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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

COUNCIL IMPLEMENTING DECISION (EU) 2017/...

of ...

**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 1447/1999¹, and in particular Article 33(1) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 286, 29.10.2008, p. 1.

Whereas:

1. INTRODUCTION AND PROCEDURE

- (1) Regulation (EC) No 1005/2008 ('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, 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 Implementing Decision 2014/170/EU¹ which established a list of non-cooperating third countries in fighting IUU fishing pursuant to IUU Regulation.

¹ Council Implementing Decision 2014/170/EU of 24 March 2014 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).

- (4) In accordance with Article 32 of the IUU Regulation, by Decision of 1 October 2015 ('Decision of 1 October 2015')¹, the Commission notified the Union of the Comoros ('the Comoros') of the possibility of being identified as a country which the Commission considers as a non-cooperating third country.
- (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 of 1 October 2015 was notified to the Comoros together with a letter of the same date suggesting that the Comoros implement, in close cooperation with the Commission, a plan of action to rectify the identified shortcomings.
- (7) The Commission invited the Comoros in particular to: (i) take all necessary measures to implement the actions contained in the plan of action suggested by the Commission; (ii) assess the implementation of those actions; and (iii) send every six months a detailed report to the Commission assessing the implementation of each of those actions as regards, inter alia, its individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.

¹ 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).

- (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 of 1 October 2015 and its letter, 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. Moreover, the Commission concluded that the measures of the plan of action had not been fully implemented. As a consequence, the Commission adopted Implementing Decision (EU) 2017/889¹, identifying the Comoros as a non-cooperating third country in fighting IUU fishing.

¹ Commission Implementing Decision (EU) 2017/889 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 135, 24.5.2017, p. 35).

- (12) 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 Implementing Decision (EU) 2017/889, it is appropriate to place the Comoros on the list of non-cooperating third countries in fighting IUU fishing.
- (13) 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 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 country concerned has taken concrete measures capable of achieving a lasting improvement of the situation.

2. IDENTIFICATION OF THE COMOROS AS A NON-COOPERATING THIRD COUNTRY

- (14) 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.

- (15) 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.
- (16) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement obligations under international law, linked in particular to: the failure to adopt an adequate legal framework and registration and licensing procedures; the lack of cooperation and information sharing within the Comorian administration and with third countries where Comorian vessels operate; the lack of an adequate and efficient monitoring, control and surveillance system; and the lack of a deterrent sanctioning system. Other identified shortcomings relate, more generally, to compliance with international obligations including Regional Fisheries Management Organisations 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 and the Voluntary Guidelines for Flag State Performance, both of the Food and Agriculture Organization of the United Nations, 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.
- (17) In Implementing Decision (EU) 2017/889, the Commission identified the Comoros as a non-cooperating third country pursuant to the IUU Regulation.

- (18) 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, having taken account 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.
- (19) Having regard to the Decision of 1 October 2015 and Implementing Decision (EU) 2017/889, and to the dialogue process with the Comoros held with the Commission and the outcome of that process, 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.
- (20) 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.

3. ESTABLISHMENT OF A LIST OF NON-COOPERATING THIRD COUNTRIES

- (21) 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. That Decision should therefore be amended accordingly.

- (22) The inclusion of the Comoros in the list of non-cooperating third 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 third countries. In the case of the Comoros, that prohibition should cover all stocks and species, namely all fishery products 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 is not limited to a given stock or species.
- (23) 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 of 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*.

- (24) 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 such 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' is hereby added to 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 ...,

For the Council

The President
