

Comments and Recommendations

based on the Courts of Auditor's report on the management of Fisheries Partnership Agreements

March 2016

Introduction

On the 14th March 2016, the Agriculture and Fisheries Council¹ is due to adopt Conclusions on Fisheries Partnership Agreements with third countries, as a policy response to recommendations issued by the European Court of Auditors on the subject in a special report. This report, 'Are fisheries Partnership Agreements well managed by the Commission', was published by the Court in October 2015². Its objective was to evaluate whether FPAs are well managed by the European Commission, during their negotiations and their implementation.

The report is based on the audit of four FPAs: three 'tuna' FPAs in the Indian Ocean (Madagascar, Mozambique and The Seychelles) and one 'mixed' FPA in West Africa (Mauritania). The main conclusion of the report is that on the whole, agreements are well managed but there is still room for improvement, both as regards negotiations process and implementation. The Commission has accepted all the recommendations made by the report, making the precision that some endeavours are already being made to improve FPAs³.

In general, CFFA feels that the conclusions drawn by the Court's report need to be deepened and broadened, since they are based only on four agreements and mostly reflect the concerns of the EU ship owners. Little consideration is given by the Court to civil society and third countries fishing communities interests and needs.

CFFA also wants to acknowledge that there have been improvements in the management of SFPAs, notably in terms of transparency concerning EU fleets activities. However, we also want to recall that there are other types of access arrangements to third countries waters, such as private agreements, chartering agreements, joint ventures, which have important impacts on third countries coastal communities, coastal eco-systems and local economies. With the new Fishing Authorisation Regulation (FAR) proposal, the EU endeavours to provide a more transparent framework, in line with the new CFP sustainability requirements, for vessels fishing under private agreements or chartering arrangements. We deplore that no such framework is currently promoted for joint ventures, despite the fact that their constitution is promoted through SFPAs⁴.

¹ The Council of the EU is involved at all stages of the negotiation and conclusion of SFPAs, from providing the mandate for negotiations to the Commission, to signing the agreement on behalf of the EU and adopting, once the Parliament has given its consent, the final decision implementing it into EU law.

² European Court of Auditors Special Report, Are the Fisheries Partnership Agreements well managed by the Commission?, (including the reply of the Commission)

http://www.eca.europa.eu/Lists/ECADocuments/SR15_11/SR_FISHERIES_EN.pdf

³ In the reformed CFP, FPAs have become SFPAs – Sustainable Fisheries Partnership Agreements – SFPAs.

⁴ <https://cape-cffa.squarespace.com/new-blog/2015/7/10/fishing-joint-ventures-operations-need-to-be-transparent-sustainability-framework-has-to-be-developed>

What does the Court of Auditors report say?

The Court of Auditors report makes recommendations to the European Commission regarding SFPAs negotiation and implementation.

- **Regarding FPA negotiations, the Court of Auditors recommends:**

- a) In order to ensure the continuity of the European fleet's activities, to make use of the possibility offered by Article 9 of the current Fishing Authorisations Regulation to allow vessels to apply through the Commission to the third country concerned for fishing licences while awaiting the signature of a renewed protocol. The Court emphasizes that this possibility is not consistent with the exclusivity clause;
- b) to improve the complementarity between FPAs and consistency with other EU regional actions and funding sources in the fisheries sector, so to maximise the potential of FPAs to improve fisheries governance at regional level;
- c) when negotiating the fishing possibilities of new protocols, to consider the utilisation rates of previous protocols, and to better link payments for access rights to actual catches, while ensuring that the fishing activities are not adversely affected;
- d) the potential impact of FPA technical conservation measures on the use of the protocol should be better analysed, while safeguarding the mutual benefits for the EU and the partner countries concerned.
- e) In as much as the information provided by ex post evaluations was not always useful in the decision-making process, ex-post evaluations should be better focused 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.

CFFA comments and recommendations

a) **On the continuity of the European fleet's activities**

As highlighted in the Commission reply, the transitional regime to allow vessels to receive a fishing licence while awaiting the signature of a new SFPA protocol was based on Article 9 of the FAR Regulation (EC) No 1006/2008, and was limited to a period of 6 months. Such licences are granted under the main framework agreement, even in the absence of protocol, and are not inconsistent with the exclusivity clause, as the Court argues, unlike private licences. It should be noted though that the article 9 of the current FAR on the continuity of fishing activity has been removed from the new FAR proposal. Moreover, this doesn't preclude **the need to harmonise the scope and the implementation of the exclusivity clause in SFPAs**, which to date remain irregular, differing often from an agreement to another⁵.

⁵ See CFFA blog article, SFPAs: The Need To Harmonise The 'Exclusivity Clause' Scope And Interpretation <https://cape-cffa.squarespace.com/new-blog/2015/1/13/65tix8ny2wfg8kgcp9dm6rvrp7huo7>

b) On complementarity between FPAs and consistency with other EU regional actions

The Court report highlights that the EC has negotiated a relevant network of agreements, but consistency within the Indian Ocean region (the tuna agreements) could be improved. The EC replies that it has begun the ‘implementation of a regional strategy’ in the Indian Ocean.

So far, there are no specific details published about either the objectives or the implementation of this strategy the EC is referring to. In our view, to negotiate several SFPAs in a same region doesn’t amount to a regional strategy. Although efforts have been made for coordination between DG Mare and DG Development, there is still a **need for a clear political commitment, by the Council and Parliament, to develop coherent strategies in the Indian Ocean, the Atlantic and the Pacific⁶, with the objective of promoting sustainable fisheries development, based on a regional approach and including EU actions in Fisheries, Trade, Development and all other policies that affect the development of fisheries in these regions.**

Coherence between FPA support and EDF support

To highlight the need for more complementarity between FPAs in the Indian Ocean and other EU regional actions, the Court takes the example of 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’.

To ensure there is an efficient regional system for exchanging sensitive information such as VMS data shows the need for EU political action to promote a regional strategy for sustainable fisheries in the region, as a basis for a transparent dialogue with all countries and stakeholders involved.

c) On the high costs of SFPAs, low use of protocols, and linking payments to actual catches.

The Court highlights that 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. In its reply, the EC reminds that fishing opportunities are based on EU fleets previous reported catches, which have to be aligned to technical conservation measures. Such measures, - such as fishing zones -, agreed by both parties, are there to ensure a sustainable exploitation of resources, to reduce the impact of fishing on marine ecosystems and avoid conflicts with coastal state artisanal fishermen.

CFFA strongly rejects the idea that lowering sustainability standards or weakening technical conservation measures applied to EU fleets could ever be considered as a way to get better ‘value for money’. On the long term, our view is that payments under SFPAs should solely be used to support the establishment, in the third country concerned, of an enabling environment for sustainable, legal and transparent fisheries operations, which do not compete with local artisanal communities’ activities. In this context, ship owners should pay the full amount of access costs.

⁶ In September 2013, the European Parliament adopted a report For a comprehensive EU fishery strategy in the Pacific Region <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0297+0+DOC+XML+V0//EN>

d) On the fact that the information provided by ex-post evaluations is not always useful in the decision-making process

These evaluations have declined in the quality of their analysis and therefore in their usefulness over time. In its reply, the EC highlights that it has established a common template for the Terms of Reference for SFPAs evaluations. A single and common methodology relating with the assessment of economic impacts of FPAs has been agreed and implemented from early 2015.

These evaluations are important tools for all stakeholders – the fact they are now public is most welcome. **They should draw a clear picture of the third country fisheries sector dynamics, also analysing in more details the impacts of an agreement on local fisheries developments prospects (on coastal communities development, on food security, on coastal eco-systems, on good governance) rather than focus mainly on economic impacts, as seems to be the case with the new methodology in place.**

- **Regarding FPA implementation, in particular the management of access conditions to fisheries, the Court of Auditors recommends:**
 - a) 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

CFFA comments and recommendations

a) About the monitoring of the issuing of licenses and of catches

The Court highlights that the central monitoring of catches was not adequate, putting at risk the timely identification of problems and the correct calculation of payments. In its reply, the EC states that it has established new IT tools: the “IT-license project” and a database for catches.

More precisions can be found in the new FAR proposal which establishes a **fishing authorizations register** (art. 39) made of a public part and a secure part, that can be accessed by the relevant competent administrative services involved in the management of fishing fleets (Art. 41). The public part of the electronic record project will contain all the names of the vessels/companies that received an authorization to fish in the waters of a third country, and there will be information on the date and duration of this fishing authorization, the type of authorization, the region, the target species and the type of gear.

Personal information about the company and the agents involved will not be public. It is not explicitly stated whether data relating to direct authorizations will be compiled in the registry, but it seems that it is not excluded if one refers to the annexes referred to in Article 39.1⁷. Regarding catches, the Commission has indeed to properly monitor them but **Member States have to be collaborative and supply the Commission with accurate and up to date data, in due time.**

⁷ http://eur-lex.europa.eu/resource.html?uri=cellar:3c2190d3-9f2f-11e5-8781-01aa75cd71a1.0021.02/DOC_2&format=PDF

- **Regarding FPA implementation, in particular the management of sectoral support, the Court of Auditors recommends:**
 - (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.

CFFA comments and recommendations

a) On the sectoral support

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

The EC replies that it is implementing the CFP principle of consistency with other EU policies and that sectoral support can be suspended if the results have not been achieved. The EC has established guidelines for the monitoring of the implementation of the sectoral support which lay out the principles to be followed for the definition and monitoring of the sectoral support and specific rules regarding reporting requirements. These guidelines have been complemented in recent protocols through the introduction of specific provisions, requiring, for example, 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.

CFFA deplores the fact that these guidelines are not made public. We recognise that progress has been made: the agreements with Mauritania and Morocco are most advanced in terms of reporting and transparency regarding sectoral support. But it is not the case in many other agreements. In February, European Parliamentarians visiting Guinea Bissau highlighted the poor use and results of the sectoral support, despite clear and important needs visible in fishing communities⁸. CFFA partners in various countries having signed an agreement with the EU regularly stress the fact that the artisanal fishing professionals, - often potential beneficiaries of actions undertaken through sectoral support-, have not been informed or consulted in the identification and implementation of sectoral support activities. Regarding the matrix of fisheries projects funded through sectoral support, they are not always complete and there are risks of double financing.

⁸ European Parliament Fisheries Committee, Report on the visit by the delegation of the Committee on Fisheries to Guinea-Bissau from 8 to 12 February 2016

CFFA requests that the EC publishes the guidelines it has developed on sectoral support, as well as the accounts and reports on the achievements of the sectoral support (e.g. Mauritania agreement on sectoral support 2008-2012) so that a public debate can be held about how to improve the planning and use of the sectoral support. On longer term, we feel that such guidelines should be given a legal force, in order to have a clear and binding framework for the use of sectoral support.

Generally, **CFFA feels that sectoral support should not be linked to the level of access rights but to the needs of the country, which makes synergies with EDF necessary**, given the relatively small amounts of the sectoral support (in particular for tuna agreements). Such synergy with EDF funding and other donors present in the country and intervening in fisheries is even more necessary to avoid double funding of the same projects.

CFFA further feels that it is fundamental that funds of foreign origin contribute to the third country's own development objectives. To that end, it's important for the third country concerned to have a general fisheries development strategy, elaborated with the participation of all stakeholders, in particular communities that depend on fishing for their livelihoods.

European Parliamentarians concerned about SFPAs sectoral support

In February 2016, the European Parliament Fisheries Committee gave strong support for the *Report on common rules in respect of application of the external dimension of the CFP, including fisheries agreements*⁹. The report gives special attention to the issues of SFPA sectoral support. CFFA fully supports these views expressed in the Parliament report, to be voted in plenary in April 2016.

Regarding the objectives of the sectoral support, the European Parliament report *'considers the provision of sectoral support to the fishing sector in SFPA partner countries to be critical in addressing their growing needs relating to fishing management, scientific research capacity, infrastructure construction and maintenance, and the training of fisheries inspectors and crew members, and in improving the supply and availability of fish with a view to the food security of populations in SFPA partner countries by providing support for the work done by women in the fisheries sector'*.

The report insists on *'better linkage between the sectoral support and the instruments available within the scope of cooperation on development, specifically the European Development Fund (EDF), and for full transparency in the funding of fisheries projects and the use of sectoral support, so as to ensure the proper use of EU funds. It further calls for the EU, through SFPAs, to encourage good governance, in particular the good management of public revenues from the fisheries sector and of financial compensation'*.

The report also notes that *'transparency is a prerequisite for consultation with, and the informed participation of, fisheries stakeholders, especially professionals whose livelihoods depend on fisheries; considers that such consultation and participation should be promoted in SFPAs, including the negotiation of agreements and protocols, their implementation, the allocation and use of sectoral support, work carried out in RFMOs, and the application of development cooperation projects'*.

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⁹ European Parliament report on Common rules with a view to the application of the external dimension of the CFP, including fisheries agreements
[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2091\(INI\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2091(INI))