Council Decision (EU) 2019/441 of 4 March 2019 on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the Exchange of Letters accompanying the Agreement

COUNCIL DECISION (EU) 2019/441

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43, in conjunction with Article 218(6)(a)(v) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[(1)],

Whereas:

(1) On 22 May 2006, the Council adopted Regulation (EC) No 764/2006[(2)] on the conclusion of the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco ('the Agreement'). The Agreement was subsequently tacitly renewed.

(2) The last Protocol implementing the Agreement and setting out the fishing opportunities and financial contribution provided for therein expired on 14 July 2018.

(3) In its judgment in case C-266/16[(3)] in reply to a request for a preliminary ruling on the validity and interpretation of the Agreement and of the Implementation Protocol thereto, the Court held that neither the Agreement nor the Implementation Protocol thereto apply to the waters adjacent to the territory of Western Sahara.

(4) The Union does not prejudice the outcome of the political process on the final status of Western Sahara taking place under the auspices of the United Nations, and it has constantly reaffirmed its commitment to the settlement of the dispute in Western Sahara, which is currently listed by the United Nations as a non-self-governing territory and administered principally by the Kingdom of Morocco. It fully supports the efforts made by the United Nations Secretary-General and his personal envoy to assist the parties in achieving a just, lasting and mutually acceptable political solution which will allow the self-determination of the people of Western Sahara as part of arrangements consistent with the purposes and principles set out in the Charter of the United Nations and enshrined in United Nations Security Council resolutions ('UNSCR'), and in particular UNSCR 2152 (2014), UNSCR 2218 (2015), UNSCR 2285 (2016), UNSCR 2351 (2017) and UNSCR 2414 (2018).

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/441. (See end of Document for details)*

(5) It should be possible for Union fleets to continue the fishing activities they had pursued since the entry into force of the Agreement, and the scope of application of the Agreement should be defined so as to include the waters adjacent to the territory of Western Sahara. Furthermore, the continuation of the fisheries partnership is essential in order for that territory to continue to benefit from the sectoral support provided under the Agreement, in compliance with Union and international law, including human rights, and for the benefit of the people concerned.

(6) To that end, on 16 April 2018 the Council authorised the Commission to begin negotiations with the Kingdom of Morocco with a view to amending the Agreement and agreeing on a new Implementation Protocol. Following those negotiations, a new Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco ('the Fisheries Agreement'), as well as a new Implementation Protocol thereto, including the Annex and Appendices to that Protocol, and the Exchange of Letters accompanying the Fisheries Agreement that forms an integral part of the Fisheries Agreement, were initialled on 24 July 2018.

(7) The objective of the Fisheries Agreement is to enable the Union and the Kingdom of Morocco to work together more closely on promoting a sustainable fisheries policy and sound exploitation of fishery resources in the fishing zone defined in the Fisheries Agreement and supporting the Kingdom of Morocco's efforts to develop the fisheries sector and a blue economy. It thereby contributes to achieving the objectives of the Union under Article 21 of the Treaty on European Union.

(8) The Commission assessed the potential impact of the Fisheries Agreement on sustainable development, in particular as regards the benefits for the people concerned and the exploitation of the natural resources of the territories concerned.

(9) In line with that evaluation, it is assessed that the Fisheries Agreement should be highly beneficial to the people concerned owing to the positive socioeconomic impact on those people, particularly in terms of employment and investment, and to its impact on the development of the fisheries sector and fish processing sector.

(10) Equally, it is assessed that the Fisheries Agreement represents the best guarantee for the sustainable exploitation of the natural resources of the waters adjacent to Western Sahara, since the fishing activities comply with the best scientific advice and recommendations in that area and are subject to appropriate monitoring and control measures.

(11) In view of the considerations set out in the Court of Justice's judgment, the Commission, together with the European External Action Service, took all reasonable and feasible measures in the current context to properly involve the people concerned in order to ascertain their consent. Extensive consultations were carried out in Western Sahara and in the Kingdom of Morocco, and the socioeconomic and political actors who participated in the consultations were clearly in favour of concluding the Fisheries Agreement. However, the Polisario Front and some other parties did not accept to take part in the consultation process.

(12) Those who did not accept to participate in the process rejected the application of the Fisheries Agreement and of the Implementation Protocol thereto to the waters adjacent to Western Sahara, because they felt essentially that those acts would affirm the Kingdom of Morocco's position on the territory of Western Sahara. However, there is nothing in the terms of the Fisheries Agreement or of the Implementation Protocol thereto which implies that it would recognise the Kingdom of Morocco's sovereignty or sovereign rights over Western Sahara and the adjacent waters. The Union will also continue to step up its efforts in support of the process, initiated and pursued under the auspices of the United Nations, of peacefully resolving the dispute.

(13) In accordance with Council Decision (EU) 2018/2068[(4)], the Fisheries Agreement, the Implementation Protocol thereto and the Exchange of Letters accompanying the Fisheries Agreement were signed on 14 January 2019, subject to their conclusion at a later date.

(14) The Fisheries Agreement, the Implementation Protocol thereto and the Exchange of Letters accompanying the Fisheries Agreement should be approved.

(15) Article 13 of the Fisheries Agreement establishes the Joint Committee responsible for monitoring its implementation. The Joint Committee may adopt amendments to the Implementation Protocol to the Fisheries Agreement, in accordance with Article 13(3) of the Fisheries Agreement. In order to facilitate the approval of those amendments, the Commission should be empowered, subject to specific conditions, to approve such amendments under a simplified procedure,

HAS ADOPTED THIS DECISION:

Article 1

The Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco (‘the Fisheries Agreement’), the Implementation Protocol thereto and the Exchange of Letters accompanying the Fisheries Agreement are hereby approved on behalf of the Union.

The text of the Fisheries Agreement, of the Implementation Protocol thereto, including the Annex and Appendices to that Protocol, and of the Exchange of Letters accompanying the Fisheries Agreement is attached to this Decision.

Article 2

In accordance with the conditions laid down in the Annex to this Decision, the Commission is empowered to approve, on behalf of the Union, the amendments to the Implementation Protocol to the Fisheries Agreement that are adopted by the Joint Committee established under Article 13 of the Fisheries Agreement.

Article 3

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 17 of the Fisheries Agreement and Article 15 of the Implementation Protocol thereto.