



Council of the  
European Union

144708/EU XXV. GP  
Eingelangt am 24/05/17

Brussels, 24 May 2017  
(OR. en)

9684/17

---

**Interinstitutional File:**  
**2017/0096 (NLE)**

---

**PECHE 215**

**PROPOSAL**

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	23 May 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 241 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting illegal, unreported and unregulated fishing, as regards the Union of the Comoros

Delegations will find attached document COM(2017) 241 final.

---

Encl.: COM(2017) 241 final



EUROPEAN  
COMMISSION

Brussels, 23.5.2017  
COM(2017) 241 final

2017/0096 (NLE)

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

**amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting illegal, unreported and unregulated fishing, as regards the Union of the Comoros**

## **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 1447/1999<sup>1</sup> (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 1 October 2015 on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing (OJ C 324, 2.10.2015, p. 6).

Commission Implementing Decision of 23 May 2017 (OJ C XXXX, XX.XX.2017, p ...) identifying the Union of the Comoros as a non-cooperating third country in fighting 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**

---

<sup>1</sup> OJ L 286, 29.10.2008, p. 1.

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 1 October 2015 the Commission, by Commission Decision, **notified** the Comoros that the Commission **considers as possible of being identified** as non-cooperating country pursuant to the IUU Regulation.

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

On 23 May 2017 the Commission, by Commission Implementing Decision, **identified** the Comoros 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 the Comoros 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.

Proposal for a

## COUNCIL IMPLEMENTING DECISION

**amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting illegal, unreported and unregulated fishing, as regards the Union of the Comoros**

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 1447/1999<sup>2</sup>, and in particular Article 33(1) 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 third countries, removal from the list of non-cooperating third countries, publicity of the list of non-cooperating third countries and any emergency measures.
- (3) On 24 March 2014, the Council adopted 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 fishing.
- (4) In accordance with Article 32 of the IUU Regulation, by Decision of 1 October 2015 (Decision of 1 October 2015)<sup>3</sup>, the Commission notified the Union of the Comoros (hereinafter ‘the Comoros’) of the possibility of being identified as a country which the Commission considers as a non-cooperating third country.

<sup>2</sup> OJ L 286, 29.10.2008, p. 1.

<sup>3</sup> Commission Decision of 1 October 2015 on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing ([OJ C 324, 2.10.2015, p. 6](#)).

- (5) In the Decision of 1 October 2015, the Commission included the information concerning the essential facts and considerations underlying such possible identification.
- (6) The Decision was notified to the Comoros together with a letter suggesting the Comoros to implement, in close cooperation with the Commission, an action plan to rectify the identified shortcomings.
- (7) The Commission invited the Comoros in particular: (i) to take all necessary measures to implement the actions contained in the action plan suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plan suggested by the Commission; and (iii) to send every six months a detailed report to the Commission assessing the implementation of each action as regards, inter alia, its individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (8) The Comoros was given the opportunity to respond in writing and orally to the Decision of 1 October 2015 as well as to other relevant information communicated by the Commission, allowing it to submit evidence refuting or completing the facts stated in the Decision of 1 October 2015. The Comoros was assured of its right to ask for, or to provide, additional information.
- (9) By its Decision and letter of 1 October 2015, the Commission opened a process of dialogue with the Comoros and highlighted that it considered a period of six months as being sufficient in principle 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 Comoros following the Decision of 1 October 2015 were considered and taken into account. The Comoros was kept informed, either orally or in writing, of the Commission's deliberations.
- (11) The Commission however took the view that the areas of concern and shortcomings as described in the Decision of 1 October 2015 had not been addressed sufficiently by the Comoros and that the measures suggested in a plan of action had not been fully implemented.
- (12) The Commission consequently identified the Comoros as a non-cooperating third country in fighting IUU fishing, by Commission Implementing Decision 2017/xxx/EU<sup>4</sup>.
- (13) Based on the investigation and dialogue procedures carried out by the Commission, including the correspondence exchanged and the meetings held, and the reasons underlying the Decision of 1 October 2015 and Commission Implementing Decision 2017/xxx/EU, it is appropriate to place the Comoros on the list of non-cooperating third countries in fighting IUU fishing.
- (14) 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

---

<sup>4</sup> Commission Implementing Decision 2017/xxx/EU of 23 May 2017 identifying the Union of the Comoros as a non-cooperating third country in fighting illegal, unreported and unregulated fishing (OJ L xx, dd.mmmm.2017, p. x).

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 identified third countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation.

## **2. PROCEDURE WITH RESPECT TO THE COMOROS**

- (15) On 1 October 2015, the Commission notified the Comoros pursuant to Article 32 of the IUU Regulation that it considered the possibility of identifying the Comoros as a non-cooperating third country and invited the Comoros to implement, in close cooperation with its services, an action plan to rectify the shortcomings identified in the Decision of 1 October 2015. Since that Decision, the Comoros made written submissions making its views known and met the Commission to discuss relevant points. The Commission provided the Comoros with relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the Comoros following the Decision of 1 October 2015 were considered and taken into account, while the Comoros was kept informed either orally or in writing of the Commission's deliberations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 1 October 2015 had not been addressed sufficiently by the Comoros and that the measures suggested in a plan of action had not been fully implemented.

## **3. IDENTIFICATION OF THE COMOROS AS A NON-COOPERATING THIRD COUNTRY**

- (16) In the Decision of 1 October 2015, the Commission analysed the duties of the Comoros 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.
- (17) The Commission reviewed the compliance of the Comoros in line with the findings of the Decision of 1 October 2015, and having regard to relevant information provided thereon by the Comoros, the suggested plan of action, and the measures taken to rectify the situation.
- (18) The main shortcomings identified by the Commission were related to several failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework and registration and licensing procedures, lack of cooperation and information sharing within the Comorian administration and with third countries where Comorian vessels operate, lack of adequate and efficient monitoring and lack of a deterrent sanctioning system. Other identified shortcomings relate, more generally to compliance with international obligations including Regional Fisheries Management Organisations (RFMOs) recommendations and resolutions. 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) and the FAO Voluntary Guidelines for Flag State Performance were 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.



- (19) In Implementing Decision [2017/xxx/EU](#), the Commission identified the Comoros as a non-cooperating third country pursuant to the IUU Regulation.
- (20) With respect to the possible constraints upon the Comoros as a developing country, it is noted that the development status and overall performance of the Comoros with respect to fisheries management may be impaired by its level of development. However, account taken of the nature of the established shortcomings of the Comoros, the Comorian development level cannot fully excuse or otherwise justify its overall performance as flag, port, coastal or market State with respect to fisheries and the insufficiency of its actions to prevent, deter and eliminate IUU fishing.
- (21) Having regards to the Decision of 1 October 2015 and the Implementing Decision [2017/xxx/EU](#) of 23 May 2017, and to the dialogue process with the Comoros held with the Commission and its outcome, it can be concluded that the actions undertaken by the Comoros in light of its duties as flag State are insufficient to comply with Articles 63, 64, 91, 94, 117 and 118 of the United Nations Convention on the Law of the Sea.
- (22) Thus, the Comoros has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing.

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

- (23) In view of the conclusions reached with regard to the Comoros, that country should be added, in accordance with Article 33 of the IUU Regulation, to the list of non-cooperating third countries established by the Implementing Decision [2014/170/EU](#). Implementing Decision [2014/170/EU](#) should therefore be amended accordingly.
- (24) The inclusion of the Comoros in the list of non-cooperating countries in the fight against IUU fishing entails the application of the measures laid down in Article 38 of the IUU Regulation. Article 38(1) of the IUU Regulation provides for the prohibition of importation of fisheries products caught by vessels flying the flag of non-cooperating countries. In the case of the Comoros, that prohibition should importation cover all stocks and species, as defined in Article 2(8) of the IUU Regulation, since the lack of appropriate measures adopted in relation to IUU fishing leading to the identification of the Comoros as a non-cooperating third country are not limited to a given stock or species.
- (25) It is noted that 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 expeditiously implement the actions in respect to the Comoros as a non-cooperating third country. As a consequence, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (26) If the Comoros 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 the Comoros from the list of non-cooperating third countries in line with Article 34(1) of the IUU Regulation. Any removal decision

should also take into consideration whether the Comoros has taken concrete measures capable of achieving a lasting improvement of the situation.

HAS ADOPTED THIS DECISION:

*Article 1*

"The Union of the Comoros" shall be added in the Annex to Implementing Decision 2014/170/EU.

*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*