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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	13 July 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending implementing Decision 2014/170/EU to remove the Republic of Guinea from the list of non-cooperating third countries in fighting IUU fishing

Delegations will find attached document COM(2016) 459 final.

Encl.: COM(2016) 459 final



Brussels, 13.7.2016
COM(2016) 459 final

2016/0219 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending implementing Decision 2014/170/EU to remove the Republic of Guinea from the list of non-cooperating third countries in fighting IUU 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 26 November 2013 the Commission, by Commission Implementing Decision, **identified** the Republic of Guinea (hereinafter Guinea) as a third country that the Commission **considers as a non-cooperating** third country pursuant to the IUU Regulation.

On 24 March 2014 the Council, by Council Implementing Decision, **adopted the list of non-cooperating third countries, which included Guinea, in fighting IUU fishing.**

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

¹ OJ L 286, 29.10.2008, p. 1.

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 Guinea as a non-cooperating country in Commission Implementing Decision of 26 November 2013 (OJ C 346 27.11.2013, p. 2-25) on 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.

The Council placing Guinea on the list of non-cooperating countries in Council Implementing Decision of 24 March 2014 (OJ L 91 27.3.2014, 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.

- **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.

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending implementing Decision 2014/170/EU to remove the Republic of Guinea from the list of non-cooperating third countries in fighting IUU 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 in fighting IUU fishing and provides for the establishment of a list of such non-cooperating countries.
- (3) By Decision of 15 November 2012³, the Commission included the information concerning the essential facts and considerations underlying such possible identification and notified eight third countries, including the Republic of Guinea (hereinafter 'Guinea') of the possibility of being identified as third countries that it considers as non-cooperating third countries in fighting IUU fishing.
- (4) By Implementing Decision of 26 November 2013⁴, the Commission identified Guinea as a non-cooperating third country in fighting IUU fishing. In that Decision, the Commission provided the reasons for which it considered that this country failed to

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).

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. 2-25).

discharge its duties under international law as flag, port, coastal or market State to take action, to prevent, deter and eliminate IUU fishing.

- (5) By Implementing Decision 2014/170/EU⁵, the Council adopted the list of non-cooperating third countries which included Guinea.
- (6) The list of non-cooperating third countries in fighting IUU fishing is set out in the Annex to Council Implementing Decision 2014/170/EU.
- (7) Following the inclusion of Guinea in that list, Guinea endeavoured to to rectify the situation that warranted its listing, and to take concrete measures capable of remedying the identified failures.
- (8) On the basis of the information obtained by the Commission, it appears that Guinea has implemented its international law obligations and adopted an adequate legal framework for fighting IUU fishing. It has created a deterrent sanctioning system. It has also established an adequate and efficient monitoring, control and inspection scheme by developing a National Plan of Inspection and introducing aerial surveillance and equipping its Fishing Monitoring Centre (FMC) with a fully functional Vessel Monitoring System (VMS). Guinea has also reviewed its registration and licensing systems and introduced technical, conservation and management measures to ensure a reasonable balance between the fishing licences delivered, resources available and its control and enforcement capacities. Guinea has furthermore reconsidered its participation within Regional Fisheries Management Organisations' (RFMOs), has improved its compliance with its international obligations stemming from recommendations and resolutions of those Organisations and has taken appropriate measures against Guinean IUU vessels on the RFMOs IUU lists.
- (9) It also appears that with the actions undertaken Guinea no longer fails to ensure compliance with its duties incumbent upon it under international law and in particular in the light of the provisions of Articles 61, 62, 94, 117 and 118 of the United Nations Convention on the Law of the Sea (UNCLOS) and Articles 18, 19 and 20 of the United Nations Fish Stocks Agreement (UNFSA).
- (10) It may therefore be concluded that the situation that warranted the listing of Guinea has been rectified and that Guinea has taken concrete measures capable of achieving a lasting improvement of the situation.
- (11) As a consequence, Council Implementing Decision 2014/170/EU should be amended in order to remove Guinea from the list of non-cooperating countries in fighting IUU fishing.
- (12) This decision taken by the Council does not preclude any future steps, which may be taken by the Union, in accordance with the IUU Regulation, in case factual elements were to reveal that Guinea fails to fulfil the duties incumbent upon it under

⁵ Council Implementing Decision of 24 March 2014 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 (OJ L 91 27.3.2014, p. 43).

international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.

- (13) In the light of the adverse consequences caused by a listing as non-cooperating third country, it is appropriate to give immediate effect to the delisting of Guinea as a non-cooperating third country,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Council Implementing Decision 2014/170/EU is replaced by 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*