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Proposal for a

COUNCIL IMPLEMENTING DECISION

amending the list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1005/2008 of 29 September 2008 on establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU fishing), amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999¹ (the IUU Regulation).

General context

This proposal is made in the context of the implementation of the IUU Regulation and is the result of investigation and dialogue procedures which were carried out in line with the substantive and procedural requirements laid out in the IUU Regulation foreseeing *inter alia* that all countries should discharge the duties incumbent upon them under international law as flag, port, coastal or market State to prevent, deter and eliminate IUU fishing.

Existing provisions in the area of the proposal

Commission Decision of 15 November 2012 (OJ C 354 17.11.2012, p.1-47) on notifying the third countries that the Commission considers as possible of being identified as non-cooperating countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Commission Implementing Decision of DATE MONTH 2014 (OJ C XXXX, XX.XX.2014, p ...) on identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation and dialogue procedures, in line with the provisions of the IUU Regulation.

Collection and use of expertise

There was no need for external expertise.

¹ OJ L 286, 29.10.2008, p. 1.

Impact assessment

This proposal is the result of the implementation of the IUU Regulation.

The IUU Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 15 November 2012 the Commission, by Commission Decision, **notified** eight third countries (Belize, the Kingdom of Cambodia, the Republic of Fiji, the Republic of Guinea, the Republic of Panama, the Democratic Socialist Republic of Sri Lanka, the Togolese Republic and the Republic of Vanuatu) that the Commission **considers as possible of being identified** as non-cooperating countries pursuant to the IUU Regulation.

The Commission initiated démarches in respect of the eight countries. These démarches consisted *inter alia* of actions providing reasons of its actions, opportunity for the countries to respond and refute, right to ask for and provide additional information, proposed actions plans to remedy the situation as well as adequate time to answer and reasonable time to remedy the situation.

On DATE MONTH 2014 the Commission, by Commission Implementing Decision, **identified** Sri Lanka as a third country that the Commission **considers as a non-cooperating** third country pursuant to the IUU Regulation.

The attached proposal for a Council Implementing Decision is based on the findings which have confirmed that Sri Lanka has failed to discharge the duties incumbent upon it under international law as flag, port, coastal or market State.

It is therefore proposed that the Council adopts the attached proposal for a Decision.

Legal basis

Council Regulation (EC) No 1005/2008 of 29 September 2008 on establishing a Community system to prevent, deter and eliminate IUU fishing.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the IUU Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimised and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: decision.

Other means would not be adequate for the following reason:

Other means would not be adequate because the IUU Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999², and in particular Article 33 thereof,

Having regard to the proposal submitted by the European Commission,

Whereas:

1. INTRODUCTION

- (1) Regulation (EC) No 1005/2008 (the IUU Regulation) establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
- (2) Chapter VI of the IUU Regulation lays down the procedure with respect to the identification of non-cooperating third countries, démarches in respect of countries identified as non-cooperating third countries, the establishment of a list of non-cooperating countries, removal from the list of non-cooperating countries, publicity of the list of non-cooperating countries and any emergency measures.
- (3) In accordance with Article 32 of the IUU Regulation, the Commission notified by a Decision of 15 November 2012³ (Decision of 15 November 2012) eight third countries of the possibility of their being identified as third countries that the Commission considers as non-cooperating third countries.
- (4) In the Decision of 15 November 2012, the Commission included the information concerning the essential facts and considerations underlying such identification.
- (5) Also on 15 November 2012, the Commission notified the eight third countries by separate letters of the fact that it was considering the possibility of identifying them as non-cooperating third countries.
- (6) The Commission highlighted, in those letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as envisaged in

² OJ L 286, 29.10.2008, p. 1.

³ Commission Decision of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 354, 17.11.2012, p. 1).

Articles 31 and 33 of the IUU Regulation, the third countries concerned were invited to establish, in close cooperation with the Commission, an action plan to rectify the shortcomings identified in the Decision of 15 November 2012.

- (7) As a consequence, the Commission invited the eight third countries concerned: (i) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plans suggested by the Commission; and (iii) to send every six months detailed reports to the Commission assessing the implementation of each action as regards, *inter alia*, their individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (8) The eight third countries concerned were given the opportunity to respond in writing on issues explicitly indicated in the Decision of 15 November 2012 as well as on other relevant information, allowing them to submit evidence in order to refute or complete the facts invoked in the Decision of 15 November 2012 or to adopt, as appropriate, a plan of action to improve and measures taken to rectify the situation. The eight countries were assured of their right to ask for, or to provide, additional information.
- (9) On 15 November 2012, the Commission opened a process of dialogue with the eight third countries and indicated that it considered a period of 6 months as being in principle sufficient for reaching an agreement.
- (10) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the eight countries following the Decision of 15 November 2012 were considered and taken into account. The eight countries were kept informed either orally or in writing on the Commission's considerations.
- (11) On 24 March 2014, the Council Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing⁴ was adopted. Three of the eight countries concerned by the Decision of 15 November 2012 were listed as non-cooperating countries as they, despite taking some measures, still failed to discharge their duties under international law as flag and coastal State to take action to prevent, deter and eliminate IUU fishing.
- (12) By an Implementing Decision of DATE MONTH 2014⁵, the Commission identified the Democratic Socialist Republic of Sri Lanka (Sri Lanka) as a non-cooperating third country in fighting IUU fishing. In accordance with the IUU Regulation, the Commission provided the reasons why it considered that Sri Lanka failed to discharge its duties under international law as flag, port, coastal or market State to take action, prevent, deter and eliminate IUU fishing.
- (13) A Council Implementing Decision placing Sri Lanka on the list of non-cooperating third countries in fighting IUU fishing should therefore be taken in the context of the implementation of the IUU Regulation as a result of investigation and dialogue procedures which were carried out in line with the substantive and procedural

⁴ OJ L 91, 27.3.2014, p.43

⁵ Commission Implementing Decision of DATE MONTH 2014 identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C XX, dd.mm.2014, p.X).

requirements laid out in the IUU Regulation. This Decision is based on those investigation and dialogue procedures, including the correspondence exchanged and the meetings held, as well as the Decision of 15 November 2012 and Decision of DATE MONTH 2014. The reasons underlying those procedures and acts are the same as those underlying this Decision. This Decision placing Sri Lanka on the list of non-cooperating third countries in fighting IUU fishing should entail the consequences stated in Article 38 of the IUU Regulation.

- (14) Upon the adoption of the Council Implementing Decision placing Sri Lanka on the list of non-cooperating third countries in accordance with Article 33 of the IUU Regulation, the Decision of DATE MONTH 2014 identifying Sri Lanka as a non-cooperating third country will become obsolete.
- (15) Pursuant to Article 34(1) of the IUU Regulation the Council, acting by qualified majority on a proposal from the Commission, is to remove a third country from the list of non-cooperating third countries if that country demonstrates that the situation that warranted its listing has been rectified. A removal decision is also to take into consideration whether the listed third countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation.

2. PROCEDURE WITH RESPECT TO SRI LANKA

- (16) On 15 November 2012, the Commission notified Sri Lanka pursuant to Article 32 of the IUU Regulation that it considered the possibility of identifying Sri Lanka as a non-cooperating third country and invited Sri Lanka to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Decision of 15 November 2012. During the period from December 2012 to June 2014, Sri Lanka made written submissions making its views known and met with the Commission to discuss relevant points. The Commission provided Sri Lanka with relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Sri Lanka following the Decision of 15 November 2012 were considered and taken into account, while Sri Lanka was kept informed either orally or in writing of the Commission's considerations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 15 November 2012 had not been addressed sufficiently by Sri Lanka. Moreover, the Commission concluded that the measures suggested in a plan of action had not been fully implemented.

3. IDENTIFICATION OF SRI LANKA AS A NON-COOPERATING THIRD COUNTRY

- (17) In the Decision of 15 November 2012, the Commission analysed the duties of Sri Lanka and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.
- (18) The Commission reviewed the compliance of Sri Lanka in line with the findings of Decision of 15 November 2012, and having regard to relevant information provided thereon by Sri Lanka, the suggested plan of action, and the measures taken to rectify the situation.
- (19) The main shortcomings identified by the Commission in the suggested plan of action related to several failures to implement international law obligations, linked in particular to the lack of adoption of an adequate legal framework, lack of an adequate and efficient monitoring system, lack of an observer scheme, lack of a deterrent

sanctioning system, and to improper implementation of the catch certification scheme. Other identified shortcomings relate, more generally to compliance with international obligations including Regional Fisheries Management Organisations (RFMOs) recommendations and resolutions, and the conditions for registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-IUU) was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.

- (20) In its Implementing Decision of DATE MONTH 2014, the Commission identified Sri Lanka as a non-cooperating third country pursuant to the IUU Regulation.
- (21) With respect to the possible constraints upon Sri Lanka as a developing country, it is noted that the specific development status and overall performance of Sri Lanka with respect to fisheries are not impaired by its general level of development.
- (22) Having regards to the Decision of 15 November 2012 and the Decision of DATE MONTH 2014, and to the dialogue process with Sri Lanka carried out by the Commission and its outcome, it can be concluded that Sri Lanka's actions in light of its duties as flag State are insufficient to comply with Articles 94, 117 and 118 of the United Nations Convention on the Law of the Sea (UNCLOS) and Articles 18, 19 and 20 of United Nations Fish Stocks Agreement (UNFSA).
- (23) Thus, Sri Lanka has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing and it should therefore be included in the Union list of non-cooperating third countries.

4. ESTABLISHMENT OF A LIST OF NON-COOPERATING THIRD COUNTRIES

- (24) In view of the conclusions reached with regard to Sri Lanka, that country should be added to the list of non-cooperating third countries established by the Decision of 24 March 2014 in accordance with Article 33 of the IUU Regulation. The Annex to the Implementing Decision 2014/170/EU should therefore be amended accordingly.
- (25) Actions in respect of Sri Lanka in the form of measures that should be applied are listed in Article 38 of the IUU Regulation. The prohibition of importation covers all fishery products as defined in Article 2(8) of the IUU Regulation since the identification as a non-cooperating third country is not due to the lack of appropriate measures adopted in relation to IUU fishing affecting a given stock or species.
- (26) IUU fishing, *inter alia*, depletes fish stocks, destroys marine habitats, undermines the conservation and sustainable use of marine resources, distorts competition, endangers food security, puts honest fishermen at an unfair disadvantage and weakens coastal communities. In view of the magnitude of the problems related to IUU fishing, it is considered necessary for the Union to implement expeditiously the actions in respect to Sri Lanka as a non-cooperating country. In the light of the foregoing, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (27) If Sri Lanka demonstrates that the situation that warranted its listing has been rectified, the Council, acting by qualified majority on a proposal from the Commission, is to remove Sri Lanka from the list of non-cooperating third countries in line with Article 34 (1) of the IUU Regulation. Any removal decision shall also take into consideration

whether Sri Lanka has taken concrete measures capable of achieving a lasting improvement of the situation,

DECIDES AS FOLLOWS:

Article 1

The Annex to Implementing Decision 2014/170/EU is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*