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PECHE 3

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 January 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 4 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 Cameroon

Delegations will find attached document COM(2023) 4 final.

Encl.: COM(2023) 4 final



EUROPEAN
COMMISSION

Brussels, 5.1.2023
COM(2023) 4 final

2023/0003 (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
Cameroon**

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 1447/1999¹ (the IUU Regulation).

General context

This proposal is made in the context of the implementation of the IUU Regulation and is the result of the analysis 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 17 February 2021 (OJ C 59, 19.2.2021, p. 1) on notifying the Republic of Cameroon of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Commission Implementing Decision of 5 January 2023 ² identifying Cameroon 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 analysis 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

¹ OJ C 59, 19.2.2021, p. 1.

² To be published in OJ early 2023.

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 17 February 2021, the Commission, by Commission Decision, notified Cameroon 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 Cameroon. 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 5 January 2023 the Commission, by Commission Implementing Decision, identified Cameroon 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 Cameroon 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 Cameroon

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 1447/1999³ (the IUU Regulation), and in particular Article 33 thereof,

Having regard to the proposal submitted by the European Commission,

Whereas:

INTRODUCTION

- (1) 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 to identify non-cooperating third countries, the *démarches* in respect of such countries, the establishment of a list of such countries, the removal from that list, the publicity of that list and any emergency measures.
- (3) On 24 March 2014, the Council adopted Implementing Decision 2014/170/EU⁴ 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 Commission Decision of 17 February 2021 ('Decision of 17 February 2021')⁵, the Commission notified the Republic of Cameroon (hereafter Cameroon) of the possibility of being identified as a country which the Commission considers as non-cooperating third country.
- (5) In its Decision of 17 February 2021, the Commission included information on the essential facts and considerations underlying such possible identification.

³ OJ L 286, 29.10.2008, p. 1.

⁴ 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).

⁵ Commission Decision of 17 February 2021 on notifying the Republic of Cameroon of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing (OJ CI 59, 19.2.2021, p. 1).

- (6) The Decision was notified to Cameroon together with a letter inviting Cameroon to implement, in close cooperation with the Commission, an action plan to rectify the identified shortcomings.
- (7) By its Decision of 17 February 2021, the Commission opened a dialogue process with Cameroon.
- (8) The Commission invited Cameroon in particular to: (i) take all necessary measures to implement the actions contained in the action plan suggested by the Commission and (ii) assess the implementation of the actions contained in the action plan suggested by the Commission.
- (9) Cameroon was given the opportunity to respond to the Decision of 17 February 2021 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 17 February 2021. Cameroon was assured of its right to ask for, or to provide, additional information.
- (10) The Commission continued to seek and verify all relevant information. The oral and written comments submitted by Cameroon following the Decision of 17 February 2021 were considered and taken into account. Cameroon was kept informed, either orally or in writing, of the Commission's considerations.
- (11) On the basis of the information gathered, the Commission took the view that the areas of concern and shortcomings as described in the Decision of 17 February 2021 had not been addressed sufficiently by Cameroon. Moreover, the Commission concluded that the measures proposed in the plan of action had not been fully implemented.
- (12) As a consequence the Commission adopted Implementing Decision of 5 January 2023 identifying Cameroon as a non-cooperating third country in fighting IUU fishing.
- (13) Based on the investigation and dialogue process carried out by the Commission, including the correspondence exchanged and the meetings held, and the reasons underlying the Decision of 17 February 2021 and Implementing Decision of 5 January 2023 identifying Cameroon as a non-cooperating third country in fighting illegal, unreported and unregulated fishing, it is appropriate to place Cameroon on the list of non-cooperating third countries in fighting IUU fishing.

1. PROCEDURE WITH RESPECT TO CAMEROON

- (14) On 17 February 2021, the Commission notified Cameroon pursuant to Article 32 of the IUU Regulation that it considered the possibility of identifying Cameroon as a non-cooperating third country and invited Cameroon to implement an action plan in close cooperation with its services to rectify the shortcomings identified in the Decision of 17 February 2021. Since that Decision, Cameroon made written submissions making its views known and met virtually the Commission to discuss relevant points. The Commission provided Cameroon with relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Cameroon following the Decision of 17 February 2021 were considered and taken into account, while Cameroon was kept informed either orally or in writing of the Commission's deliberations. The Commission took the view in the Implementing Decision of 5 January 2023 identifying Cameroon as a non-cooperating third country in fighting illegal, unreported and unregulated fishing, that the areas of concern and shortcomings as described in the Decision of 17 February 2021 had not been

sufficiently addressed by Cameroon. Moreover, the Commission concluded that the measures proposed in a plan of action had not been fully implemented.

2. IDENTIFICATION OF CAMEROON AS A NON-COOPERATING THIRD COUNTRY

- (15) In the Decision of 17 February 2021, the Commission analysed the duties of Cameroon 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 criteria listed in Article 31(4) to (7) of the IUU Regulation.
- (16) The Commission reviewed the compliance of Cameroon in line with the findings of the Decision of 17 February 2021, and having regard to relevant information provided thereon by Cameroon, the suggested plan of action, and the measures taken to rectify the situation.
- (17) 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 and updated legal framework, lack of clear and transparent registration and licensing procedures and lack of efficient and adequate monitoring of fishing vessels. The identified shortcomings relate, more generally, to the conditions established for registration of fishing vessels and their control according to international law. A lack of alignment with recommendations and resolutions from relevant bodies such as the FAO International Plan of Action against Illegal, Unreported and Unregulated Fishing of the United Nations (IPOA-IUU)⁶ and FAO Voluntary Guidelines on Flag State Performance⁷ was also identified. However, the lack of consistency with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.
- (18) In the Implementing Decision of 5 January 2023, the Commission therefore identified Cameroon as a non-cooperating third country pursuant to the IUU Regulation.
- (19) With respect to the possible constraints upon Cameroon as a developing country, it is noted that the specific development status and overall performance of Cameroon with respect to fisheries are not impaired by its general level of development.
- (20) Having regards to the Decision of 17 February 2021, to Implementing Decision of 5 January 2023, and to the dialogue process with Cameroon held with the Commission and its outcome, it can be concluded that the actions undertaken by Cameroon in light of its duties as flag State are insufficient to comply with Articles 91, 92, 94, 117 and 118 of the United Nations Convention on the Law of the Sea.
- (21) Thus, Cameroon 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

- (22) In view of the conclusions reached with regard to Cameroon, 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.

⁶ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Food and Agriculture Organization of the United Nations, 2001.

⁷ Voluntary Guidelines for Flag State Performance, March 2014, retrieved from: <http://www.fao.org/3/a-i4577t.pdf>

- (23) The inclusion of Cameroon 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 Cameroon that prohibition should 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 Cameroon as a non-cooperating third country is not limited to a given stock or species.
- (24) 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 compliant 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 Cameroon as a non-cooperating country. Therefore, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (25) If Cameroon 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 Cameroon 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 Cameroon has taken concrete measures capable of achieving a lasting improvement of the situation,

HAS ADOPTED THIS DECISION:

Article 1

Cameroon 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*