



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement

Case Study: Tuna Fisheries • May 2021



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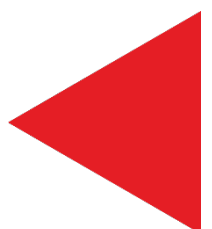


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1. Fisheries in the South-West Indian Ocean

The fishing industry in the South-West Indian Ocean in and around the territorial waters and the Exclusive Economic Zones (EEZs) of Comoros, Madagascar, Mauritius and Seychelles, can be categorised into:

- Artisanal Fisheries: carried out by local fishers, with small, motorised boats targeting mainly demersal and semi-pelagic species.
- Semi-Industrial Fisheries: consisting of small (14m-22m LOA), locally-owned long-liners targeting pelagic species (mainly tuna and swordfish).
- Industrial Fisheries: comprising mainly European-owned purse seiners operating mainly out of Seychelles and large, mainly foreign-owned long-liners.

There is a fish canning industry in Seychelles, Mauritius and Madagascar and the Eastern and Southern Africa (ESA) Indian Ocean countries, the ESA4,¹ also export fresh fish, fresh frozen fish and by-products such as fish oil.

2. Sustainable Fisheries Partnership Agreements

According to the EU², Sustainable Fisheries Partnership Agreements (SFPAs) guarantee the respect of the European Common Fisheries Policy's key principles and values and are a tool for good governance and transparent management of fisheries, which is shown diagrammatically below.



SFPAs have three main components:

- 1) The Fisheries Agreement: sets out the scope and basic principles of cooperation and the commitment to cooperate, mainly through Joint Committees that are set up to monitor the application of the SFPAs.

¹ ESA4 is the term used to refer to the four island countries of Comoros, Madagascar, Mauritius and Seychelles who are negotiating the ESA EPA together with Zimbabwe.

² https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/2015-sfpa_en.pdf

- 2) A Protocol implementing the Agreement that authorises fishing access of European Union (EU) vessels and specifies fishing opportunities, amounts and methods of payment, modalities of cooperation and fixes details on the sectoral support component and sets the frame for technical provisions for fishing activities etc.
- 3) Technical Annexes that set out implementation and procedural aspects, such as the licensing system, electronic catch reporting system (ERS), observers, vessel monitoring system (VMS), and control and enforcement.

Partner countries are said to gain from the following:³

- Financial contribution for the access of fisheries resources, and sectorial support supporting activities along with science-based management of marine resources, the development of the local fisheries sector (for many partner countries, this support is the main resource for the fisheries administration), fishing and maritime monitoring and blue economy.
- Employment by developing ancillary industries and port facilities in partner countries.
- Food security, as some of the fish caught by the EU, is supplied to the local market, such as small pelagic fish. Sectoral support plays a crucial role in the development of the local fisheries sector.

The EU has 16 SFPAs with African countries which cover substantially the West African Coast and the Indian Ocean.

The SFPA signed by the European Union and Mauritius in December 2013 entered into force on 28 January 2014, for a period of 6 years, tacitly renewable for additional periods of 3 years. A new fisheries protocol concluded between the EU and Mauritius covers the period 8 December 2017 – 7 December 2021. The SFPA allows 40 purse seiners and 45 surface long-liners from Spain, France, Italy and Portugal to fish in Mauritius’s EEZ.⁴

Table 1: Main Features of the Mauritius – EU SFPA

Duration of the agreement	6 years renewable for additional periods of 3 years (entry into force on 28.01.2014)
Duration of the protocol	4 years (08.12.2017-07.12.2021 - provisional application as of 08.12.2017)
Nature of the SFPA	Tuna fishery agreement
Financial contribution	€575,000 out of which €220,000 for targeted actions for the development of the fisheries sector and €135,000 for targeted actions for the development of the maritime policy and ocean economy
Fee for shipowners	€65 per tonne caught for 2 years, then €70
Advances	- Tuna Seinners: €8,500/year - Surface longliners: €4,125 for vessels of more than 100 GT; €2,050 for vessels of equal to/less than 100 GT)
Reference tonnage	4,000 t./year

Source: SFPA between the EU and Mauritius

³ <https://op.europa.eu/en/publication-detail/-/publication/c8b5d962-0d38-11e7-8a35-01aa75ed71a1/language-en/format-PDF/source-37907030>

⁴ https://ec.europa.eu/fisheries/cfp/international/agreements/mauritius_en

On 24 February 2020, the EU and Seychelles signed a new 6-year SFPA. The current protocol covers the period 24.02.2020 - 23.02.2026 with an EU financial contribution of €5.3 million per year, out of which €2.8 million is earmarked for the support of the fisheries policy of Seychelles.⁵ This fisheries agreement allows EU vessels from Spain, France, Italy and Portugal to fish in the Seychelles' fishing zone and is part of the tuna network fisheries agreements in the Indian Ocean. The SFPA allows 40 purse seiners and 8 surface longliners from Spain, France, Italy and Portugal to fish in Seychelle's EEZ.

Table 2: Main Features of the Seychelles – EU SFPA

Duration of the agreement	6 years renewable (24.2.2020 – 23.2.2026)
Duration of the protocol	6 years (24.2.2020 – 23.2.2026)
Nature of the SFPA	Tuna fishery agreement
Financial contribution	€5,300,000 per year, of which €2,800,000 is dedicated to the support of the fisheries sector of Seychelles.
Fee for shipowners	€80 per tonne for the first and second year of protocol's application €85 per tonne from the third to the sixth year of protocol's application
Advances	<ul style="list-style-type: none"> - Tuna seiners: Annually incremental from €56,000 per year to €59,500 per year (from the third to the sixth year of protocol's application) (ref catches: 700 t) - Surface longliners = Annually incremental from €7 200 per year to €7 650 per year (year (from the third to the sixth year of protocol's application) (ref catches: 90 t)
Reference tonnage	50,0000 t./year
Environmental management and observation of marine ecosystems contribution	€2.25 per GT (purse seine vessels only) per year

Source: SFPA between the EU and Seychelles

The Madagascar – EU fisheries agreement expired in December 2018 so the EU's distant water fleet DWF has not been fishing in the EEZ of Madagascar since December 2018. According to a Coalition for Fair Fisheries Agreements (CFFA) Briefing Paper,⁶ the negotiations for a new SFPA need to reach a compromise on the number of EU vessels licensed to operate in Madagascar's EEZ and the fees paid for the fish. The EU wants 94 vessels to access Madagascar's EEZ while the Malagasy side intends to limit this number to 45 and the EU is proposing that the EU DWF ship owners pay a fee of €80/t while the Malagasy are proposing a fee of €120/t. The main features of the expired agreement are in Table 3.⁷

Table 3: Main Features of the Madagascar – EU SFPA

Duration of the agreement	6 years tacitly renewable (1.1.2007– 31.12.2012, renewed for the period 01.01.2013- 21.12.2018)
Duration of the protocol	4 years (01.01.15– 31.12.2018)
Initialisation	1 January 2015
Nature of the SFPA	Tuna fishery agreement, in the framework of the IOTC convention area

⁵https://ec.europa.eu/fisheries/cfp/international/agreements/seychelles_en#:~:text=On%2024%20February%202020%2C%20the.and%20the%20modalities%20of%20sectoral

⁶ *Financial Compensation, Support for Development and Transparency, the Key Issues at Stake in the Negotiation of the EU Madagascar SFPA.* Brussels. 21 April 2020. Coalition for Fair Fishing Arrangements.

⁷ https://ec.europa.eu/fisheries/cfp/international/agreements/madagascar_en

Financial contribution	€1,566,250 per year for 2015 and 2016 and €1,487,500 per year for 2017 and 2018, out of which €700,000 was earmarked to support the Malagasy fisheries policy to promote sustainability in its waters.
Fee for shipowners	€60 per tonne caught for 2015 and 2016 and €70 per tonne caught for 2017 and 2018
Advances	<ul style="list-style-type: none"> - Tuna seiners: €11,400/year for the first two years and €13,300 /year for the last two years (ref catches: 190 t/an) - Surface longliners >100 GT: €3,600/year for the first two years and €4,200/year for the last two years (ref catches: 60 t/an) - Surface longliners = or < 100 GT: €2,400/year for the first two years and €2,800/year for the last two years (ref catches: 40 t)
Reference tonnage	15,750 t./year

Source: SFPAs between the EU and Madagascar

Comoros had a bilateral fisheries agreement with the EU, adopted in 2006, and then tacitly renewed. However, this agreement was denounced by the EU in January 2019 following the inclusion of Comoros on the list of non-cooperating countries in the fight against illegal, unreported and unregulated (IUU) fishing.⁸

In summary:

- Comoros does not have a bilateral agreement with the EU relating to fisheries so there are no licensed European Union registered fishing vessels operating in Comoros's EEZ.
- The SFPAs with Madagascar has expired but, when it was in force, it made provision for the EU to pay Madagascar €1,487,500 in 2018, which was linked to a reference tonnage of 15,750 of tuna landed per year. This implies that the EU paid Madagascar about €94.4/t of tuna caught, assuming the EU DWF caught the tonnage of tuna referenced, and the ship owners paid Madagascar an additional €70 per ton of fish caught.
- Mauritius has a SFPAs in the form of a tuna fisheries agreement through which the EU paid €575,000 per year (€220,000 for access), which is linked to a reference tonnage of 4,000 of tuna landed per year.
- Seychelles has a SFPAs in the form of a tuna fisheries agreement through which the EU pays €5.3 million per year (€2.5 million for access), which is linked to a reference tonnage of 50,000 tons of tuna landed per year.

According to the Food and Agriculture Organization (FAO) European Price Report for 2020,⁹ the average free on board (FOB) price between February 2013 and February 2020 for Skipjack tuna from Seychelles was €1.15/kg and €2.20/kg for Yellowfin tuna. Overall this gives an average price of €115/t for Skipjack and €220/t for Yellowfin, or an average tuna price of €167.5/t, which would be a bit high given the fact that more Skipjack is landed than Yellowfin. The cost and freight (CFR) price paid by the Spanish canneries during the same period was €1.20/kg for Skipjack and €2.50/kg for Yellowfin, so the prices of Seychelles fish are relatively high. If the fixed price paid to Seychelles by the EU (the total annual amount paid by the EU which is not linked to actual tonnages), using the reference tonnages, is added to the price paid per ton by vessel owners is added together and averaged out for Madagascar, Mauritius and Seychelles, the average price paid to the three countries is €188 per ton of tuna.

⁸ https://ec.europa.eu/fisheries/cfp/international/agreements/comoros_en

⁹ <http://www.fao.org/3/ca7891en/ca7891en.pdf>

In addition to the support provided through SFPAs to the Indian Ocean fishing sector, the EU, through the European Development Fund (EDF), provides significant support and resources to the fisheries and blue economy sector of the COMESA-EAC-SADC Tripartite region through programmes such as the Smartfish programme, which has now come to an end, and the operational Ecofish (or E€OFISH) programme.

3. Fisheries Chapter in the ESA interim EPA

The ESA Interim EPA has a dedicated Chapter on Marine Fisheries, which is identical to the Marine Fisheries Chapter in the EAC interim EPA. It reflects the fact that the bulk of negotiations for the EAC and ESA EPA were done under the COMESA umbrella and when the EAC decided to go alone in terms of EPA negotiations it did so by taking the ESA negotiating framework as its starting point.¹⁰

Article 30 of the ESA interim EPA refers to the scope of Marine Fisheries being “*the utilisation, conservation and management of marine fisheries resources to optimise the benefits from fisheries for the ESA region through investment capacity building and improved market access*”. Although the definition is relatively broad, it is missing a development component. It could, however, be argued that the development of the marine fisheries sector would be achieved “*through investment capacity building and improved market access*”. This would certainly fit into the “Aid for Trade” concept but if this were the case, we could expect the text on Marine Fisheries to cover the OECD’s¹¹ four main components of Aid for Trade of mainstreaming and prioritising trade (demand); trade-related projects and programmes (response); enhanced capacity to trade (outcome) and improved trade performance and reduced poverty (impact). Under the Fisheries title, these four components of Aid for Trade are not addressed, so it could be concluded that there is no development component in the interim EPA specific to fisheries, nor any mechanism in place to channel funds through the EPA to a fisheries development component.

Article 31 outlines the objectives of the Agreement which are to:

- (a) **strengthen cooperation to ensure the sustainable exploitation and management of fisheries resources as a strong basis for regional integration.** This relates to the fact that tuna is a migratory species, and no ESA state can ensure the sustainability of the fishing industry on its own. There is cooperation through the Indian Ocean Tuna Commission (IOTC), whose aim is to ensure stability. However, within the EPA specifically, there are no mechanisms in place that would allow the sustainable exploitation and management of fisheries resources to strengthen cooperation and so be a strong basis for regional integration. The main avenues of regional integration for the ESA4 are their membership of COMESA, IOC and SADC, which all ESA4 countries are members of, but none of these regional organisations is a party to the ESA EPA negotiations so cannot coordinate negotiations. If the objective of strengthening cooperation to ensure the sustainable exploitation and management of fisheries resources as a strong basis for regional integration is to have any practical application in the comprehensive EPA, there is a need for a mechanism that allows a regional integration dimension to be introduced through the management of fisheries resources to ensure sustainable exploitation.

¹⁰ The EAC interim EPA comprises Burundi, Kenya, Rwanda, Uganda and Tanzania. Initially, Burundi, Kenya, Rwanda and Uganda were negotiating an EPA under the ESA (COMESA) while Tanzania was negotiating an EPA under SADC. This approach was going to lead to challenges within the EAC customs union so the EAC decided to negotiate an EPA under the EAC umbrella, with Burundi, Kenya, Rwanda and Uganda leaving the ESA umbrella. The ESA term was coined at the start of the negotiations when COMESA was trying to bring SADC, EAC and COMESA together to negotiate as a group and so be in compliance with the principle that EPAs should strengthen regional integration, but, principally, the SACU countries objected to this approach, so negotiations started as EAC (COMESA) and SADC and then the EAC countries split as well.

¹¹ <http://www.oecd.org/aidfortrade/>

- (b) **ensure a more equitable share of the benefits derived from the fisheries sector.** According to a paper in Marine Policy entitled “Who gets what? Developing a more equitable framework for EU fishing agreements”, the benefits derived from the fishing sector remain more skewed towards the EU than they are to the ESA.¹² The authors note that since 1986, EU quotas for Madagascar increased by 30 per cent while the fees paid by the EU decreased by 20 per cent. Yet, Madagascar’s treasury income from these agreements decreased by 90 per cent. The authors conclude that the EU agreements with Madagascar are in direct contradiction to the goals set in the Common Fisheries Policy (CFP) which states that benefits of agreements should be directed towards developing countries, and not towards private EU entities. The authors proposed a new framework for the CFP, “prioritizing fisheries sustainability and equitable benefit sharing, in which reasonable quotas are set, fees are indexed to the landed value of catches, and all costs of agreements are borne directly by the benefiting industries. EU development assistance should be decoupled from these agreements and should focus on enhancing the host countries’ monitoring and enforcement capacities. This new framework would increase the benefits to Madagascar while reducing costs to EU taxpayers”.
- (c) **ensure effective monitoring control and surveillance (MCS) necessary for combating IUU fishing.** There has been steady, albeit slow, progress in improving monitoring, control and surveillance (MCS) of fishing and fishing-related activities in the South-West Indian Ocean and additional MCS provisions are referred to under Article 32(2)(b)(ii) of the EPA.
- (d) **promote effective exploitation, conservation and management in the EEZ for the mutual social and economic benefit of the ESA States and the EC Party.** The EPA does not provide any benchmarks against which the promotion of effective exploitation, conservation and management in the EEZ can be measured and no benchmark on what social and economic benefits can be expected or what level of benefits can be expected, so this objective is aspirational at best and too general to be meaningful. This article could be strengthened in the comprehensive EPA by adding targets and benchmarks.


Article 32 provides details of Areas of Cooperation. Article 32.1 and 32.2 are general in nature and note that cooperation will include fisheries management and conservation issues, vessel management and post-harvest arrangements, financial and trade measures, development of fisheries and fishery products, marine aquaculture and mobilisation of resources. The Article also notes that the EC shall contribute to the measures as described in the section concerning financial and trade measures, and on infrastructure development specific for fisheries and marine aquaculture. The language, using “shall” indicates “best endeavour” on the part of the EC rather than a firm commitment, so these articles are non-binding and not enforceable, on either Party.

Article 32(2)(a) addresses Fisheries Management and Conservation Issues.

¹² Le Manach F, et al. *Who gets what? Developing a more equitable framework for EU fishing agreements. Mar. Policy (2012), https://blueventures.org/wp-content/uploads/2017/09/LeManach_etal_EU-MadagascarAgreement.pdf*

- 1) **The precautionary approach shall be applied in determining levels of sustainable catch, fishing capacity and other management strategies.** The precautionary approach is used in fisheries where reliable data are not available and is applied where there are highly migratory species and straddling stocks under Article 6 of the UN Fish Stocks Agreement (1995). The interim EPA text on the precautionary approach refers to its use when addressing negative impacts on ecosystems and the artisanal sector. There has been concern in the past about the ability of putting the adoption of a precautionary approach into practice when coastal states generally lack the means to do so. However, there are numerous examples of the precautionary approach being put into action. For example, in 2019, the IOTC used the precautionary principle to restrict the tonnage of Yellowfin tuna caught by the purse seiner fleet and there have been no major challenges in implementing these catch restrictions.¹³ As a purse seiner cannot control what type of tuna (or bycatch) it catches when it starts to get close to its Yellowfin quota the purse seiners stay in the harbour. At the end of 2019, most purse seiners registered to fish out of Port Victoria were in the harbour because of the Yellowfin catch limits in force, which reduces the overall tonnage of tuna caught, including Skipjack, by purse seiners and so also reduces the availability of originating fish that can be used in the canning factory in Seychelles, Mauritius and Madagascar, which is one of the reasons why the ESA4 countries want the automatic derogation for non-originating tuna to be increased.
- Box 1: Precautionary Approach in Action**

28 DECEMBER 2019



A majority of the Seychelles-flagged purse seiners fishing in the island nation's waters have reached their annual yellowfin quota for the year and are awaiting the beginning of the year to resume activities, a top government official said Friday.

Eleven out of the 13 Seychelles-flagged vessels are now moored outside of Port Victoria awaiting the beginning of the new fishing season, Charles Bastienne, the Minister of Fisheries and Agriculture, told a news conference.

He said the vessels have reached their annual quota set out by the Indian Ocean Tuna Commission (IOTC) and it was normal to see so many of them moored outside Port Victoria.
- 2) **Appropriate measures, including seasonal and gear restrictions, should be to protect territorial waters and ensure sustainability.** Territorial waters refer only to the 12-mile zone, which is where artisanal fishermen operate and not the industrial fleets including the purse seiners. Purse seiners are not allowed to operate within the 12-mile zone so perhaps this article can be interpreted as the countries taking appropriate measures to protect their territorial waters. The Article does not infer that ESA states can take measures to protect the EEZ beyond its territorial waters and ensure sustainability beyond the 12-mile limit and up to the 200-mile limit of the EEZ.
- 3) **Membership of IOTC will be promoted.** The EU and the ESA interim EPA member states are all members of IOTC. Since Brexit, the UK is a fully-fledged IOTC member representing the British Indian Ocean Territory (BIOT) and their distant water fishing fleet. La Réunion and Mayotte are Ultraperipheral Regions of the European Union and therefore represented by the EU. France is a member on behalf of the island of Tromelin.
- 4) **Where there is insufficient scientific evidence for the competent national management authority to determine limits and target levels of sustainable catch in an ESA EEZ, both Parties shall support scientific analysis.** This is not contentious and, in being members of the IOTC, and participating in the IOTC activities and supporting and complying with the decisions of the IOTC, both parties are supporting scientific analysis. The EPA text does not specify performance indicators that

¹³ A news item from the Seychelles News Agency (reproduced at <https://allafrica.com/stories/201912300490.html>) highlights the fact that the Seychelles-registered purse seiners were in harbour in December 2019 because they were nearing their Yellowfin tuna quotas.

could be used to gauge how well or actively the Parties support scientific analysis but there is no evidence to suggest that the Parties do not support scientific analysis.

- 5) **Appropriate measures will be taken in cases of catches above the target sustainable level.** Target sustainable levels of catches are set by the IOTC and all members of the IOTC need to abide by the decisions of the IOTC. However, what is interesting is that, although the target sustainable levels of catch of some species continue to be reduced (with none increasing), the SFPAs continue to increase the level of the reference catch, although not increasing the number of fishing vessels that can operate in the South-West Indian Ocean. For example, the 2020 SFPAs between the EU and Seychelles uses a reference catch of 50,000 tons per year and caters for 40 EU-registered purse seiners and 8 long-liners. The 2002 Access Agreement between the EU and Seychelles allowed for 40 purse seiners and 32 long-liners but with a reference catch of 46,000 tons per year.¹⁴
- 6) **Ensure compliance.** Both Parties do try to ensure compliance as it is in both of their interests that the fishing fleets are compliant with relevant national, regional and sub-regional fisheries management measures and related national laws and regulations. For example, in the early 1980s, artisanal fishermen in Seychelles started to harvest sea cucumbers but by 1999 there were already signs of stock depletion, including lower volumes of high-value species and fishermen having to travel further and dive deeper to maintain catch rates. The Seychelles Fishing Authority (SFA) implemented management measures in 1999, including restrictions on the number of licenses issued to harvest (25) and process (4), limited the numbers of the crew on the fishing boats and limited the fishing season from October to May. Then, in 2017, the SFA introduced a Total Allowable Catch (TAC) for each species and fishermen are now only allowed to catch 3 species (flower teat fish, white teat fish and prickly red).¹⁵ This is an example of compliance and use of the precautionary principle.

Article 32(2)(b) addresses **Vessel Management and Post-Harvest Arrangements.**

- i) **Vessel Monitoring System (VMS).** VMS was developed in the 1990s for vessel monitoring, control and surveillance. The system was to address key concerns facing both fishing vessels and the regulatory authorities, such as national sovereignty issues with boats fishing in another nation's territorial waters, combating illegal fishing and sustainably monitoring marine resources. It was designed to deliver accurate, regular positions of vessels without any regional or global limits. VMS is designed so that the flag states are the only ones empowered to receive, validate and distribute VMS data to whoever needs to know (Regional Fisheries Management Organisations, coastal states, etc). The fishing companies can then be confident that the privacy of their data is protected by their national authority. The information cannot be hacked by an unauthorized operator, protecting the vessel's market-sensitive information.

The Agreement stipulates that all ESA States will use a compatible VMS and ESA States which do not have a VMS will be assisted by the EU to set up a compatible VMS. IOTC Resolution 15/03 specifies in detail the VMS requirements, including timeframes for implementation.¹⁶ According to a 2019 research paper by Nielblas et al on a VMS/logbook comparison for the Seychelles Tuna Fishery,¹⁷ Seychelles is a regional leader in the sustainable exploitation of marine ecosystems in the Western Indian Ocean and is involved in the joint management with Mauritius of adjacent regions.

¹⁴ See, for example: "Experience from the bilateral fisheries access agreement, impact on the economy and implications for Seychelles of the outcome of the WTO mediation on the case of tuna between the EU and Thailand and the Philippines" by Phillip Michaud dated 2003.

¹⁵ For a more detailed explanation of fisheries policy in the Seychelles see the Seychelles Fisheries Comprehensive Plan. <https://echebatar.com/wp-content/uploads/2019/11/Seychelles-Fisheries-Comprehensive-Plan-Nov-2019.pdf>

¹⁶ <https://www.iotc.org/cmm/resolution-1503-vessel-monitoring-system-vms-programme>

¹⁷ https://www.researchgate.net/publication/342673237_Seychelles_VMSlogbook_comparison_for_tuna_fisheries_FAO_Area_51/link/5f7482ac458515b7cf593f7c/download

Since the early 2000s, VMS in Seychelles has been well maintained and closely monitored for vessels >12 m length, but numerous smaller vessels are not monitored.

The state of play of implementation of VMS obligations is in the IOTC reports. This includes a sound legislative framework that sets out the requirements for the operation of a VMS system while at sea. Currently, SFA is responsible to install, maintain and repair and/or replace damaged transceiver terminals including communication costs related to the terminals and, although fishermen have no financial burden, skippers usually refuse to operate the terminals and installation of transceiver terminals is done on a voluntary basis.

According to the Seychelles News Agency, in October 2017, a Spanish organisation, the Organisation of Associated Producers of Large Tuna Freezers (OPAGAC) called upon the local fishing authority to make electronic monitoring compulsory on all purse seiners fishing in Seychelles' waters.¹⁸ They made this request after receiving results from a pilot project that started in 2016 which showed that electronic monitoring is "an efficient way of improving tropical tuna fishery management in the Indian Ocean." However, the Seychelles Fishing Authority indicated it would not make such monitoring compulsory at this time.

Under the Fisheries Comprehensive Plan of the Ministry of Fisheries and Agriculture, plans were revived to put in place a VMS management plan by the third quarter of 2019.¹⁹ The plan is to institute a legal framework to improve governance of the VMS programme within the small-scale fishery; make it mandatory to use transceiver terminals on-board domestic vessels involved in commercial fishing and related activities, including sports fishing vessel; prohibit the tampering and deliberate vandalism of transceiver terminals; establish minimum standards for installing transceiver terminals onboard domestic fishing vessels; establish minimum reporting requirements from the transceiver terminals deployed on domestic vessels, including reporting frequencies to the SFA; establish a minimum period whereby a vessel may continue a fishing operation if a transceiver terminal ceases to operate while undertaking a trip and establish an alternative reporting mechanism if a transceiver terminal ceases to report while undertaking a fishing trip. In addition, the owner will need to inform the SFA if there is a malfunction, or breakdown, of the transceiver terminal within a defined timeline. Transceiver terminals will be the property of the vessel owners, once allocated and installed on their vessel and operation, maintenance, repair and any subsequent replacements, if necessary, will be the sole responsibility of the vessel's owner. SFA will be responsible for the communication fees relating to the reporting of vessels' position from the transceiver terminals to the Fisheries Monitoring Centre (FMC). A VMS management fee will be applied upon application of a fishing vessel license to support costs relating to the commissioning and reporting of transceiver terminal to the FMC.

It is reported that the Seychelles high seas tuna fleets have high Automatic Identification System (AIS) use with a transmission frequency considerably higher than that of VMS.²⁰ However, AIS has far fewer transmissions than VMS and many more gaps in transmission longer than a few hours. Although the spatial coverage of the AIS data is good for Seychelles longline vessels, with acceptable coverage over the core fishing grounds, it is deficient for purse seiners and supply vessels with most data only present around ports because of the switch-off behaviour linked to the piracy threat.

¹⁸<http://www.seychellesnewsagency.com/articles/8094/Spanish+purse+seiners+want+compulsory+electronic+monitoring+on+Seychelles-flagged+vessels>

¹⁹ <https://echebatar.com/wp-content/uploads/2019/11/Seychelles-Fisheries-Comprehensive-Plan-Nov-2019.pdf>

²⁰ See, for example,

https://www.researchgate.net/publication/342673237_Seychelles_VMSlogbook_comparison_for_tuna_fisheries_FAO_Area_51

- ii) **Monitoring, Control and Surveillance (MCS).** The interim EPA states that “All ESA States, in conjunction with the EC Party, will develop other mechanisms to ensure effective MCS and the EC Party will support the ESA States to put such an agreed system in place and assist in implementation.

In January 2012, the Smartfish programme produced a Comprehensive Review of MCS Capacity in the ESA – Indian Ocean Region.²¹ The review focused on seven countries (Comoros, Kenya, Madagascar, Mauritius the Seychelles, Somalia and the United Republic of Tanzania) to analyse and benchmark the MCS capacity and to identify gaps. The picture that emerged showed that Seychelles and Mauritius had the strongest capacity for MCS in the region, with Kenya, Madagascar, and Tanzania having partial to weak capacity and Comoros and Somalia having the weakest capacity. From the gap analysis, proposed actions were suggested and compiled across all countries to meet the capacity gaps (see Chapter 9 of the Comprehensive Review). The Review concluded the following:

- 1) The coastal and inland artisanal fisheries were in general more likely to be non-compliant when access or gear restrictions were in place, however, many of these rules and regulations do not exist. This was generally associated with widely spread fisheries, and weak community engagement in the MCS of the fishery, which is a practical requirement when the central government has limited means to oversee the highly dispersed fisheries.
- 2) The coastal semi-industrial and industrial shrimp and mixed fisheries, that are usually locally fished in boats that come back to port or landing sites in the main towns of each country, appear to be the most compliant fisheries. In most cases, these fisheries are better controlled and MCS staff are more familiar with the fishers, and fisheries, often monitoring landings, logbooks and placing observers on vessels.
- 3) The industrial offshore tuna fisheries were generally more likely to be non-compliant as countries had limited capacity to oversee the fishers, to monitor the catches or to inspect the vessels and the requirement for strong regional and international cooperation and intelligence sharing are required.

A proposed roadmap recommended actions that should be taken in the areas of MCS human capacity (all fishery types and countries); standard operating procedures / improved MCS systems (all fishery types and countries); MCS intelligence and strategic planning (priority in off-shore fisheries where regional/international cooperation is required); risk assessment (all fisheries and countries); MCS co-management systems (artisanal inland and coastal); regional MCS cooperation (priority in the semi-industrial and industrial but also important for lesson learning in artisanal); MCS awareness campaigns (all fishery types and countries across a broad range of players) and equipment for MCS (all fishery types and countries).

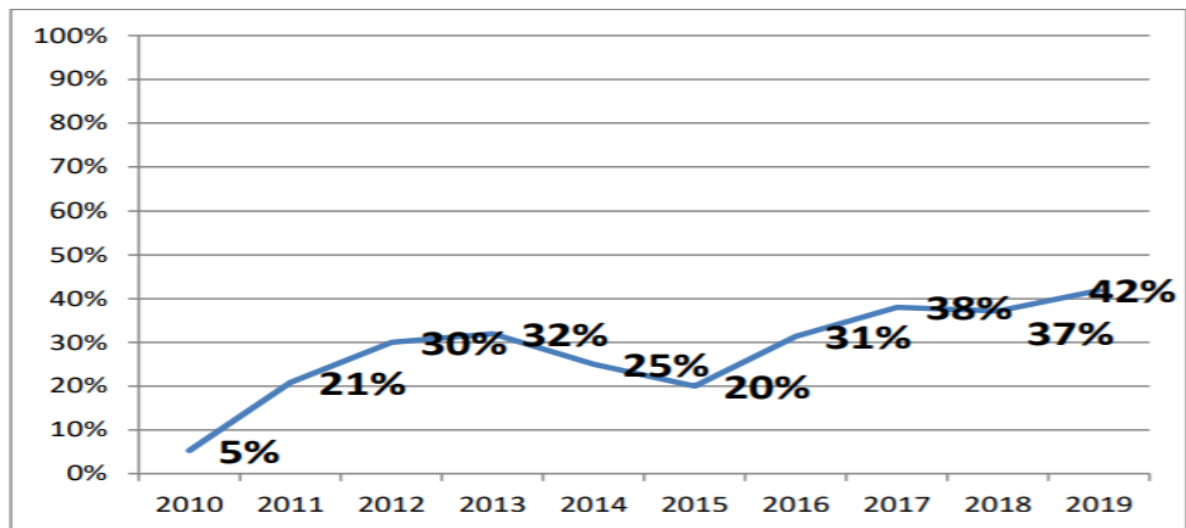
- iii) **Observers.** The interim EPA states that “The Parties shall have the right to place observers, whether in national or international waters, with the procedures concerning the deployment of observers being well stipulated. Observers are to be paid by the national governments, but all costs onboard are to be met by the ship-owner. The EC Party will support the costs of training observers”. According to a summary report from the IOTC secretariat on the level of compliance (IOTC-2019-CoC17-03_Rev3 [E]) dated 31 July 2020,²² since the adoption of the Resolution on a Regional Observer Scheme (Resolution 11/04), the IOTC Secretariat has conducted work to facilitate the implementation of the observer scheme at the national level. Most recently, this has been supported by Resolution 16/04 on the implementation of a pilot project in view of promoting the regional observer scheme of IOTC. More

²¹ <http://www.fao.org/3/a-az384e.pdf>

²² Summary report on the level of compliance, pp 8-9: https://www.iotc.org/sites/default/files/documents/2021/03/IOTC-2020-CoC17-03_Rev3_E_-_Summary_Report.pdf

details on these activities can be found in paper IOTC-2020-SC23-07.²³ Figure 1 illustrates the level of compliance with the regional observer scheme from 2010 to 2019, in terms of the proportion of fleets achieving the minimum level of 5% of operations or sets. As can be seen from the figure, although compliance is improving, it is still low, with the highest level of compliance being 42 per cent in 2019.

Figure 1: Trends in compliance to Resolution 11/04, between 2010 and 2019



Source: https://www.iotc.org/sites/default/files/documents/2021/03/IOTC-2020-CoC17-03_Rev3_E-Summary_Report.pdf

- iv) **Reporting.** The interim EPA states that “common systems of reporting of fishing will be developed and be used throughout the region, with minimum terms set for reporting.” IOTC defines reporting requirements for its members and the reporting requirements specified in the ESA could be directly aligned to the IOTC reporting requirements.
- v) **Fish Landing.** The interim EPA states that “All vessels that land or tranship their catches within the ESA State shall do it in ports or outer-port areas. No transhipment shall be allowed at sea, except on particular conditions foreseen by the relevant Regional Fisheries Management Organisations. Both Parties shall cooperate to modernise landing or transhipment infrastructure in ports of ESA States, including development capacity of fish products.” Landing/transhipment in-port brings economic benefits to the country in which the landing or transhipment takes place as it allows the country concerned to provide goods and services to the vessels and their crews. Transhipment in “outer-port areas” (e.g. from fishing vessel direct to carrier vessel) and transhipment at sea “on particular condition” means that the fish may not land in the ESA state. However, this is sometimes necessary as, if a fishing vessel is, perhaps, hundreds of miles from port, it is not commercially feasible for it to return to port and then go out to the same fishing location to resume fishing. The best endeavour language that is used in this instance is probably the best that can be achieved.
- vi) **Use Local Supplies.** The interim EPA states that “All vessels should endeavour to use the facilities of the ESA States and undertake to make use of local supplies.” As is noted by Liam Campling, “This clause on the use of local inputs/supplies links to Article 32(b)(6) on the requirement to land/tranship in-port or in outer-port areas in that if the vessel tranships in-port the vessel “should” make use of local goods and services. However, the obligation is very weak, merely committing EU vessels “to

²³ Update on the implementation of the IOTC Regional Observer Scheme:
https://www.iotc.org/sites/default/files/documents/2020/11/IOTC-2020-SC23-07_-_ROS_update.pdf

endeavour” to do so, and thus contains no legally binding contribution to domestic economic development”.²⁴

- vii) **Discard Reporting.** The interim EPA states that “Discards reporting shall be compulsory. Priority should be given to avoid discards through the use of selective fishing methods in line with the principles of the IOTC,²⁵ and relevant regional fisheries organisations. As far as possible, bycatch²⁶ shall be brought ashore.²⁷” Landing bycatch can be both beneficial to local populations and highly disruptive for the local fishing industry. It is beneficial for the local population. After all, it can often provide a cheap source of protein because it is sold cheaply, just to get rid of the bycatch, which has, at least until recently, no commercial value to the industrial fishing industry. It is disruptive for the local (artisanal) fishing industry as it may mean that the local market is over-supplied such that the local fishermen cannot sell their fish, or have to sell their fish at lower prices, which could mean that they are not making a profit. In addition to reporting of discards being mandatory under IOTC Resolution 15/02. There are many other reasons, including issues of sustainability, why it is essential that discard reporting remains compulsory; that priority should be given to avoid discards through the use of selective fishing methods; that bycatch should be brought ashore. It is probably advisable to strengthen this clause so that it is compulsory to report all discards by species, where discards are necessary, and to land all bycatch, and to introduce penalties for discarding fish at sea and not adequately reporting all bycatch and then to take measures to mitigate the negative impact on the local artisanal fishing industry. For example, there is now a trade in frozen fish – seemingly any species of fish – mainly into West Africa and Asia - and so bycatch now has a commercial value as it can be sold by the twenty-foot reefer container load to overseas markets. The bycatch could also be quickly taken off the local fresh fish market where necessary by selling it to fish meal producers etc.

Article 32(b)(2) specifies that the Parties should cooperate in developing and implementing national/regional training programmes for ESA nationals, that employment of ESA nationals shall be encouraged. An agreement to cooperate rather than a commitment from the European Union to provide training programmes and to provide preferences to the EU DWF to employ ESA nationals could be strengthened in the Comprehensive EPA. The application of the International Labour Organisation (ILO) Declaration on fundamental principles and rights at work would, presumably, still apply under the Comprehensive EPA.

Article 32(b)(3) encourages both Parties to take measures to prevent, deter, and eliminate IUU fishing. It stipulates that “Fishing vessels involved in IUU fishing should be prosecuted and should not be allowed to fish again in ESA waters unless prior authorisation has been obtained from both the flag State and the concerned ESA States as well as, where relevant, the concerned RFMO.” Both sides should strictly abide by their international obligations as regards the fight against IUU fishing.

Article 32(c) encourages cooperation in promoting the setting up of joint ventures in fishing operations, fish processing and port services; to enhance production capacity; to improve the competitiveness of fishing and related industries and services, to downstream processing, development and improvement of port facilities, and to diversify the fishery to include non-tuna species which are under-exploited or not exploited. This article could certainly be strengthened by providing some benchmarks and key performance indicators.

²⁴ Liam Campling: “Fisheries Aspects of ACP-EU Interim Economic Partnership Agreements: Trade and Sustainable Development Implications”. ICTSD Issues Paper number 6. October 2008

²⁵ Under IOTC resolution 15/02, reporting of discard is already mandatory.

²⁶ Bycatch includes non-targeted fish and can be sold or discarded at sea. Discards can also include species killed in the fishing process, which cannot be marketed or for which a viable market does not currently exist and includes sharks, rays, triggerfish, seabirds, marine turtles, dolphins and tuna that is too small for the market. Fish can also be discarded because of a lack of storage space at the end of a trip or because of discards through the practice of “high-grading”, particularly in quota-managed fisheries where only the highest value fish are retained.

²⁷ Except in the case of prohibited and vulnerable species

4. Rules of Origin

The ESA-EU EPA Rules of Origin, as contained in the Official Journal of the European Union (OJ L 93, 27 March 2020), considers fish to be originating if the fishing vessels or factory ships:

- are registered in an EC Member State or an ESA State;
- sail under the flag of an EC Member State or an ESA State;
- meet one of the following conditions:
 - they are at least 50 per cent owned by nationals of an EC Member State or an ESA State; or
 - they are owned by companies that have their head office and their main place of business in an EC Member State or an ESA State; and
 - are at least 50 per cent owned by an EC Member State or by an ESA State, public entities or nationals of that State.

Upon request of an ESA State, vessels chartered or leased by the ESA State are treated as ‘their vessels’ to undertake fisheries activities in its EEZ.

On 14 January 2020, the EPA Committee adopted Decision No 1/2020 (OJ L 93, 27 March 2020)²⁸ which entered into force on 31 March 2020 and amended certain provisions of Protocol 1. The text of Protocol 1, defining the concept of ‘originating products’ and methods of administrative cooperation to the Interim Agreement, is replaced by the text set out in the Annex to Decision 1/2020 of the EPA Committee. The amendments agreed allow for “accounting segregation” for materials, replaces the provision on ‘direct transport’ by a rule on ‘non-alteration’, allows the possibility for ESA States to ship sugar without splitting containers for originating and non-originating sugar (“shipment of sugar”) and introduces the move to self-certification as exclusive proof of origin, ceasing the issuance of movement certificates EUR.1.

The ESA4 EPA countries have expressed concern about rules of origin, including the following:

- In cases where insufficient wholly obtained fish is available for canning, there is a value tolerance (*de minimis*), of up to 15 per cent for non-originating inputs of fresh or frozen fish in the manufacture of fish products. The canning factories have made requests to have this increased, especially during periods when there is a shortage of originating fish for the canneries to use.
- Under the Cotonou Partnership Agreement, there was an annual automatic derogation to use a total of 8,000 metric tonnes for non-originating fish for canning and 2,000 metric tonnes of non-originating tuna loins for all 77 countries of the ACP group. A major gain for the ESA-EU interim EPA was to get the same volume of automatic derogation for non-originating tuna for canning (8000 metric tons) for Mauritius, Seychelles and Madagascar and non-originating tuna loins (2000 metric tons) for Mauritius and Seychelles.
- The Rules of Origin that have been agreed to in 2020 provide for accounting segregation for fungible materials. Accounting segregation determines how non-originating and originating fungible materials should be tracked (accounted for) when both types are stored together. It allows both types of materials to be tracked not through physical identification and separation but based on an accounting or inventory management system. Originating and non-originating tuna can be traced back to the vessel

²⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2020:093:FULL&from=EN>

that caught them so accounting segregation is of no value in terms of fish that goes into a tin. Accounting segregation may be useful in the additives in a tin of tuna, such as vegetable oil and spices.

- The difficulty of using cumulation with other ESA states that are not members of the ESA EPA. If the ESA4 want to cumulate with other ESA States (Article 4) and neighbouring developing countries (Article 5), then they need to agree on administrative cooperation (ACA) with those states and need to provide the EU with details of agreements on administrative cooperation. The EC will then publish in the *Official Journal of the European Union* (C series), and the ESA States will publish according to their procedures, the date on which the cumulation may be applied with those countries or territories which have fulfilled the necessary requirements.

The ESA4 can streamline and simplify the process of certification of origin of goods by utilising exclusively self-certification. Under self-certification, exporters make out their statement on origin in accordance with the rules of the protocol.

The challenge for the ESA4 is to ensure that they can utilise the EPA Rules of Origin to become part of global value chains. By selling whole frozen fish, the ESA4 will receive a return of less than US\$2 per kilo. If, however, they process the fish and move up the value chain then they will be able to increase the revenue they get from selling fish and fish products. Skipjack frozen cooked loins sell at an average price of US\$4.60/kg and Yellowfin frozen cooked loins sell at an average price of US\$6.85 per kg,²⁹ so through some relatively simple processing, returns on fish and fish products can double and triple and, by making expedient use of the rules of origin, the ESA4 can significantly improve returns of fish and fish products through benefitting from preferential market access opportunities.

5. Possible Impact of the ESA EPA on the Outermost Regions

Currently, there are nine outermost regions:

- Five French overseas departments — Martinique, Mayotte, Guadeloupe, French Guiana and Réunion
- One French overseas community — Saint-Martin
- Two Portuguese autonomous regions — Madeira and the Azores
- One Spanish autonomous community — the Canary Islands

The Outermost Regions (OR) (not to be confused with the EU overseas countries and territories (OCTs)) are part of the EU's single market but, because of their location and distance from the mainland EU, and related difficulties, EU policies have had to be adjusted to their special situation. The relevant measures concern customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, and conditions for the supply of raw materials and essential consumer goods. In addition, the rules on state aid and conditions of access to the Structural Funds and EU horizontal programmes can be adapted to the needs of these regions (e.g. European Regional Development Fund (ERDF) special allocations to ORs). ORs also benefit from the Programmes of Options Specifically Relating to Remoteness and Insularity (POSEI) programmes funded from the European Agricultural Guarantee Fund, which focus on:

- Specific supply arrangements designed to mitigate the additional supply costs relating to essential products for human consumption, for processing or use as agricultural inputs; and

²⁹ <http://www.fao.org/3/ca7891en/ca7891en.pdf>

- Measures to support local agricultural production.

For the 2014-2020 programming period, approximately EUR 13 billion of European Structural and Investment (ESI) Funds were allocated to the nine ORs.

The two ORs that could be affected by the EU – ESA EPA, because of their proximity to the EU – ESA EPA countries, could, conceivably, be Mayotte and Réunion, both of which have economies based largely on agriculture (including livestock in Mayotte) and fishing and, in the case of Réunion, tourism. Both economies are not self-sufficient and need to import a large proportion of their food requirements, mainly from Metropolitan France.

The EU – ESA EPA could have a positive impact on Mayotte and Réunion if Madagascar, in particular, starts to meet its potential as a food producer as staple foods such as maize, cassava, sweet potatoes and yams. However, as none of the island ESA EPA countries nor Mayotte and Réunion are self-sufficient in food at present, the EU – ESA EPA is likely to be neutral in terms of trade, and particularly food trade.

Another area where the ESA EPA could have an impact is in the fisheries sector. Under the European Maritime and Fisheries Fund, the EU Commission supports the ORs' fisheries sector, including a 100 per cent compensation for additional costs linked to their specific situation. The financial package earmarked for these regions aims to help develop sustainable fisheries and a sustainable maritime economy and to support small-scale coastal fishermen. The European Union Distant Water Fleet operate in the French EEZ of Mayotte and Réunion but do not land catch in Mayotte and Réunion. In addition, both Mayotte and Réunion have semi-industrial and industrial long-liners and artisanal fishing fleets operating in the French EEZ and coastal waters. However, the support provided by the EU to Mayotte and Réunion and support provided to the EU – ESA EPAs through the ESA and under the Sustainable Fisheries Partnership Agreements are coordinated, both by the EU Commission and under the IOTC, so there should be no negative effects on either the EU – ESA EPA countries or Mayotte and Réunion.

Finally, the Interreg programme, with funding from the European Regional Development Fund (ERDF) finances cross-border cooperation between the outermost regions and third countries and allow the development of “win-win” exchanges and privileges the co-development of the OR with the third country. For example, the 2014-2020 Interreg V - Mayotte – Comoros – Madagascar cooperation programme focused on cross-border cooperation between the outermost region of Mayotte and the neighbouring islands of Comoros and Madagascar and promoted increased trade; improving emergency services and the population's state of health; and promoting access to education through mobility. The Comoros and Madagascar also benefitted from development programmes supported by the European Development Fund (EDF).

6. Conclusions and Recommendations on Negotiations

From the findings of the case study on Marine Fisheries, the following could be concluded in terms of negotiating more robust, equitable, egalitarian and sustainable fisheries agreements between the EU and the ESA states of Comoros, Madagascar, Mauritius and Seychelles.

Marine Fisheries Text of the Comprehensive EPA

- 1) In the negotiations of the Marine Fisheries Title of the Comprehensive EPA, it is suggested that binding text that relates to a development component specifically for Marine Fisheries is included. The binding text could be in the format of the OECD's four main components of Aid for Trade of mainstreaming and prioritising trade (demand); trade-related projects and programmes (response); enhanced capacity to trade (outcome) and improved trade performance and reduced poverty (impact). The binding text, which would, as much as possible, replace the “best endeavour” text, would be linked to

key performance indicators and there would be consequences for non-compliance. For example, modalities to increase the number of joint ventures could be introduced (rather than “undertake to cooperate in promoting the setting up of joint ventures in fishing operations” which is an aspirational goal with no modalities outlined) and targets set.

The text of the ESA EPA could be more closely aligned to that of the United Nations Convention on the Law of the Sea (UNCLOS) and other relevant international agreements and regional conservation and management measures. The text on Fisheries Management and Conservation Issues and VMS and Post Harvest Arrangements should be linked to the agreements made under IOTC.

Finally, the ESA EPA text could be more closely aligned with the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA). The PSMA was adopted in 2009 by the United Nations Food and Agriculture Organization (FAO) and requires parties to place tighter controls on foreign-flagged vessels seeking to enter and use their ports to land or tranship fish. Consistent international momentum over the past few years has boosted the number of parties to the agreement, making it increasingly difficult for illegitimate catch to make its way to national and international markets and reducing the incentive for fishing operators to practice IUU activities. The seafood industry also plays an important role, because seafood buyers can show preference to ports in countries that have ratified the agreement.

Trade, Environment and Sustainable Development

Article 53 (Rendez-Vous Clause) of the ESA interim EPA makes provision for concluding a full and comprehensive EPA that covers, amongst other topics, trade, environment and sustainable development. Typically, the EU approach to trade and sustainability includes human rights, labour rights, environmental sustainability, and economic sustainability.³⁰ These are regarded as cross-cutting areas for Marine Fisheries so are covered, at least as part of recommendations for the negotiations that will affect Marine Fisheries.

The non-paper of the Commission Services on Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs) dated 11th July 2017³¹ notes that Existing TSD chapters in EU trade agreements contain a comprehensive set of binding provisions, which are anchored in multilateral standards, notably International Labour Organisation (ILO) conventions and Multilateral Environmental Agreements (MEAs). The EU approach treats labour and the environment, including climate protection, on an equal footing in the same institutional framework.

- In terms of scope, the ESA EPA, in line with existing EU TSD provisions, could promote: the effective implementation of the fundamental international labour conventions³² and beyond as regards other ratified up-to-date international labour conventions and working conditions³³ and multilateral environmental agreements (MEAs).³⁴

³⁰ See: “The economic and social effects of the Economic Partnership Agreements on selected African countries” by Jan Grumiller, Werner Raza, Cornelia Staritz, Bernhard Tröster, Rudi von Arnim. Austrian Foundation for Development Research. 7/2018 Research Report. July 2018. https://www.oefse.at/fileadmin/content/Downloads/Publikationen/Studien/7_EPA_Study.pdf

³¹ http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf

³² *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957. (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*

³³ As provided for in the ILO declaration on Social Justice for a fair globalization of 2008

³⁴ By means of illustration, these include for instance: *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention); Minamata Convention on Mercury (Minamata Convention); Convention on Persistent Organic*

- a level playing field, by not lowering labour and environmental standards for the purpose of improving trade or attracting investment and ensuring effective implementation; and
- sustainable management of natural resources in areas of low carbon development, forestry, fisheries, biodiversity, including fighting illegal harvesting practices and promoting corporate social responsibility and fair and ethical trade initiatives.³⁵

The institutional structure of the ESA EPA chapters would be designed to be inclusive, through platforms where civil society can play an advisory role. They would participate in the monitoring of the FTA implementation through direct exchanges amongst civil society actors and with governments. These platforms include the Domestic Advisory Groups (DAGs) on the side of each FTA partner and Joint Platforms bringing together civil society organisations from both FTA partners.

Pollutants (Stockholm Convention); Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal (Basel Convention); Framework Convention on Climate Change (UNFCCC); Kyoto Protocol, The Paris Agreement; Convention on Biological Diversity (UN) (CBD) and its Protocol on Biosafety to the Biodiversity Convention (The Cartagena Protocol), Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (The Nagoya – Kuala Lumpur Supplementary Protocol) and Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization to the Convention on Biological Diversity (The Nagoya Protocol); Protocol to the Convention for the Protection of the Ozone Layer on Substances that deplete the Ozone Layer (Montreal Protocol),

³⁵ See for example Chapter 13 of the EU-Trade Agreement with Georgia, OJ L 261/89 of 30.8.2014.