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## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: COUNCIL IMPLEMENTING DECISION amending 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 as regards Sri Lanka

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# COUNCIL IMPLEMENTING DECISION

of

**amending 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 as regards Sri Lanka**

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>1</sup>, and in particular Article 33 thereof,

Having regard to the proposal from the European Commission,

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

Whereas:

1. INTRODUCTION

- (1) Regulation (EC) No 1005/2008 establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
- (2) Chapter VI of Regulation (EC) No 1005/2008 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) In accordance with Article 32 of the Regulation (EC) No 1005/2008, the Commission notified eight third countries, by a Decision of 15 November 2012<sup>1</sup>, of the possibility of their being identified as countries which the Commission considers as non-cooperating third countries.
- (4) In the Decision of 15 November 2012, the Commission included information concerning the essential facts and considerations underlying such identification.

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<sup>1</sup> 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).

- (5) Also on 15 November 2012, the Commission notified the eight third countries by separate letters that it was considering the possibility of identifying them as non-cooperating third countries.
- (6) The Commission highlighted, in those letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as provided for in Articles 31 and 33 of Regulation (EC) No 1005/2008, the third countries concerned were invited to establish, in close cooperation with the Commission, an action plan to rectify the shortcomings identified in the Decision of 15 November 2012.
- (7) As a consequence, the Commission invited the eight third countries concerned: (i) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plans suggested by the Commission; and (iii) to send detailed reports to the Commission every six months assessing the implementation of each action as regards, *inter alia*, their individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (8) The eight third countries concerned were given the opportunity to respond in writing to issues explicitly indicated in the Decision of 15 November 2012 as well as to other relevant information, allowing them to submit evidence in order to refute or complete the facts invoked in the Decision of 15 November 2012 or to adopt, as appropriate, a plan of action to improve and measures taken to rectify the situation. The eight countries were assured of their right to ask for, or to provide, additional information.

- (9) On 15 November 2012, the Commission opened a process of dialogue with the eight third countries 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 eight countries following the Decision of 15 November 2012 were considered and taken into account. The eight countries were kept informed, either orally or in writing, of the Commission's deliberations.
- (11) On 24 March 2014, the Council Implementing Decision 2014/170/EU<sup>1</sup> was adopted. Three of the eight countries concerned by the Decision of 15 November 2012 were listed as non-cooperating third countries as they, despite taking some measures, still failed to discharge their duties under international law as flag or coastal State to take action to prevent, deter and eliminate IUU fishing.
- (12) By Implementing Decision 2014/715/EU<sup>2</sup>, the Commission identified the Democratic Socialist Republic of Sri Lanka ("Sri Lanka") as a non-cooperating third country in fighting IUU fishing. In accordance with the Regulation (EC) No 1005/2008, the Commission provided the reasons why it considered that Sri Lanka failed to discharge its duties under international law as flag, port, coastal or market State to take action to prevent, deter and eliminate IUU fishing.

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<sup>1</sup> 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).

<sup>2</sup> Commission Implementing Decision 2014/715/EU of 14 October 2014 identifying a third country that the Commission considers as 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 (OJ L 297, 15.10.2014, p. 13).

- (13) This Decision placing Sri Lanka on the list of non-cooperating third countries in fighting IUU fishing should therefore be adopted in the context of the implementation of Regulation (EC) No 1005/2008 as a result of investigation and dialogue procedures which were carried out in line with the substantive and procedural requirements laid out in that Regulation. This Decision is based on those investigation and dialogue procedures, including the correspondence exchanged and the meetings held, as well as the Decision of 15 November 2012 and Implementing Decision 2014/715/EU. The reasons underlying those procedures and acts are the same as those underlying this Decision. This Decision placing Sri Lanka on the list of non-cooperating third countries in fighting IUU fishing should entail the consequences stated in Article 38 of Regulation (EC) No 1005/2008.
- (14) Upon the adoption of this Decision placing Sri Lanka on the list of non-cooperating third countries in accordance with Article 33 of the Regulation (EC) No 1005/2008, the Implementing Decision 2014/715/EU identifying Sri Lanka as a non-cooperating third country is no longer relevant.
- (15) Pursuant to Article 34(1) of Regulation (EC) No 1005/2008 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 countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation.

## 2. PROCEDURE WITH RESPECT TO SRI LANKA

- (16) On 15 November 2012, the Commission notified Sri Lanka pursuant to Article 32 of the Regulation (EC) No 1005/2008 that it considered the possibility of identifying Sri Lanka as a non-cooperating third country and invited Sri Lanka to establish an action plan in close cooperation with its services to rectify the shortcomings identified in the Decision of 15 November 2012. During the period from December 2012 to June 2014, Sri Lanka made written submissions making its views known and met the Commission to discuss relevant points. The Commission provided Sri Lanka with relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Sri Lanka following the Decision of 15 November 2012 were considered and taken into account, while Sri Lanka 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 15 November 2012 had not been addressed sufficiently by Sri Lanka. Moreover, the Commission concluded that the measures suggested in a plan of action had not been fully implemented.

## 3. IDENTIFICATION OF SRI LANKA AS A NON-COOPERATING THIRD COUNTRY

- (17) In the Decision of 15 November 2012, the Commission analysed the duties of Sri Lanka 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 Regulation (EC) No 1005/2008.

- (18) The Commission reviewed the compliance of Sri Lanka in line with the findings of the Decision of 15 November 2012, and having regard to relevant information provided thereon by Sri Lanka, the suggested plan of action, and the measures taken to rectify the situation.
- (19) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement international law obligations, linked in particular to the failure to adopt an adequate legal framework, the lack of an adequate and efficient monitoring system, the lack of an observer scheme, the lack of a deterrent sanctioning system, and to improper implementation of the catch certification scheme. Other identified shortcomings relate, more generally, to compliance with international obligations, including Regional Fisheries Management Organisations recommendations and resolutions, and the conditions for registration of vessels according to international law. 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 was 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.



- (20) In the Implementing Decision 2014/715/EU, the Commission identified Sri Lanka as a non-cooperating third country pursuant to Regulation (EC) No 1005/2008.
- (21) With respect to the possible constraints upon Sri Lanka as a developing country, it is noted that the specific development status and overall performance of Sri Lanka with respect to fisheries are not impaired by its general level of development.
- (22) Having regards to the Decision of 15 November 2012 and the Implementing Decision 2014/715/EU, and to the dialogue process with Sri Lanka entertained by the Commission and its outcome, it can be concluded that the actions undertaken by Sri Lanka in light of its duties as flag State are insufficient to comply with Articles 94, 117 and 118 of the United Nations Convention on the Law of the Sea and Articles 18, 19 and 20 of United Nations Fish Stocks Agreement.
- (23) Thus, Sri Lanka 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

- (24) In view of the conclusions reached with regard to Sri Lanka, that country should be added, in accordance with Article 33 of Regulation (EC) No 1005/2008, to the list of non-cooperating third countries established by the Implementing Decision 2014/170/EU, as amended by Council Implementing Decision 2014/914/EU<sup>1</sup>. Implementing Decision 2014/170/EU should therefore be amended accordingly.
- (25) Actions in respect of Sri Lanka in the form of measures that should be applied are listed in Article 38 of Regulation (EC) No 1005/2008. The prohibition of importation covers all stocks and species, as defined in Article 2(8) of Regulation (EC) No 1005/2008, since the identification as a non-cooperating third country is not due to the lack of appropriate measures adopted in relation to IUU fishing affecting a given stock or species.

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<sup>1</sup> Council Implementing Decision 2014/914/EU of 15 December 2014 amending 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 as regards Belize (OJ L 360, 17.12.2014, p. 53).

- (26) 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 Sri Lanka as a non-cooperating country. In the light of this matter, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (27) If Sri Lanka 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 Sri Lanka from the list of non-cooperating third countries in line with Article 34 (1) of Regulation (EC) No 1005/2008. Any removal decision should also take into consideration whether Sri Lanka has taken concrete measures capable of achieving a lasting improvement of the situation,

HAS ADOPTED THIS DECISION:

*Article 1*

The Democratic Socialist Republic of Sri Lanka shall be 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 Brussels,

*For the Council*

*The President*

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