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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

• **Reasons 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).

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.

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 **considered the possibility of identifying them** 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 these démarches, 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 14 October 2014 the Commission, by Commission Implementing Decision, **identified** the Democratic Socialist Republic of Sri Lanka (hereinafter Sri Lanka) as a third country that the Commission **considers as a non-cooperating** third country pursuant to the IUU Regulation.

On 26 January 2015 the Council, by Council Implementing Decision, **amended the existing list of non-cooperating third countries**, by including Sri Lanka, in fighting IUU fishing.

The attached proposal for a Council Implementing Decision is based on the findings which have confirmed that **Sri Lanka** has demonstrated that the situation that warranted its listing has been rectified and that Sri Lanka has taken concrete measures capable of achieving a lasting improvement of the situation.

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

• **Consistency with existing policy provisions in the policy area**

The pre-identification by the Commission of Sri Lanka as a non-cooperating country in 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.

The identification by the Commission of Sri Lanka as a non-cooperating country in Commission Implementing Decision of 14 October 2014 (OJ L 297 15.10.2014, p. 13-22) on identifying a third country that the Commission considers as a non-cooperating third country

¹ OJ L 286, 29.10.2008, p. 1.

pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

The Council placing Sri Lanka on the list of non-cooperating countries in Council Implementing Decision of 26 January 2015 (OJ L 33 10.2.2015, p. 15-18) amending 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 fishing as regards Sri Lanka.

- **Consistency with other Union policies**

Not applicable.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **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 (for non-exclusive competence)**

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

- **Proportionality**

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 the instrument**

Proposed instruments: decision.

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

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Interested parties concerned by the proceeding have had the possibility to defend their interest 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.

- **Impact assessment**

This proposal is a 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 must be assessed.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable as proposal enters into force the day after its publication.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal amends the list established by the Council of non-cooperating third countries in the fight against IUU as set out in the Annex to Council Decision 2014/170/EU.

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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

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 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 34(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (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 European Commission ("the Commission") notified by Decision of 15 November 2012³ ("Decision of 15 November 2012") eight third countries of the possibility of their being identified as third countries that it considers as non-cooperating third countries. Among these countries there was the Democratic Socialist Republic of Sri Lanka (hereinafter Sri Lanka).
- (4) In the Decision of 15 November 2012 the Commission included the information concerning the essential facts and considerations underlying such possible identification.
- (5) Also on 15 November 2012 the Commission notified the eight third countries, among which there was Sri Lanka, with separate letters of the fact that it was considering the possibility of identifying them as non-cooperating third countries.

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).

- (6) By Implementing Decision of 14 October 2014⁴ ("Commission Implementing Decision of 14 October 2014"), the Commission identified Sri Lanka as a non-cooperating third country in fighting IUU fishing. In accordance with the IUU Regulation, the Commission provided the reasons for which it considered that this country failed to discharge its duties under international law as flag, port, coastal or market State to take action, to prevent, deter and eliminate IUU fishing.
- (7) In accordance with Article 33 of the IUU Regulation, the Council, by Implementing Decision 2015/200 of 26 January 2015⁵, ("Council Implementing Decision of 26 January 2015") amended, by adding Sri Lanka, the list of non-cooperating third countries in fighting IUU fishing in accordance with the IUU Regulation.
- (8) Following the amendment of the Council Implementing Decision of 24 March 2014 of the list of non-cooperating third countries in fighting IUU fishing, the Commission offered to Sri Lanka the opportunity to continue the dialogue in line with the substantive and procedural requirements laid out in the IUU Regulation. The Commission continued to seek and verify all information deemed necessary, including oral and written comments, aiming at giving any identified country the opportunity to rectify the situation that warranted its listing, and to take concrete measures capable of remedying the identified failures. This process resulted in the acknowledgement that Sri Lanka has rectified the situation and taken remedial action.
- (9) Pursuant to Article 34 (1) of the IUU Regulation the Council should therefore amend the Implementing Decision of 24 March 2014 by removing Sri Lanka from the list of non-cooperating third countries.
- (10) Upon the adoption of this Council Implementing Decision removing Sri Lanka from the list of non-cooperating third countries in accordance with Article 34(1) of the IUU Regulation, the Commission Implementing Decision of 14 October 2014 identifying Sri Lanka as a non-cooperating third country is without object.

REMOVAL OF SRI LANKA FROM THE LIST OF NON-COOPERATING THIRD COUNTRIES

- (11) Following the adoption of the Implementing Decision of 14 October 2014 and the Council Implementing Decision 2015/200 of 26 January 2015 the Commission continued the dialogue with Sri Lanka. In particular, Sri Lanka appears to have implemented the international law obligations and adopted an adequate legal framework for fighting against IUU fishing; it has introduced an adequate and efficient monitoring, control and inspection scheme by introducing logbooks to record catch data, plus radio call signs for fishing vessels and equipping the entire high seas fleet with Vessel Monitoring System (VMS); it has created a deterrent sanctioning system, revised its fisheries legal framework and assured for the proper implementation of the catch certification scheme. Sri Lanka has furthermore continuously improved its compliance with its international obligations, including those stemming from Regional

⁴ Commission Implementing Decision of 14 October 2014 identifying a third country that the Commission considers as a non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 297, 15.10.2014, p. 13).

⁵ Council Implementing Decision 2015.200 of 26 January 2015 (OJ L 33, 10.2.2015, p. 15-18) amending 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 fishing.

Fisheries Management Organisations' (RFMOs) recommendations and resolutions such as Port State Control measures and transposition of RFMO rules into Sri Lankan law and has adopted its own National Plan Of Action against IUU, in line with the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-UN).

- (12) The Commission reviewed the current compliance of Sri Lanka with its international obligations as flag, port, coastal or market State in line with the findings in the Decision of 15 November 2012, Implementing Decision of 14 October 2014 and Council Implementing Decision of 26 January 2015 and with relevant information provided thereon by Sri Lanka. It also considered the measures taken to rectify the situation as well as the guarantees provided by the competent authorities of Sri Lanka.
- (13) The Commission concluded, on the basis of all of the above, that with the actions undertaken Sri Lanka no longer fails to discharge its duties incumbent upon it under international law as flag State in particular in the light of the provisions of Articles 94, 117 and 118 of United Nations Convention on the Law of the Sea (UNCLOS) and Articles 18, 19, 20 and 23 of United Nations Fish Stocks Agreement (UNFSA). The Commission therefore concluded that the elements put forward by Sri Lanka demonstrate that the situation that warranted the listing of Sri Lanka has been rectified and that Sri Lanka has taken concrete measures capable of achieving a lasting improvement of the situation.
- (14) In the light of all the above mentioned circumstances and pursuant to Article 34(1) of the IUU Regulation, the Council concludes that Sri Lanka should be removed from the list of non-cooperating countries.
- (15) The decision taken by the Council does not preclude any subsequent step taken by the Commission or the Council in the future, in line with Chapter VI of the IUU Regulation, in case factual elements were to reveal that Sri Lanka fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.
- (16) In the light of the adverse consequences provoked by a listing as non-cooperating third country, it is appropriate to give immediate effect to the delisting of Sri Lanka as non-cooperating third country.

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Council Decision 2014/170/EU is replaced by the Annex in 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