In fact the audit found that, despite the relatively sound selection of actions, the funds were not fully used as intended in all the partner countries visited during the audit (as illustrated in **Box 2**). Instead, in some cases, the

funds were used for other projects, which were not as relevant to fisheries management as the planned actions and which differed from the indicative types of action presented in the Commission's guidelines for the implementation of sectoral support.

Box 2

Examples of sectoral support funds not traceable in the national budget or not used as agreed between the Commission and the partner countries

Madagascar

The traceability of funds in the national budget was not ensured, despite repeated requests from the Delegation to provide a specific budget line for sectoral support. The fact that the EU contribution and funding from other development partners were not earmarked and identifiable in the national budget made the transfers difficult to monitor. This lack of traceability may also hinder the detection of funding overlaps with the regional inspection programme.

The Commission suspended payments for 1 year (2011) due to implementation issues.

Mauritania

The country benefited from 65 million euro of sectoral support under the 2008-2012 protocol. From 2011 up until the end of the protocol in July 2012, the authorities failed to sufficiently inform the Commission on how they were using the sectoral support funds. Only in August 2012, after several requests from the Commission, did the partner country reveal that the unspent sectoral support allocations at the end of the protocol amounted to 25 million euro. Approximately 90 % of this balance was earmarked for infrastructure items such as port infrastructure, and a patrol vessel. Of this amount, approximately 50 % had been spent by the partner country without the *ex ante* agreement of the Commission.

Mozambique

The authorities assign project codes in the budget. However, these alone are not sufficient to mitigate the risk of funding overlap by the various financial partners for actions such as observers, inspection days, mission days for international meetings, etc.

The balance of sectoral support from a previous protocol (2007-2011) financed actions that were not included in the multiannual (2012-2014) or annual (2012) matrices and therefore not approved *ex ante* by the Joint Committee. The Commission did not suspend payments in this case. Infrastructure accounted for 84 % of the funds spent in 2012. The Commission was only informed once that the actions had been implemented. Expenditure was not always directly linked to the development of the Mozambican fisheries sector or to improvements in fisheries governance (ministry building accounting for 46 % of the balance for 2012 and fencing of the fisheries school accounting for 38 %).

Observations

Payments made by the Commission for sectoral support were not linked to progress achieved by the partner countries in implementing agreed actions

77

In order to ensure the application of the conditionality principle, the protocol should provide for the possibility of adjusting payments to reflect progress on actions or when there is no sound financial management in the partner country, rather than just suspending them.

78

The audit found that the protocols did not provide for a reduction in the sectoral support component on the basis of the actual progress achieved by partner countries when implementing the agreed actions.

79

The Indian Ocean protocols audited provide that the sectoral support component can be suspended, after consultation in the Joint Committee, where the actions implemented are inconsistent with the budgeted programme (actions and financial execution). This definition of conditionality makes it difficult for the Commission to appropriately apply the suspension of the sectoral support component. In fact, there has only been one actual case of suspension, in Madagascar in 2011, and this was not linked to the country's progress in implementing sectoral support.

80

In Mauritania, the Commission improved the conditionality of sectoral support for the 2013-2014 protocol by introducing more explicit conditions. In particular, the first payment under the protocol was made conditional on the absorption of the balance from the previous protocol, and the disbursement of the sectoral support component was linked to the implementation of the agreed actions. The Commission applied these provisions and did not pay the sectoral support component as the existing balance had not been fully spent. However, as for the Indian Ocean protocols, no partial disbursements were possible.

81

The new common fisheries policy has introduced the principle of decoupling access rights and sectoral support payments³². This means that the sectoral support component no longer has a fixed payment date as is the case with the access rights component, but should be paid once the partner countries are able to demonstrate the results achieved. The Court deems this to be an improvement on the earlier focus on actions. However, the application of this principle is hindered by the fact that the protocols currently in force still do not provide for the possibility of partial reductions of payments when results are only partially achieved, but only for the possibility of the Commission suspending payments where the results are not satisfactory.

32 Article 32 of Regulation (EU) No 1380/2013 provides that sectoral support is conditional upon the achievement of specific results, and complementary to and consistent with the development projects and programmes implemented in the third country in question. Sectoral support should be decoupled from payments for access to fisheries resources. The Union requires the achievement of specific results as a condition for payments under the financial assistance, and closely monitors progress.

82

The audit also found there to be a lack of consistency between the handling of FPA sectoral support (by the Commission's DG Maritime Affairs and Fisheries) and payments under the EDF for budget support (by DG International Cooperation and Development). Sectoral support (FPA) and budget support (EDF) share the same concept, since payments are disbursed directly to public authorities in the partner countries based on the progress achieved in a number of previously defined areas. In some cases, EDF payments were delayed by the Commission due to various problems linked to either the political situation or the management of public finances. A similar approach was not taken for sectoral support payments by DG Maritime Affairs and Fisheries. **Box 3** illustrates this inconsistency in the cases of Madagascar and Mozambique.

83

The protocols do not include rules relating to budgetary transparency in the partner country, in contrast to the EU Budget Support Guidelines³³. While Mozambique had laudably taken the initiative of identifying actions by project code in the budget, there was little traceability of funds in the other three countries visited, which affected the visibility of the support and the potential for subsequent monitoring of the use of EU sectoral support funds. The fact that the protocols do not require the partner countries to ensure the traceability and transparency of funds is not consistent with the requirements for budget support for sectoral reforms under the Cotonou Agreement.

33 Budget support is subject to eligibility criteria (Section 5.1 of Budget Support Guidelines, 2012). Two of these are:
— good public financial management or a credible and relevant programme to improve it;
— transparency and oversight of the budget. Moreover, Article 61(2) of the Cotonou Agreement provides that: 'Direct budgetary assistance in support of macroeconomic or sectoral reforms shall be granted where: [...] (c) public financial management is sufficiently transparent, accountable and effective.'

Box 3

Inconsistencies between EU payments in partner countries

In Madagascar, almost all EU financial assistance was suspended from 2010 until May 2014, by virtue of Article 96 of the Cotonou Agreement, or pending appropriate measures as regards human rights, democratic principles and the rule of law. Payments under the FPA were, however, continued.

In Mozambique, one budget support payment was delayed by 7 months until the Government solved an issue affecting the transparency of national public finances, as requested by the International Monetary Fund/General Budget Support donors. However, FPA sectoral support payments were made during this period.

Source: ECA, based on information from DG Maritime Affairs and Fisheries and DG International Cooperation and Development.

84

Fisheries Partnership Agreements (FPAs) between the EU and its partner countries allow EU fishing fleets to fish in the partner countries' waters, and support the sustainable development of their national fisheries sector. The Court's audit examined whether FPAs are well managed by the Commission, looking into the negotiation of FPAs and their protocols, the exercise of fishing access rights, and the implementation of support to the national fishing sector. The audit concluded that FPAs are generally well managed by the Commission, but that there are still several areas for improvement, particularly as regards implementation.

85

Negotiating an FPA and its associated protocols is a long and complicated process, yet the Commission handled these difficulties well and, with few exceptions, managed to avoid interrupting the EU fleet's fishing activities. Nevertheless, the audit identified a number of weaknesses in the way the Commission handled the negotiation process (paragraphs 17 to 25).

86

For continuity of the European fleet's activities, the Commission can make use of the possibility offered by Article 9 of Regulation (EC) No 1006/2008 to allow vessels to apply through the Commission to the third country

concerned for fishing authorisations while awaiting the signature of a renewed protocol. This regulatory possibility is, however, not consistent with another regulatory requirement, namely 'the exclusivity clause' and its application led to misunderstandings between a partner country and the Commission (paragraphs 22 and 23).

87

The Commission's strategy of enlarging the network of FPAs is relevant to the needs and priorities of the EU fleet. However, there is still room to improve the complementarity and consistency among the FPAs negotiated within the same region, so as to maximise the potential of FPAs to improve fisheries governance at regional level (paragraphs 26 to 28).

88

One of the main objectives of the FPAs is to only fish surplus stocks. However, this has proven very difficult to implement in practice due to a lack of reliable information on fish stocks and on the fishing effort of domestic fishing fleets, or of other foreign fleets which have also been granted access by the partner countries (paragraphs 29 to 32).

Conclusions and recommendations

89

The actual unit cost paid for a tonne of fish was frequently higher than the unit price negotiated. While the negotiations considered catches reported from previous protocols, the reference tonnage agreed in the most recent protocols often remained higher, leading to their regular underutilisation. However, the EU financial contribution must be paid in full regardless of the fishing opportunities used. The underuse of the protocols and resulting high costs were sometimes attributable to clauses negotiated with the partner countries to comply with their national legislation or to ensure the sustainability of fishing activities (paragraphs 33 to 46).

90

The usefulness of independent *ex post* evaluations as an aid to decision-making in the negotiation process is hindered by incomplete information being provided on the utilisation rates of the protocols, their lack of comparability and the absence of a critical analysis of the effectiveness of FPAs (paragraphs 48 to 53).

Recommendation 1 Negotiation of FPAs

For future protocols and agreements, the Commission should:

- (a) review dormant agreements and consider how to address the interruption of fishing activities imposed by the exclusivity clause while respecting the principles of the common fisheries policy. Furthermore, the Commission should clarify and include in the protocols appropriate provisions to ensure the continuity of fishing operations between two protocols;
- (b) define regional strategies for the development of fisheries governance and ensure that protocols negotiated within the same region are consistent with the relevant regional strategy and with other EU funds;
- (c) when negotiating the fishing possibilities of new protocols, consider the utilisation rates of previous protocols, and endeavour to better link payments for access rights to actual catches, while ensuring that the fishing activities are not adversely affected;
- (d) better analyse the potential impact of SFPAs clauses on the use of the protocol, while safeguarding the mutual benefits for the EU and the partner countries concerned, perhaps by consulting the relevant stakeholders to identify where more detailed assessments of critical clauses are necessary;
- (e) better focus *ex post* evaluations to obtain a consistent and comparable analysis of the return on public money spent under the protocols as well as a comprehensive and critical analysis of their effectiveness for the EU and the partner country concerned.

Conclusions and recommendations

91

The audit also concluded that the management of the implementation of the access conditions and the sectoral support components was not sufficiently robust.

92

The licensing process is lengthy and cumbersome, and delays can complicate or reduce the fleet's fishing activities. However, the Commission does not have an information system to help it keep track of the various stages of the licence application process, which makes it more difficult to identify the reasons for delays and areas for improvement (paragraphs 55 to 60).

93

Despite recent initiatives by the Commission, there were shortcomings in the management of data on fish catches, with a lack of reliable, consistent and complete information (paragraphs 61 to 65).

Recommendation 2 Management of access conditions to fisheries

The Commission should, without delay:

- (a) establish procedures to monitor each of the steps in the licensing process, including time taken by Member States, partner countries, and the Commission services, in order to identify and follow up on weaknesses in the procedure;
- (b) promote the acceptance of electronic licences or of a list of authorised vessels for the whole period of validity of the licences;
- (c) ensure that the new catch database is fully used by flag Member States and provides reliable catch data which can be consolidated, monitored and kept up to date.

94

The planning of actions funded by sectoral support has gradually improved. However, the Commission's role in monitoring the implementation of this component is still limited. There was a lack of a clear framework, with no eligibility and traceability rules or reporting requirements for the actions funded. As a result, cases were identified where partner countries implemented different actions than those jointly planned with the Commission, which implied a subsequent risk for the effectiveness of the sectoral support component (paragraphs 66 to 76).

Conclusions and recommendations

95

Finally, the protocols allow for the suspension of sectoral support payments, but not for a reduction in payments on the basis of actual implementation of agreed actions or the results achieved. Moreover, the conditions for payment of sectoral support are different from those for EDF budget support, which can sometimes lead to inconsistencies (paragraphs 78 to 83).

Recommendation 3 Management of sectoral support

The Commission should, without delay:

- (a) for new protocols, propose the introduction of eligibility requirements to assess actions being considered for sectoral support funding (other requirements could relate to traceability, selection, reporting and performance measurement, and control rights for the Commission);
- (b) ensure effective coordination on the subject of FPA sectoral support with other development partners active in the fisheries sector;
- (c) ensure that sectoral support disbursements are consistent with other budget support payments and based on the results achieved by the partner countries in the implementation of the matrix of commonly agreed actions.

This report was adopted by Chamber I, headed by Mr Augustyn KUBIK, Member of the Court of Auditors, in Luxembourg at its meeting of 15 July 2015.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

Fisheries Partnership Agreements: further information on their negotiation and implementation

Introduction

01

In drawing up an FPA, the EU and its partner countries negotiate an agreement and its implementing protocols. This agreement provides a framework for long-term cooperation in fisheries, including the general principles and standards governing access for EU vessels to fish in waters under the jurisdiction of the partner countries. The protocols set out detailed terms and conditions regarding, for example, fishing opportunities and species, the financial contribution (for both access and sectoral support), the level of fees to be paid by shipowners, the number and size of vessels authorised for fishing, and the specific areas in which they are allowed to fish.

Responsibilities

02

FPAs are managed centrally by the Commission under direct management arrangements. The Council delivers a mandate to the Commission, represented by DG Maritime Affairs and Fisheries, to open negotiations on behalf of the EU for each new agreement or protocol renewal. Since the Treaty of Lisbon, the agreement and the protocol have to be concluded by the Council with the consent of the European Parliament. Once an agreement is in force, protocols are generally negotiated every 3 to 6 years, as agreed with the partner country.

03

Responsibility for the day-to-day management of FPAs lies with the central offices of DG Maritime Affairs and Fisheries and the six fisheries attachés responsible for follow-up and regular communication with the partner countries.

04

The partner countries are responsible for observing and enforcing conservation and management measures and for establishing effective mechanisms with which to monitor and check the activities of fishing vessels. The EU and Flag Member States¹ are, however, responsible for exercising effective control over their vessels and ensuring that they fulfil all their obligations, particularly in terms of collecting catch and VMS data.

¹ The flag state is the state where the vessel is registered.

Negotiation of FPAs

05

The negotiation process consists of various phases, but in order to ensure the continuity of fleet activities, the Commission has to start the process of negotiating a new protocol at the latest approximately 1 year before the expiry of the current one. Following a Commission initiative, a mandate is received from the Council, and one or more rounds of negotiations then take place between the Commission and the partner country. At the end of these negotiations, the agreement is initialled by the Commission and the partner country concerned, then approved and signed by the Council and the partner country. The protocol can then be applied provisionally, if the parties agree, before its formal ratification. The protocol is ratified by the partner country, and the European Parliament gives its consent to the conclusion of the protocol, which then enters into force.

Fishing authorisations

06

Fishing Authorisation Regulation (EC) No 1006/2008 requires the Commission to keep a licence database in which data is updated on a regular basis by the Member States, which are responsible for checking the eligibility of the licence applications submitted by the operators. These applications are subsequently forwarded to the Commission for verification. The Commission forwards the applications to the partner countries, via the Delegation. Once the partner country has issued the authorisation, the original document is sent back to the operator via the Delegation, the Commission and the Member States.

The Joint Committees

07

The agreements provide for the establishment of a Joint Committee to monitor the application of each FPA. Each Joint Committee is made up of representatives from the Commission and from the partner country concerned, and is responsible for monitoring FPA performance, interpretation and application, establishing the annual and multiannual programmes for the sectoral support component and evaluating their implementation, liaising over matters of mutual interest in relation to fisheries, acting as a forum for the amicable settlement of any disputes regarding FPA interpretation or application, and reassessing, where necessary, the level of fishing opportunities and, consequently, that of the financial contribution.

The fisheries attaché

08

The fisheries attaché represents DG Maritime Affairs and Fisheries in the partner countries and plays a direct role in monitoring the implementation of the protocols. The fisheries attaché contributes to the preparation of negotiations and Joint Committee meetings, maintains contact with the national authorities, checks that the provisions of the protocols and sectoral support are properly implemented, reports to DG Maritime Affairs and Fisheries on a regular basis, analyses documents and takes part in the RFMO's scientific meetings, monitors the development of issues relating to DG Maritime Affairs and Fisheries policy at international level, monitors the activities of other partners in the fisheries sector and prepares updated project files for all EU-funded projects.

09

DG Maritime Affairs and Fisheries currently has six fisheries attachés, one in the Indian Ocean region², four in the West Africa (Central Atlantic) region³, and another with responsibility for the Pacific Ocean region and for Kiribati in particular.

Monitoring by the Member States

10

The Member States monitor the activities of their fleets and the legality of such activities through their fisheries monitoring centres. They also follow up on their fleets' catches through the ERS. The Member States send this catch data to the Commission together with the fishing area information provided by the VMS. In the case of the tuna protocols, the Member States' scientific institutes validate the annual catches after the year-end in accordance with their own scientific procedures. The annual consolidated catches are used for the final statement of fees discussed with the partner countries, for discussions on the utilisation of the FPA with the partner countries and for payments where the reference tonnage is exceeded, in accordance with the conditions of the protocol. The validated annual catches are also sent to the relevant RFMO, to fulfil the EU reporting requirements.

- 2 This fisheries attaché works at the Delegation in Mauritius and is responsible for the five agreements in the Indian Ocean (Comoros, Mozambique, Mauritius, Madagascar and Seychelles).
- 3 One is responsible for Cape Verde, Côte d'Ivoire, Senegal and Guinea-Bissau, another for Sao Tome and Principe and Gabon, another for Mauritania and the fourth for Morocco.

Annex II

Fisheries Partnership Agreements in force for 2015

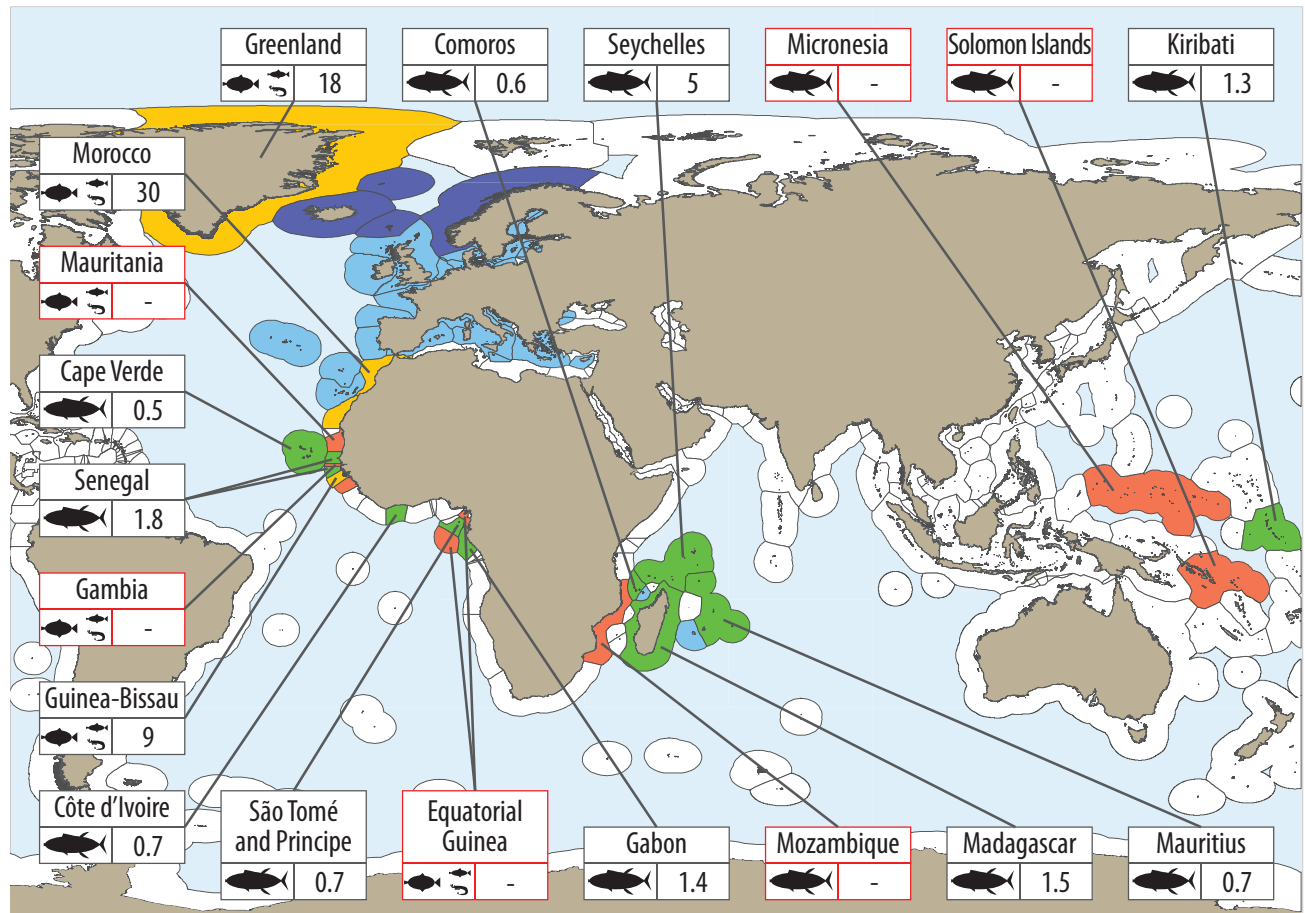
Country	Species	Period	Total EU contribution (euro)	Sectoral support (euro)	Access right (euro)	Reference tonnage (Tn)
Cape Verde ¹	Tuna	Provisional application from 23.12.2014 - 22.12.2018	525 000	262 500	262 500	5 000 and Number of vessels
Comoros	Tuna	1.1.2014 - 1.1.2017	600 000	300 000	300 000	6 000
Côte d'Ivoire	Tuna	1.7.2013 - 30.6.2018	680 000	257 500	422 500	6 500
Gabon	Tuna	24.7.2013 - 23.7.2016	1 350 000	450 000	900 000	20 000
Greenland	Mixed agreement	1.1.2013 - 31.12.2015	17 847 244	2 743 041	15 104 203	Cod 2 200 Pelagic Redfish 3 000 Demersal Redfish 2 000 Greenland Halibut - West 2 500 Greenland Halibut - East 4 315 Shrimp - West 3 400 Shrimp - East 7 500 Atlantic halibut - West 200 Atlantic halibut - East 200 Capelin 60 000 Snowcrab 250 Grenadier spp. - West 100 Grenadier spp. - East 100
Guinea-Bissau	Mixed agreement	24.11.2014 - 23.11.2017	9 200 000	3 000 000	6 200 000	Shrimp, demersal, cephalopods and tuna No reference tonnage. Number of vessels and fishing global capacity only
Kiribati	Tuna	16.9.2012 - 15.9.2015	1 325 000	350 000	975 000	15 000
Madagascar	Tuna	1.1.2015 - 31.12.2018	1 566 250	700 000	866 250	15 750
Mauritius	Tuna	28.1.2014 - 27.1.2017	660 000	302 500	357 500	5 500
Morocco	Mixed agreement	15.7.2014 - 14.7.2018	30 000 000	14 000 000	16 000 000	Pelagic, demersal and tuna 80 000 pelagics. For the others: No reference tonnage. Number of vessels and overall fishing capacity only
Mozambique	Tuna	1.2.2012 - 31.1.2015	980 000	460 000	520 000	8 000
São Tomé and Príncipe	Tuna	23.5.2014 - 22.5.2018	710 000	325 000	385 000	7 000
Senegal ¹	Tuna	20.11.2014 - 19.11.2019	1 738 000	750 000	988 000	14 000
Seychelles ¹	Tuna	18.1.2014 - 17.1.2020	5 116 666	2 533 333	2 583 333	50 000
Total annual payments			72 298 160	26 433 874	45 864 286	
Last protocols with countries with which negotiations were delayed						
Mauritania ²	Mixed agreement	16.12.2012 - 15.12.2014	70 000 000	3 000 000	67 000 000	Crustaceans 5 000 (quota) Black hake 4 000 (quota) Demersal species other than black hake with gear other than trawls 2 500 (quota) Freezer tuna 5 000 Pole-and-line tuna vessels and surface longliners 10 000 Pelagic freezer trawlers 285 000 (quota) Crab fishing 200 (quota)
Mozambique	Tuna	1.2.2012 - 31.1.2015	980 000	460 000	520 000	Non-freezer pelagic vessels 15000 (quota) 8 000

1 The financial contribution for the access rights has been calculated as an average of the annual payments.

2 Negotiations between the European Commission and Mauritania in view of the establishment of a new protocol were successfully concluded on 10 July 2015. This 4-year protocol amounts to 59.125 million euro per year, it still needs the approval of Council and the consent of the European Parliament.

Source: Website DG Maritime Affairs and Fisheries and Regulation.

Fisheries Partnership Agreements



Mixed Agreement
 Fisheries Partnership Agreement in force for 2015:
 Greenland, Guinea-Bissau, Morocco.

Tuna Agreement
 Fisheries Partnership Agreement in force for 2015:
 Cape Verde, Comoros, Côte d'Ivoire, Gabon, Kiribati, Madagascar, Mauritius, São Tomé and Príncipe, Senegal, Seychelles.

Agreement but no protocols in force:
 Equatorial Guinea, Gambia, Mauritania¹, Micronesia, Mozambique, Solomon Islands.

EU waters

Country	
Type of agreement	EU contribution for 2015 in million euro

Northern Agreements

Country (dormant agreement)	
Type of agreement	-

¹ Negotiations between the European Commission and Mauritania in view of the establishment of a new protocol were successfully concluded on 10 July 2015. This four-year protocol amounts to 59.125 million euro per year, it still needs the approval of Council and the consent of the European Parliament.

Executive summary

I Under the recent CFP Reform, Sustainable Fisheries Partnership Agreements are primarily a tool for improving fisheries governance in the EEZ of coastal state partner countries based on the same principles as those applied in the EU. This is aimed to ensure the sustainable exploitation of resources, whilst at the same time supporting our partners' capacity to develop its fishing sector.

The agreements are based on the best available scientific advice, are fully transparent and non-discriminatory. These principles are embedded in the FPA protocols that have been recently negotiated. The protocols have been negotiated with the aim of maximising the value for money which is paid for access to the partners fishing areas and the provision of sectoral support.

Reply to paragraphs III and IV

The negotiation of FPA protocols depends on a series of factors, many of which are outside the control of the Commission. There are rules to be followed that involve other EU institutions, i.e. Council and Parliament. The overall time of the negotiation process is also highly dependent on the internal adoption procedures of the partner third country.

When interruptions occurred, they were generally of a short duration and did not impact on the fishing activities of the EU fleet operations.

V This transitional regime is based on Article 9 of the FAR Regulation (EC) No 1006/2008 which would ensure continuity of fishing operations for a limited time period of 6 months, in a situation where a protocol has been agreed between the EU and its partner country, but the protocol is not yet being provisionally applied. Such transitional licences granted on a strictly voluntary basis by the partner country upon request from the Commission should still be considered as licences granted under the main agreement (albeit in the absence of a protocol) and thus not contrary to the exclusivity clause (unlike purely 'private licences' would be as explained by the Court in case C-565/13).

VI

Where applicable, this concept implies that management objectives, management measures and sharing keys established by the coastal State among the different stakeholders are clearly specified and well known, as is the case in the mixed Agreements with Greenland, Morocco, Mauritania and Guinea-Bissau.

Regarding the Tuna Agreements the fishing opportunities are established on the basis of the management objectives and measures adopted by the appropriate regional fisheries management organisations (RFMOs) mandated to carry out these tasks on a regional basis, and supported by RFMOs scientific work and advice.

VII

The Commission takes into account the level of utilisation of fishing opportunities in the past, the external factors that may have an impact on the uptake of the fishing opportunities depending on the availability and variability of catches.

Catch reference levels fixed in 'tuna FPAs protocols' — which are not catch limits — are based on previous reported catches of the EU fishing fleets. The reference tonnage agreed in the respective protocols, an essential prerequisite for our partners, provides the legal basis for the payment of the EU contribution for access. However such catch reference levels need also to take into account the high inter-annual variability of catches in the different areas, due to the variability of distribution and abundance of highly migratory species on a yearly basis.

Concerning the link between a possible underutilisation of fishing possibilities and the implementation of more constraining technical conservation measures (TCMs), it has to be recalled that such TCMs are agreed between both parties to ensure a sustainable exploitation of the different stocks, to reduce the impact of fishing activities on marine ecosystems and to avoid conflicts between offshore foreign industrial fleets and coastal state inshore artisanal fishermen.

Technical conservation measures are in many cases, enshrined in the national legislation of the partner countries and are therefore non-negotiable. They have to be incorporated into the SFPAs.

The principle of a payment in advance from the EU of the access contribution provides a stable income to the partner country, thus making SFPAs attractive governance tools.

VIII

The Commission was aware of the problems of comparability in the methodology applied by the independent consultants in undertaking the evaluations. Following an internal audit and on the basis of the guidelines resulting from this audit, the Commission has established a common template for the Terms of Reference for evaluations to be undertaken in the context of the SFPAs. A single and common methodology relating with the assessment of economic impacts of FPAs has been agreed and implemented from early 2015.

IX

The Commission has during the last years engaged in a process of redesigning its IT tools and has launched the so-called 'IT Licence Project' in early 2013 that will record both the transmission and follow-up of authorisations, in a digital manner. The existing IT tools allow the Commission to better manage the procedures relating to fishing authorisation applications and deliveries, from the introduction of a complete demand by the Member State till the delivery of an authorisation by the third country.

X

The Commission has since 2011 been developing new data submission procedures and new databases, particularly the so-called 'DataWarehouse', to allow a better and proper monitoring of all catches made by EU fishing vessels. This was available at the end of 2013 and became progressively operational through 2014 depending on the Member States' capacity to implement the system. When specific issues are identified these are discussed with Member States.

XI

The guidelines established by the Commission services in 2013 and updated in 2014 for the monitoring of the implementation of the sectoral support lay out the principles to be followed for the definition and monitoring of the sectoral support and specific rules regarding reporting requirements. This enables adjustments to the programme to be agreed by the Joint Committee.

These guidelines have been complemented in recent protocols through the introduction of specific provisions relating to the implementation and monitoring of the sector support.

They, inter alia, require the development and agreement of a matrix of activities to be funded by the sectoral support which clearly identify the actions to be supported, targets and the results achieved.

The matrix is examined regularly by the Joint Committee and monitored by the fisheries attaché to ensure that matrix programme is being respected.

XII

Following the new CFP adopted in 2013, including the decoupling of sectoral support payments from those relating to access rights, and the conditionality relating to them, sector support payments are now directly linked to the performance and utilisation of the sectoral support.

Sectoral support provided under the SFPAs is provided on the basis of a limited number of specific actions proposed by the partner country and not on a systemic approach as the EDF, which inter alia provides budgetary support. Furthermore, sectoral support is generally much lower than that provided under the EDF.

Provisions are foreseen for the revision of sectoral support in the Joint Committee for cases where the partner country requests the reallocation of funds within the programme with an appropriate justification, or, if necessary, the suspension of sectoral payments until such time as satisfactory implementation of the sectoral support is achieved.

Reply of the Commission

XIII (a)

The Commission accepts this recommendation.

XIII (b)

The Commission accepts this recommendation and has begun with its implementation.

XIII (c)

The Commission can accept this recommendation, the implementation of which is subject to negotiations and agreement of both the EU and the third country concerned;

XIII (d)

The Commission can accept the recommendation, it has already commenced the consultation process with stakeholders.

XIII (e)

The Commission accepts this recommendation.

A new methodology was presented to the Commission in December 2014 and accepted in January 2015. It will provide a common basis for the undertaking of assessments of the economic impacts of the protocols, which will be undertaken in advance of future negotiations. Once this methodology has been systematically applied it will respond fully to the Court's recommendations.

XIII (f)

The Commission accepts this recommendation and considers that it is already taking the necessary steps to rectify this situation.

The Commission has during the last years engaged in a process of redesigning its IT tools and has launched the so called 'IT Licence Project' to record both the transmission and follow-up of authorisations, in a digital manner.

XIII (g)

The Commission accepts this recommendation and considers that it is already taking the necessary steps to rectify this situation.

During the negotiations for the renewal of protocols, the Commission actively promotes the use of electronic licences for EU vessels.

XIII (h)

The Commission accepts this recommendation and considers that it is already taking the necessary steps to rectify this situation.

The Commission is in constant contact with Member States in order to solve all technical issues.

XIII (i)

The Commission accepts this recommendation and considers that it has been partially implemented as it has established specific guidelines for the management and monitoring of sectoral support and subject to negotiations with the partner countries the Commission will take the necessary steps for the full implementation.

XIII (j)

The Commission accepts this recommendation and considers that it has been partially implemented.

The new CFP has made 'consistency with other Union policies' one of its principles of good governance (Article 3(h) of EU Regulation No 1380/2013). On that basis, fisheries aspects are increasingly mainstreamed into development policy.

XIII (k)

The Commission accepts this recommendation and considers that it is being partially implemented.

Disbursements are considered in the context of the Joint Committee of each FPA on an annual basis. If it has been seen and agreed by the Joint Committee that there has not been adequate utilisation of the funding provided, payment for the following years' sectoral support contribution may be suspended.

Observations

21

In the case of Mauritania, there has been no interruption of fishing activities between the 2008-2012 and 2013-2014 protocols.

22

In conformity with Article 9 of the FAR, the Mauritanian authorities accepted to issue licences for the applications that were sent to them. Had EU ship-owners requested licences to be issued for other fishing categories these may have been issued for these other fishing categories. However, no requests were received from the shipowners at that time.

23

The solution negotiated with Mauritania in July 2014 is a compromise to the issue of the expiration date and it has been accepted by the Commission with the consent of Member States concerned.

24

The possibility of providing compensation for the interruption of fishing activities stems from the EFF (European Fisheries Fund) regulation. These compensatory amounts are already budgeted for in the EU budget, therefore there would be no additional expenditure for the EU.

28

The new CFP has made 'consistency with other Union policies' one of its principles of good governance (Article 3(h) of EU Regulation No 1380/2013).

Enhanced cooperation with DG DEVCO, both at senior management and desk level, will ensure that there is efficient use of the financial support provided by the EU, either through SFPAs or EDF, and by other donors.

The EU sectoral support is provided inter alia to assist in improving governance at a national level, whereas the funding provided to the IOC at a regional level from the EDF is aimed at further developing regional cooperation. The fisheries attaché in the EU Delegation in situ, in his regular contacts with the IOC, also contributes to ensuring complementarity of actions financed.

31

Through FPAs and more particularly through sectoral support, the EU also seeks to enhance a collaborative scientific processes on stocks, fisheries and management measures assessments between EU and partner countries' scientists through Joint Scientific Committees in mixed SFPAs and also support the participation of partner countries' scientists and managers to RFMO meetings in the context of tuna SFPA.

For tuna agreements, the protocols should grant access rights only if they are in line with management principles expressed in Unclos. The Commission should therefore ensure that the FPAs reflect the resolutions and recommendations of the regional fisheries management organisations (RFMOs) on the state of fish stocks.

For mixed agreements, the Joint Scientific Committee reviews regularly all relevant and available information on catches, effort and stock status of the fisheries relating to the respective SFPA protocols.

According to Article 61 of Unclos, even if a coastal state determines the surplus, the EU and the flag state also bear responsibility that there is no over-fishing. For this reason, the EU aims at obtaining full transparency on fishing opportunities and management objectives. The concept of surplus does not however mean that a management framework based on catch limits has to be adopted. Fishing mortality rates may be indeed constrained through other types of measures, such as capacity limits, effort limits, etc.

Reply of the Commission

32

Fishing mortality is limited by the capacity limits that have been set on the basis of the fleet development plans of the parties to IOTC and the capacity levels relating to the EU are respected in the protocols.

Reply to paragraphs 33-34

In all recent negotiations, the issues of sound financial management and value for money played a major part in the development of the negotiations. This is reflected in the restructuring of the financial component which now sees the industry taking a greater share of the financial burden of access payments away from the EU.

39

Information provided in the evaluation also shows that the direct added value for all the beneficiaries has only slightly decreased in the 2013-2014 protocol compared to the previous protocol (from 0,86 to 0,8) with a rebalancing of the benefit of the added value in favour of Mauritania.

This should also be conditioned by the fact that the evaluation covered a period of only 11 months out of the protocol duration of 2 years, which coincided with period of low utilisation. In addition the high volatility in the market prices for small pelagics should also be noted, which clearly has an influence on the value added estimates. For these reasons, the conclusions of the evaluation should be treated with caution.

40

Negotiations with Mauritania for a successor protocol have been suspended for that reason.

41

During the negotiations with Mozambique for the new protocol, these technical conditions were accepted by the Member States considering the fact that the Commission even obtained a derogation from national legislation (1/3 of the fleet to be inspected instead of the totality) with a view to maximise the utilisation of the protocol.

46

SFPAs and EDF budget support are different by nature and are negotiated separately. The calendar for negotiations of EDF and SFPA support indeed rarely coincide. EDF programming is discussed every 7 years while SFPAs had an average duration of 3-4 years.

Therefore, the Commission considers that this does not affect the Commission's position during SFPA negotiation.

Overall, there is coherence and consistency in the approaches taken in respect of our partner countries.

49

The Commission relies on data provided by Member States as required by EU legislation. Discrepancies which may occur will be resolved through the new centralised catch reporting system which allows for continuous follow-up. Data availability will be improved comparing the reported catches with the set reference tonnage from the protocol on a constant basis.

50

The short duration of the protocol prior to the reform of the CFP was to allow for the transition to the implementation of the new CFP. Now this has entered into force, protocols with a longer duration, on average for 4 to 5 years, will be sought.

52

Given that the objectives of the CFP as regards the FPAs do not envisage their impact on EU regions nor the supply of fish to the EU market, it would not be expected to have an evaluation of these aspects.

In early 2015 the consultants engaged by the Commission to undertake SFPA evaluations have developed and agreed with the Commission services a common, homogenous method for the assessment of economic impacts in the context of the SFPAs.

57

The verification procedure by the Commission fully respects the provision of the applicable protocol.

The Commission is currently creating a new system which will record both the transmission and follow-up of authorisations, all in a digital manner (LICENCE project) and allow the Commission to better manage parts of the procedures relating with fishing authorisation applications and deliveries, from the introduction of a complete demand by the Member States till the delivery of an authorisation by the third country.

58

The form of transmission of authorisations requests is highly dependent on the specific provisions in the national legislation of the partner country as well as their respective human and administrative capacity.

59

For Mauritania, the EU Delegation is closely monitoring the licencing procedure and is in constant contact with the competent services of Mauritania to ensure that delays are minimised. Moreover, the process is facilitated by the existence of agents that represent ship owners with local authorities.

60

The current IT system only allows the Commission to track a fishing authorisation application once sent complete by the relevant flag state. The goal of the project initiated in early 2013 to improve the process, called 'IT Licence Project' will enable better monitoring of the procedures associated to fishing authorisations applications and deliveries. In the meantime, the Commission is currently reviewing all its internal procedures.

62

The reporting provisions in the relevant EU legislation are respected and the Commission maintains appropriate records. Moreover, it is in the process of developing the necessary IT tools for the creation of the catch database.

63

The Commission has since 2011 been developing new data submission procedures and new databases, particularly the so-called 'DataWareHouse', to allow a better and proper monitoring of all catches made by EU fishing vessels. This was available at the end of 2013 and became progressively operational through 2014 depending on the Member States capacity to implement the system. When specific issues are identified these are discussed with Member States.

65

The Commission has already identified this issue and is currently working with Member States, EU fisheries research institutes and third countries to agree on common and shared methodologies to assess catches made in waters covered by FPAs.

Although there may have been a potential risk in incurring additional expenditure for the EU, however, this was not the case for the Indian Ocean where the catches did not exceed the reference tonnage in any of the agreements under review by the Court except for MDG in 2005 and 2007.

Reply of the Commission

68

Please see the reply to Point XI of the Executive Summary.

69

When possible in countries where several donors are active, the EU has set up coordination meetings with other development players (cf. Mauritania and more recently in Mozambique). The fisheries attaché participates in the coordination meetings. There is active liaison between the different sections of the Delegation involved in cooperation development.

The choice of EU priorities is reflected in the coordination meetings with other donors.

70

The Delegation in Mozambique participates in sector donor coordination meetings organised by the Ministry and the Delegation is represented as a major donor in the sector. Moreover, the fisheries authorities prepare plan of activities following national rules and relating to the transparency of activities funded by different donors and the EU. The Commission considers that there is no risk of double funding.

72

Please also refer to the reply to the Executive Summary Point XI.

73

The Commission aims to have the sectoral support contribution clearly referred to in the national budget, but this depends on the national financial legislation of the partner country.

It is the view of the Commission that the sectoral support provided is traceable in the respective matrices of the partner countries.

The Commission has also to rely on the fact that the actions undertaken by the partner country to implement the respective matrix regarding the sectoral support implementation is usually subject to the relevant national rules relating to tendering and procurement.

74

The Joint Committees under the protocols monitor the implementation of the sectoral support including where available the cost-effectiveness.

As regards Mozambique, in addition to the regular monitoring in the Joint Committee, the final assessment of the implementation of the sectoral support provided under the 2012-2014 protocol has yet to be undertaken. Mozambique is currently in the process of preparing the documentation for this assessment and a Joint Committee is to be organised to review progress.

75

Please see the reply to Point XII of the Executive Summary.

For Mauritania, the level of utilisation was affected by the difficult political context at the beginning of the period 2008-2012. Furthermore, sectorial support in the 2013-2014 protocol was reduced to 3 M€/year at the explicit request of the Mauritanian authorities: this was not the Commission's initial objective and not a direct response to the lack of transparency from the Mauritanian partner.

The absorption capacity is closely monitored in each Joint Committee meeting systematically assessing and commenting on the utilisation rate of the funds with significant improvements in the case of the Seychelles and Mozambique compared with the previous protocols.

76

The utilisation of the sectoral support provided to partner countries is determined on a case-by-case approach, on the basis of how the partner country wishes to use this support in relation to its national fisheries policy development.

Box 2 — Madagascar

The EU funds are fungible at the level of the public treasury like any other government source of income.

Box 2 — Mauritania

The amount of 25 M€ of unspent sectoral support allocations is the result of a joint review. In March 2013, Mauritania sent a report to the EU where it indicated that the remaining funds amounted 13 M€ at this date. But this figure was not jointly acknowledged since Mauritania did not fully justify the basis for its calculation.

Box 2 — Mozambique

In its meeting in June 2012 the Joint Committee agreed to amend the programme *ex post* as noted in the attached annexes to the report and that additional infrastructure projects were foreseen in the overall framework of actions agreed and included in the national budgetary exercise.

78

Please see the reply to Point XII of the Executive Summary.

Governance of the sectoral support has been improved following the reformed CFP which decouples sectoral support financing from access payments, and increased monitoring and application of conditionality in the Joint Committee process.

Please see the reply to Point XII of the Executive Summary.

80

Disbursements are considered and reviewed regularly in the context of the Joint Committee of each FPA on an annual basis. If it has been seen and agreed by the Joint Committee that there has not been adequate utilisation of the funding provided, payment for the following years' sectoral support contribution may be suspended pending improvement in the utilisation of the funds. This was particularly the case regarding the Seychelles, Mozambique and the Comoros.

81

If there have been no or limited results achieved on a priority action/projects payment of the sectoral support in the following year will be suspended until the targets have been met.

This has to be seen in the context that actions are in the main not limited in duration to the financial year in question, but may be of a multiannual nature.

82

Although the concepts are the same, the objectives significantly differ due to the different scope and scale of the support and its management.

Reply of the Commission

However, there is improved coherence and consistency in the implementation of these policies between the services of the Commission relating to the use of and disbursement of sectoral support. This is applied on the basis of targeted, identifiable actions with clear achievement indicators against which performance can be measured.

Sectoral support programmes are developed and based on the needs of the partner country and are discussed in the Joint Committee by both parties and the final programme of activities is a result of this consultative process.

Box 3 — Madagascar

In Madagascar, payments under the SFPA continued after the decision that Madagascar would not be eligible any more to budget support. This decision was taken in full coordination between the relevant services of the EU institutions as payments were clearly targeted to fisheries administration and were contributing to safeguard employment and growth in the fisheries sector, as well as food security in the country, in the context of the political crisis.

Box 3 — Mozambique

Although budget support was delayed, this had no link to the payment of sectoral support as there was no direct implication on the implementation of the agreed specific sectoral support work programme. This, therefore, recognises the distinct nature of the two support regimes.

The Commission believes that greater coherence between the development and fisheries policies does not necessarily mean an identical approach as regards payments of funds under the respective policies, as they are each governed by specific legal instruments, with the respective conditions to be respected.

83

Please refer to the reply to Point XI of the Executive Summary.

The Commission endeavours to have sectoral support contributions included in the Loi de Finance of the partner countries in order to ensure transparency of the funds.

Conclusions and recommendations

85

The negotiation of FPA protocols depends on a series of factors, many of which are outside the control of the Commission. There are rules to be followed that involve other EU institutions, i.e. Council and Parliament. The overall time of the negotiation process is also highly dependent on the internal adoption procedures of the partner third country.

86

This transitional regime is based on Article 9 of the FAR Regulation (EC) No 1006/2008 which would ensure continuity of fishing operations for a limited time period of 6 months, in a situation where a protocol has been agreed between the EU and its partner country, but the protocol is not yet being provisionally applied. Such transitional licences granted on a strictly voluntary basis by the partner country upon request from the Commission should still be considered as licences granted under the main agreement (albeit in the absence of a protocol) and thus not contrary to the exclusivity clause (unlike purely 'private licences' would be as explained by the Court in case C-565/13).

87

As far as the 'tuna' agreements are concerned, this approach is already followed, especially in the Indian Ocean where the fisheries exist with partner countries that mirror the migratory route of the tuna. As regards the 'mixed' agreements, this would be more difficult to achieve given the different fisheries concerned.

88

Where applicable, this concept implies that management objectives, management measures and sharing keys established by the coastal state among the different stakeholders are clearly specified and well known, as is the case in the mixed Agreements with Greenland, Morocco, Mauritania and Guinea-Bissau.

Regarding the tuna agreements the fishing opportunities are established on the basis of the management objectives and measures adopted by the appropriate regional fisheries management organisations (RFMOs) mandated to carry out these tasks on a regional basis, and supported by RFMOs scientific work and advice.

89

The Commission takes into account the level of utilisation of fishing opportunities in the past, the external factors that may have an impact on the uptake of the fishing opportunities depending on the availability and variability of catches.

Catch reference levels fixed in 'tuna FPAs protocols' — which are not catch limits — are based on previous reported catches of the EU fishing fleets. The reference tonnage agreed in the respective protocols, an essential prerequisite for our partners, provides the legal basis for the payment of the EU contribution for access. However such catch reference levels need also to take into account the high inter-annual variability of catches in the different areas, due to the variability of distribution and abundance of highly migratory species on a yearly basis.

Concerning the link between a possible underutilisation of fishing possibilities and the implementation of more constraining technical conservation measures (TCMs), it has to be recalled that such TCMs are agreed between both parties to ensure a sustainable exploitation of the different stocks, to reduce the impact of fishing activities on marine ecosystems and to avoid conflicts between offshore foreign industrial fleets and coastal state inshore artisanal fishermen.

Technical conservation measures are in many cases, enshrined in the national legislation of the partner countries and are therefore non-negotiable. They have to be incorporated into the SFPAs.

The principle of a payment in advance from the EU of the access contribution provides a stable income to the partner country, thus making SFPAs attractive governance tools.

90

The Commission was aware of the problems of comparability in the methodology applied by the independent consultants in undertaking the evaluations. Following an internal audit and on the basis of the guidelines resulting from this audit, the Commission has established a common template for the Terms of Reference for evaluations to be undertaken in the context of the SFPAs. A single and common methodology relating with the assessment of economic impacts of FPAs has been agreed and implemented from early 2015.

Recommendation 1 (a)

The Commission accepts this recommendation.

Recommendation 1 (b)

The Commission accepts this recommendation and has begun with its implementation.

Recommendation 1 (c)

The Commission accepts this recommendation, the implementation of which is subject to negotiations and agreement of both the EU and the third country concerned.

Recommendation 1 (d)

The Commission accepts this recommendation, it has already commenced the consultation process with stakeholders.

Recommendation 1 (e)

The Commission accepts this recommendation.

A new methodology was presented to the Commission in December 2014 and accepted in January 2015. It will provide a common basis for the undertaking of assessments of the economic impacts of the protocols, which will be undertaken in advance of future negotiations. Once this methodology has been systematically applied it will respond fully to the Court's recommendations.

92

The Commission has during the last years engaged in a process of redesigning its IT tools and has launched the so called 'IT Licence Project' in early 2013 that will record both the transmission and follow-up of authorisations, in a digital manner. The existing IT tools allow the Commission to better manage the procedures relating to fishing authorisation applications and deliveries, from the introduction of a complete demand by the Member State till the delivery of an authorisation by the third country.

93

The Commission has since 2011 been developing new data submission procedures and new databases, particularly the so-called 'DataWareHouse', to allow a better and proper monitoring of all catches made by EU fishing vessels. This was available at the end of 2013 and became progressively operational through 2014 depending on the Member States capacity to implement the system. When specific issues are identified these are discussed with Member States.

Recommendation 2 (a)

The Commission accepts this recommendation and considers that it is already taking the necessary steps to rectify this situation.

The Commission has during the last years engaged in a process of redesigning its IT tools and has launched the so called 'IT Licence Project' to record both the transmission and follow-up of authorisations, in a digital manner.

Recommendation 2 (b)

The Commission accepts this recommendation and considers that it is already taking the necessary steps to rectify this situation.

During the negotiations for the renewal of protocols, the Commission actively promotes the use of electronic licences for EU vessels.

Recommendation 2 (c)

The Commission accepts this recommendation and considers that it is already taking the necessary steps to rectify this situation.

The Commission is in constant contact with Member States in order to solve all technical issues.

94

The guidelines established by the Commission services in 2013 and updated in 2014 for the monitoring of the implementation of the sectoral support lay out the principles to be followed for the definition and monitoring of the sectoral support and specific rules regarding reporting requirements. This enables adjustments to the programme to be agreed by the Joint Committee.

These guidelines have been complemented in recent protocols through the introduction of specific provisions relating to the implementation and monitoring of the sector support.

They, inter alia require the development and agreement of a matrix of activities to be funded by the sectoral support which clearly identify the actions to be supported, targets and the results achieved.

The matrix is examined regularly by the Joint Committee and monitored by the fisheries attaché to ensure that matrix programme is being respected.

95

Following the new CFP adopted in 2013, including the decoupling of sectoral support payments from those relating to access rights, and the conditionality relating to these payments, are now directly linked to the performance and utilisation of the sectoral support.

Sectoral support provided under the SFPAs is provided on the basis of a limited number of specific actions proposed by the partner country and not on a systemic approach as the EDF, which inter alia provides budgetary support. Furthermore, sectoral support is generally much lower than that provided under the EDF.

Provisions are foreseen for the revision of sectoral support in the Joint Committee for cases where the partner country requests the reallocation of funds within the programme with an appropriate justification, or, if necessary, the suspension of sectoral payments until such time as satisfactory implementation of the sectoral support is achieved.

Recommendation 3 (a)

The Commission accepts this recommendation and considers that it has been partially implemented as it has established specific guidelines for the management and monitoring of sectoral support and subject to negotiations with the partner countries the Commission will take the necessary steps for the full implementation.

Recommendation 3 (b)

The Commission accepts this recommendation and considers that it has been partially implemented.

The new CFP has made 'consistency with other Union policies' one of its principles of good governance (Article 3(h) of EU Regulation No 1380/2013). On that basis, fisheries aspects are increasingly mainstreamed into development policy.

Recommendation 3 (c)

The Commission accepts this recommendation and considers that it is being partially implemented.

Disbursements are considered in the context of the Joint Committee of each FPA on an annual basis. If it has been seen and agreed by the Joint Committee that there has not been adequate utilisation of the funding provided, payment for the following years' sectoral support contribution may be suspended.

Reply to table 4

For Mozambique subsequent verification by the Commission led to a correction of the figures. The current information held by the Commission indicates that the catches were 2330t, which closely reflects the quantity reported by Spain and France for the same year (2326t).

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The European Union (EU) negotiates agreements with coastal countries to obtain fishing rights for EU vessels and to support the governance and sustainable development of the local fishing sector. The Court found that these agreements were generally well managed by the European Commission, but that some improvements were needed. The quantities of fish negotiated with the coastal countries regularly exceeded the actual use made by the EU fleet, making the agreements relatively more costly than expected for the EU. The monitoring of catch data and the licencing process was not sufficiently robust, and the support provided for the sustainable development of the local fisheries sectors needed clearer eligibility conditions, and better coordination and consistency with other EU development support.



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