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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 September 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION Denouncing the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros, adopted by Council Regulation (EC) No 1563/2006 of 5 October 2006

Delegations will find attached document COM(2017) 556 final.

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Brussels, 29.9.2017
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Proposal for a

COUNCIL DECISION

Denouncing the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros, adopted by Council Regulation (EC) No 1563/2006 of 5 October 2006

EXPLANATORY MEMORANDUM

The Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros¹ (referred to below as ‘the Comoros’) provides for its termination by either party in the event of serious circumstances, such as failure to comply with undertakings made by the Parties with regard to combating illegal, unreported and unregulated fishing (referred to below as ‘IUU fishing’). Termination of the agreement requires written pre-notification by the party seeking the termination, which must be submitted at least six months in advance of the termination.

Pursuant to Article 31 of Council Regulation (EC) No 1005/2008 (‘the IUU Regulation’), the Commission can identify third countries which it considers to be failing to cooperate in combating IUU fishing. A third country may be identified as a non-cooperating third country if it fails to carry out the duties incumbent upon it under international law, as a flag, port, coastal or market state, to take action to prevent, deter and eliminate IUU fishing.

In accordance with Article 32 of the IUU Regulation, the Comoros was notified on 1 October 2015 by Commission Decision of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing².

Following this decision, the Commission opened a dialogue with the Comoros which was conducted in accordance with the requirements laid down in the IUU Regulation. The dialogue was based on an action plan proposed by the Commission to the Comoros to rectify the shortcomings. The Comoros did not take, within reasonable time, the necessary remedial action to remove the concerns identified.

As the Comoros failed to carry out its duties under international law as a flag, port, coastal or market state and to take action to prevent, deter and eliminate IUU fishing, it has been identified, in accordance with Article 31 of the IUU Regulation, as a non-cooperating third country, by Commission Implementing Decision (EU) 2017/889³ of 23 May 2017. Following this identification the Comoros still failed take the necessary remedial action.

The main shortcomings that justified this Decision had to do with: (i) the Comorian authorities' flag of convenience policy; (ii) evidence of illegal fishing activities by the Comorian fleet; (iii) the national authorities' poor or non-existent monitoring and control capacities; and (iv) the Comoros' outdated legal framework for fisheries.

In accordance with Article 33 of the IUU Regulation, the Comoros has since been added, by Council Implementing Decision (EU) 2017/1332⁴, to the list of non-cooperating third countries established by Implementing Decision 2014/170/EU⁵ on 11 July 2017.

Placing a third country on the list of countries failing to cooperate in combating IUU fishing activities requires that the measures referred to in Article 38 of the IUU Regulation must be taken. Among these measures, the Commission is to propose the denunciation of any standing

¹ OJ L 290, 20.10.2006, p 6.
² OJ C 324, 2.10.2015, p. 6.
³ OJ L 135, 24.5.2017, p 35.
⁴ OJ L 185, 18.7.2017, p, 37.
⁵ OJ L 91, 27.3.2014, p. 43

bilateral fisheries agreement with the Comoros which provides for termination of the agreement in case of failure to comply with undertakings made by them with regard to combating IUU fishing.

Since the Comoros has been placed on the list of non-cooperating countries, the Commission considers it necessary to propose to the Council that it, the Commission, initiate the termination of the Fisheries Partnership Agreement between the European Community and the Comoros.

The Lisbon treaty empowers the Commission to represent the Union vis-à-vis non-EU countries. This implies that it is incumbent on the Commission, on behalf of the EU, to notify the Comoros of the Council and the Union's decision to terminate the Partnership Agreement with six months notice and a consultation between the Parties before the agreement is terminated (Article 12 of the Fisheries Agreement between the EU and the Comoros).

The legal basis for this proposal is Article 43 (2) and in conjunction with Article 218 (6) (a) of the TFEU. Following the doctrine of '*actus contrarius*', the legal basis used to terminate an international agreement should be the same as the one used for its conclusion. This means that the European Parliament is required to consent to this proposal before it is adopted by the Council.

The proposal for the termination of this agreement should not delay the effects of Art 38(8) of the IUU Regulation. Hence, the Commission should request the Council to ask the European Parliament to agree upon a time-limit of three months for giving its consent to the proposal.

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

n/a

- **Consistency with existing policy provisions in the policy area**

n/a

- **Consistency with other Union policies**

This proposal is in line with the Common Fisheries Policy and with the Sustainable Fisheries Partnership Agreements and IUU fishing policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The appropriate legal basis for this proposal is Article 43 (2) in conjunction with Article 218 (6) (a) of the TFEU.

- **Subsidiarity (for non-exclusive competence)**

n/a

- **Proportionality**

n/a

- **Choice of the instrument**

Since the purpose of the legal act is to implement a Council decision addressed to a particular third country, it is appropriate to use a Council decision to notify the Government of the Comoros of the termination of the Fisheries Partnership Agreement between the European Community and the Union of the Comoros.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n/a

- **Stakeholder consultations**

n/a

- **Collection and use of expertise**

n/a

- **Impact assessment**

n/a

- **Regulatory fitness and simplification**

n/a

- **Fundamental rights**

n/a

4. BUDGETARY IMPLICATIONS

The termination of the Sustainable Fisheries Partnership Agreement with the Republic of the Comoros has no budgetary implications. No amounts relating to a new protocol replacing the protocol that expired on 31.12.2016 were budgeted in the reserve for the 2017 budget and the draft 2018 budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

n/a

- **Explanatory documents (for directives)**

n/a

- **Detailed explanation of the specific provisions of the proposal**

n/a

Proposal for a

COUNCIL DECISION

Denouncing the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros, adopted by Council Regulation (EC) No 1563/2006 of 5 October 2006

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) in conjunction with Article 218(6) (a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) Council Regulation (EC) No 1563/2006⁶ concerns the conclusion of the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros (referred to below as ‘the EU-Comoros FPA’).
- (2) One of the objectives of the EU-Comoros FPA is to ensure that the measures for the conservation and management of fish stocks are effective, and that illegal, undeclared or unregulated (‘IUU’) fishing is prevented.
- (3) The EU-Comoros FPA applies for seven years from the date of its entry into force and is renewable for additional periods of seven years, unless notice of termination is given by either Party.
- (4) According to Article 12 of the EU-Comoros FPA, this Agreement may be terminated by either Party in the event of serious circumstances such as the failure to comply with undertakings made with regard to combating IUU fishing. The Party concerned is to notify the other Party of its intention to withdraw from the Agreement at least six months before the date of expiry of the initial period of seven years or each additional period and the dispatch of such notification shall open consultations between the Parties.

⁶ Council Regulation (EC) No 1563/2006 of 5 October 2006 concerning the conclusion of the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros (OJ L 290, 20.10.2006, p. 6)

- (5) Pursuant to Article 31 of Council Regulation (EC) No 1005/2008⁷ ('the IUU Regulation'), the Commission is to identify third countries that it considers as non-cooperating countries in fighting IUU fishing. A third country may be identified as a non-cooperating third country if it 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.
- (6) In accordance with a decision adopted by the Commission on 1st October 2015⁸, the Comoros was notified of the possibility of being identified by the Commission as a non-cooperating third country in fighting IUU fishing because of (i) the flag of convenience policy pursued by the Comorian authorities; (ii) evidence of illegal fishing activities by the Comorian fleet; (iii) the poor or inexistent monitoring and control capacities of the national authorities; and (iv) the outdated Comorian legal fisheries framework
- (7) By that decision, the Commission opened a dialogue process with the Comoros which was carried out in accordance with the procedural requirements laid out in Article 32 of the IUU Regulation. The Comoros did not take, within reasonable time, the necessary action to remedy the situation.
- (8) In view of the Comoros persistent failure to discharge its duties under international law as a flag, port, coastal or market State and to take action to prevent, deter and eliminate IUU fishing, that country has been identified, in accordance with Article 31 of the IUU Regulation, as non-cooperating in the fight against IUU fishing by Commission Decision (EU) 2017/889 of 23 May 2017⁹. Following this identification the Comoros still failed take the necessary remedial action.
- (9) In accordance with Article 33 of the IUU Regulation, that country has been added, by Council Implementing Decision (EU) 2017/1332¹⁰, to the list of non-cooperating third countries established by the Implementing Decision (EU) 2014/170/EU¹¹ on 24.3.2014.
- (10) According to Article 38(8) of the IUU Regulation, the Commission is to propose the denunciation of any standing bilateral agreement with a non-cooperating third country which provides for termination of the agreement in case of failure to comply with undertakings made by that country with regard to combating IUU fishing.

⁷ 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 (OJ L 286, 29.10.2008, p. 1)

⁸ 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).

⁹ 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.)

¹⁰ Council Implementing Decision (EU) 2017/1332 of 11 July 2017 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. (OJ L 185, 18.7.2017, p. 37)

¹¹ Council Implementing Decision 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)

- (11) It is therefore appropriate to denounce the Partnership Agreement in the fisheries sector between the European Community and the Union of Comoros.
- (12) The Treaty on the European Union empowers the Commission to ensure the Union's external representation. The Commission, on behalf of the European Union, should therefore notify the Union of Comoros of the denunciation of the EU-Comoros Fisheries Partnership Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros, which entered into force on 6 March 2008, shall be denounced.

Article 2

The European Commission, on behalf of the European Union, shall notify the Union of the Comoros of the denunciation of the Partnership Agreement.

Article 3

This Decision shall enter into force on the day after its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President