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2014/0295 (NLE)

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 26 November 2013 (OJ C 346 27.11.2013, p. 2-25) 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.

Council Implementing Decision of 24 March 2014 (OJ L 91 27.03.2014, p 43-47) 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.

Council Implementing Decision of 24 March 2014 (OJ L 91 27.03.2014, p 43-47) 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 was amended by Council Implementing Decision (LISTING OF SRI LANKA) of xxxxxxxx.

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.

¹ OJ L 286, 29.10.2008, p. 1.

Collection and use of expertise

There was no need for external expertise.

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 **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 26 November 2013 the Commission, by Commission Implementing Decision, **identified** Belize, the Kingdom of Cambodia, and the Republic of Guinea as third countries that the Commission **considers as non-cooperating** third countries pursuant to the IUU Regulation.

On 24 March 2014 the Council, by Council Implementing Decision, **established a list of non-cooperating third countries**, including Belize, the Kingdom of Cambodia and the Republic of Guinea in fighting IUU fishing.

The attached proposal for a Council Implementing Decision is based on the findings which have confirmed that **Belize** demonstrated that the situation that warranted its listing has been rectified and Belize 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.

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 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 submitted by 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 Belize.
- (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 Belize, 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 26 November 2013⁴ ("Implementing Decision of 26 November 2013"), the Commission identified Belize, the Kingdom of Cambodia and the Republic of Guinea as non-cooperating third countries in fighting IUU fishing. In accordance with the IUU Regulation, the Commission provided the reasons for which it considered that those three countries failed to discharge their duties under international law as flag, port, coastal or market States 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 2014/170 of 24 March 2014⁵, ("Council Implementing Decision of 24 March 2014") placed Belize, the Kingdom of Cambodia and the Republic of Guinea on the list of non-cooperating third countries in fighting IUU fishing in accordance with the IUU Regulation..
- (8) Following the establishment by the Council Implementing Decision of 24 March 2014 of the list of non-cooperating third countries in fighting IUU fishing, the Commission offered to the identified countries 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 Belize 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 Belize from the list of non-cooperating third countries.
- (10) Upon the adoption of this Council Implementing Decision removing Belize from the list of non-cooperating third countries in accordance with Article 34(1) of the IUU Regulation, the Commission Implementing Decision of 26 November 2013 identifying Belize as a non-cooperating third country is without object.

REMOVAL OF BELIZE FROM THE LIST OF NON-COOPERATING THIRD COUNTRIES

- (11) Following the adoption of the Implementing Decision of 26 November 2013 and Council Implementing Decision 2014/170 of 24 March 2014 the Commission continued the dialogue with Belize. In particular, Belize appears to have implemented the international law obligations and has adopted an adequate legal framework for fighting against IUU fishing; it introduced an adequate and efficient monitoring, control and inspection scheme; it created a deterrent sanctioning system and assured for the proper implementation of the catch certification scheme. Belize improved

⁴ Commission Implementing Decision of 26 November 2013 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 346, 27.11.2013, p. 2).

⁵ Council Implementing Decision 2014.170 of 24 March 2014 (OJ L 91 27.03.2014, p 43-47) 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.

furthermore its compliance with its international obligations, including those stemming from Regional Fisheries Management Organisations' (RFMOs) recommendations and resolutions. Belize set up a new system of registration of vessels according to international law. Belize is currently compliant with the recommendations and resolutions from relevant bodies 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 Belize 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 26 November 2013 and Council Implementing Decision of 24 March 2014 and with relevant information provided thereon by Belize. It also considered the measures taken to rectify the situation as well as the guarantees provided by the competent authorities of Belize.
- (13) The Commission concluded, on the basis of all of the above that the actions undertaken by Belize in light of its duties as flag State are sufficient to comply with the provisions of Articles 91, 94, 117 118 of United Nations Convention on the Law of the Sea (UNCLOS), Articles 18, 19, 20 of United Nations Fish Stocks Agreement (UNFSA) and Article III(8) of FAO Compliance Agreement. The Commission concluded that the elements put forward by Belize demonstrate that the situation that warranted the listing of Belize has been rectified and that Belize has taken concrete measures capable of achieving a lasting improvement of the situation.
- (14) In the circumstances and pursuant to Article 34(1) of the IUU Regulation the Council concludes that Belize 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 Belize 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 Belize 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