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from: General Secretariat
to: Permanent Representatives Committee (Part 1)

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Subject: Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of conservation of fish stocks
(First reading) (Legislative deliberation)
- Approval of the final compromise text

**REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

**on certain measures in relation to countries allowing non-sustainable fishing for the purpose
of the conservation of fish stocks**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) and Article 207,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) As provided in the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "UNCLOS") and in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (hereinafter referred to as "*UNFSA*"), the management of certain *shared*, straddling and highly migratory fish stocks requires the cooperation of all the countries *in whose waters the stock occurs (the coastal states) and the countries* whose fleets exploit that stock (*the fishing states*). This cooperation may be established in the framework of regional fisheries management organizations (RFMOs) or, where RFMOs have no competence for the stock in question, by means of ad-hoc arrangements among the countries having an interest in the fishery.
- (2) Where third countries having an interest in a fishery involving stocks of common interest to that country and the Union conduct, without due regard to existing fishing patterns and/or the rights, duties and interests of other States and those of the Union, fisheries activities that jeopardize the sustainability of the stock, failing to cooperate with *other countries, including* the Union in its management, specific measures should be adopted in order to promote the contribution of those countries to the conservation of the stock.
- (3) Fish stocks should be considered in *an unsustainable* state when they are *not* continuously maintained at or above the levels than can produce maximum sustainable yield, *or whenever these levels cannot be estimated, when the stocks are not continuously maintained within safe biological limits.*
- (4) It is necessary to define the conditions upon which a country can be considered as allowing non-sustainable fishing and subject to measures under this Regulation, including a process granting the countries concerned the right to be heard and allowing them an opportunity to adopt corrective action.

¹ OJ C , , p. .

- (5) In addition, it is necessary to define the type of measures that may be taken with regard to countries allowing non-sustainable fishing and to establish general conditions for the adoption of such measures so they are based on objective criteria, equitable, cost-effective and compatible with international law, in particular the Agreement establishing the World Trade Organization.
- (6) Such measures should aim at removing incentives for the fleets of the country allowing non-sustainable fishing to fish on the stock of common interest. This can be achieved by, for example, restricting imports of fish products caught by vessels conducting fisheries on a stock of common interest under the *control of the* country allowing non-sustainable fishing, restricting the *access to ports* to those vessels, or avoiding that Union fishing vessels or Union fishing equipment may be used for fishing the stock of common interest under the *control* of the country allowing non-sustainable fishing.
- (7) In order to ensure effective and coherent Union action for the conservation of fish stocks, it is important that the measures set out in Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing², are taken into consideration.
- (8) *In order to guarantee that the measures are environmentally sound, effective, proportionate and compatible with the international rules*, it is necessary that the adoption of such measures be preceded by an evaluation of their expected environmental, trade, economic and social effects.
- (8a) *If measures that have been adopted against a third country under this Regulation are ineffective and that country continues to be considered a country allowing non-sustainable fishing, further measures may be adopted in accordance with this Regulation.*
- (9) The measures adopted pursuant to this Regulation should cease to apply whenever the country allowing non-sustainable fishing has adopted the necessary measures to contribute to the conservation of the stock of common interest.
- (10) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred upon the Commission *in order to identify a country allowing non-sustainable fishing, to adopt measures in respect of such third country and in order to decide that the measures adopted should cease to apply*. Those powers should be exercised by implementing acts providing for the examination procedure in accordance with Article 2(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control of by Member States of the Commission's exercise of implementing powers³. However, for reasons of urgency, the decisions whether the measures would cease to apply should be adopted as immediately applicable implementing acts in accordance with Article 8 of the said regulation.

² OJ L 286, 29.10.2008, p. 1.

³ OJ L 55, 28.2.2011, p. 13.

- (11) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the end of application of measures taken pursuant to this Regulation, imperative grounds of urgency so require,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

1. This Regulation lays down the framework for the adoption of certain measures regarding fisheries-related activities and policies by third countries ***in order to ensure*** long-term ***conservation of*** stocks of common interest between the European Union and those third countries.
2. The measures adopted pursuant to this Regulation may apply in all cases where cooperation ***between third countries and*** the Union is required ***for*** the joint management of the stocks of common interest, including where that cooperation takes place in the context of a regional fisheries management organization or a similar body.

Article 2
Definitions

For the purposes of this Regulation the following definitions shall apply,

- (a) "stock of common interest" means a fish stock whose geographical distribution makes it available to the fleets of both Member States and third countries and whose management requires the cooperation between these third countries and ***other countries, including*** the Union, ***in either bilateral or multilateral settings***;
- (b) "associated species" means any fish ***belonging to the same ecosystem with the*** stock of common interest ***that prey upon it, are preyed on by it, compete with it for food and living space or co-occur in the same fishing area and are exploited or accidentally taken*** in the ***same fishery or fisheries***.
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- (d) "regional fisheries management organisation" means a sub-regional, regional or a similar organisation with competence, as recognised under international law, to establish conservation and management measures for living marine resources placed under its responsibility by virtue of the convention or agreement by which it was established;
- (e) "importation" means the introduction of fish or fishery products into the territory of the Union, including for transshipment purposes at ports in its territory;
- (f) "transshipment" means the unloading of all or any fish or fishery products on board a fishing vessel to another fishing vessel;

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- (ga) *"unsustainable state" means the condition where the stock is not continuously maintained at or above the levels that can produce maximum sustainable yield or, whenever these levels cannot be estimated, when the stocks are not continuously maintained within safe biological limits. The stock levels determining whether the stock is in an unsustainable state shall be determined on the basis of best available scientific advice.*
 - (gb) *"safe biological limits" means the boundaries of the size of a stock within which the stock can replenish itself with high probability while allowing high yield fisheries on it.*
 - (gc) *"country" shall mean a country, including territories enjoying self-governing status and endowed with competencies in the area of conservation and management of living marine resources.*

Article 3

Countries allowing non-sustainable fishing

1. A third country may be identified as a country allowing non-sustainable fishing where
 - (a) it fails to cooperate █ in the management of a stock of common interest in full accordance with the provisions of the *UNCLOS and the UNFSA*, or of *any other international agreement or norm of international law*, and
 - (b) that third country
 - (i) has failed to adopt *necessary* fishery management measures, or
 - (ii) has adopted *fishery management* measures without due regard to the rights, interests and duties of *other countries* including the █ Union, and those fishery management measures, *when considered in conjunction with measures taken by other countries, including the Union*, lead to fishing activities which would *result in the unsustainable state of the stock. This condition is considered complied with also where the management measures adopted by a third country did not lead to non-sustainable management solely due to measures adopted by others.*

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Article 4

Measures which may be adopted in respect to countries allowing non-sustainable fishing

1. The Commission may adopt, by means of implementing acts, the following measures in respect to *a country* allowing non-sustainable fishing:

- (a) identify the **country** allowing non-sustainable fishing;
 - (b) identify, where necessary, the specific vessels or fleets **of the third country** to which certain measures apply;
 - (c) impose quantitative restrictions on importations into the Union of fish, and fishery products made of or containing such fish, stemming from the stock of common interest ■ that had been caught under the control of the **third country** ■ ;
 - (d) impose quantitative restrictions **on** importations into the Union of fish of any associated species, and fishery products made of or containing such fish, when caught while conducting fisheries on the stock of common interest under the control of the **third country**; **when adopting the measure**, the Commission shall, **in accordance with Article 5(4) of this Regulation, in application of the principle of proportionality**, determine which **species and their catches should** fall within the scope of the measure;
 - (e) impose restrictions **on** the use of Union ports by vessels flying the flag of the **third country** ■ that fish the stock of common interest and/or **associated species and** by vessels transporting fish and fishery products stemming from the stock of common interest **and/or associated species** that **has** been caught either by vessels flying the flag of the **third country** ■ or by vessels authorised by it while flying another flag; such restrictions shall not apply in cases of *force majeure* or distress within the meaning of Article 18 of the UNCLOS (*force majeure* or distress) for services strictly necessary to remedy those situations;
 - (f) prohibit the purchase by Union economic operators of a fishing vessel flying the flag of **the third country** .
 - (g) prohibit the reflagging of fishing vessels flying the flag of a Member State to **the flag of the third country**.
 - (h) prohibit Member States to authorise the conclusion of chartering agreements **by the Union operators to economic operators of the third country**.
 - (i) prohibit the exportation to **the third country** of fishing vessels flying the flag of a Member State or of fishing equipment and supplies needed to fish on the stock of common interest;
 - (j) prohibit the conclusion of private trade arrangements between **Union operators and the third country** in order for a fishing vessel flying the flag of a Member State to use ■ fishing **opportunities** of such **country**;
 - (k) prohibit joint fishing operations involving fishing vessels flying the flag of a Member State and fishing vessels flying the flag of a **third country** ■ .
2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(2).

Article 5

General requirements concerning the measures adopted pursuant to this Regulation

1. The measures adopted in accordance with this Regulation shall be:
 - (a) related to the conservation of the stock of common interest;
 - (b) made effective in conjunction with restrictions on fishing by Union vessels or on production or consumption within the Union applicable to fish, and fishery products made of or containing such fish, of the species for which the measures have been adopted pursuant to this Regulation. ■
 - (c) ***Proportionate to the objectives pursued and*** compatible with the obligations imposed by international agreements to which the Union is a party and any other relevant norms of international law.
2. The measures adopted in accordance with this Regulation shall take into account measures already taken pursuant to Regulation (EC) No 1005/2008.
3. The measures adopted in accordance with this Regulation shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.
4. In adopting measures in accordance with this Regulation, the Commission shall, ***in order to ensure that the measures are environmentally sound, effective, proportionate and compatible with the international rules,*** evaluate the environmental, trade, economic and social effects of those measures in the short and long terms and the administrative burden associated to their implementation.
5. The measures adopted in accordance with this Regulation shall foresee an appropriate system for their enforcement by Competent Authorities.

Article 6

Procedures prior to the adoption of measures in respect to countries allowing non-sustainable fishing

1. Where it considers necessary to adopt measures pursuant to Article 4, the Commission shall notify the country concerned of the intention to identify it as a country allowing non-sustainable fishing. ***In such cases, the Council and the Parliament should be immediately informed.***
2. That notification shall include information on the reasons for the identification of that country as a country allowing non-sustainable fishing and describe the possible measures that could be taken in relation to it in accordance with this Regulation.
3. Prior to adopting measures pursuant to Article 4, the Commission shall provide the third country concerned with a reasonable opportunity to respond to the notification in writing and to remedy the situation ***within one month of receiving the notification.***

Article 7

Period of application of the measures in respect to countries allowing non-sustainably fishing

1. The measures adopted in accordance with this Regulation shall cease to apply upon adoption by the country allowing non-sustainable fishing of appropriate corrective measures *necessary* for the *conservation and* management of the stock of common interest that
 - (a) have *either been adopted autonomously, or have* been agreed in the context of consultations with the Union and, where applicable, other countries concerned, *and*
 - (b) do not undermine the effect of measures taken by the *Union* either autonomously, or in cooperation with other countries, *for the purpose of the* conservation of the fish stocks concerned.
2. The Commission shall, by means of implementing acts, determine whether the conditions laid down in paragraph 1 have been complied with and shall, where necessary, decide that the measures adopted *in respect of a country* pursuant to Article 4 cease to apply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(2).

On duly justified imperative grounds of urgency relating to unforeseen economic or social disruption, the Commission shall adopt immediately applicable implementing acts to decide that the measures adopted pursuant to Article 4 cease to apply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(3).

Article 8

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
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3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.
- 3a. *The evaluation report referred to in Article 5(4), shall be made available to the European Parliament and the Council in accordance with the procedure provided for in Article 10(4) of Regulation No 182/2011 in addition to other documents provided for therein.*

Article 9
Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament
The President

For the Council
The President
