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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 September 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 544 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 Republic of Trinidad and Tobago

Delegations will find attached document COM(2023) 544 final.

Encl.: COM(2023) 544 final



EUROPEAN
COMMISSION

Brussels, 25.9.2023
COM(2023) 544 final

2023/0330 (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 Republic of Trinidad and Tobago

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 21 April 2016 (OJ C 144, 23.4.2016, p. 14) on notifying the Republic of Trinidad and Tobago 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 25 September 2023 [C(2023)6303] (OJ C XXXX, XX.XX.2023, p ...) identifying Trinidad and Tobago as a non-cooperating third countries in fighting illegal, unreported and unregulated fishing.

- **Consistency with other Union policies**

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.

¹ OJ C 59, 19.2.2021, p. 1.

Collection and use of expertise

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 21 April 2016, the Commission, by Commission Decision, **notified** Trinidad and Tobago 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 Trinidad and Tobago. 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 25 September 2023, the Commission, by Commission Implementing Decision, **identified** Trinidad and Tobago 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 Trinidad and Tobago 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 Republic of Trinidad and Tobago

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 1447/1999², and in particular Article 33 thereof,

Having regard to the proposal submitted by the European Commission,

Whereas:

1. INTRODUCTION AND PROCEDURE

- (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 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/EU³ 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 a Decision of 21 April 2016 (the 'Decision of 21 April 2016')⁴, the Commission notified the Republic of Trinidad

² OJ L 286, 29.10.2008, p. 1.

³ 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).

⁴ Commission Decision of 21 April 2016 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 144, 23.4.2016, p. 14).

and Tobago ('Trinidad and Tobago') of the possibility of its identification as a country which the Commission considers as non-cooperating third country.

- (5) In its Decision of 21 April 2016, the Commission included information on the essential facts and considerations underlying such possible identification.
- (6) That Decision was notified to Trinidad and Tobago together with a letter inviting Trinidad and Tobago to implement, in close cooperation with the Commission, an action plan to rectify the identified shortcomings.
- (7) By its Decision of 21 April 2016, the Commission opened a dialogue process with Trinidad and Tobago.
- (8) In particular, the Commission invited Trinidad and Tobago to take all necessary measures to implement the actions contained in the action plan suggested by the Commission and to assess their implementation.
- (9) Trinidad and Tobago was given the opportunity to respond to the Decision of 21 April 2016 as well as to other relevant information communicated by the Commission, and to submit evidence refuting or completing the facts stated in that Decision. Trinidad and Tobago was assured of its right to ask for, or to provide, additional information.
- (10) The Commission has continued to seek and verify all relevant information. The oral and written comments submitted by Trinidad and Tobago following the Decision of 21 April 2016 were considered and taken into account. Physical as well as virtual meetings were held between Trinidad and Tobago and the Commission to discuss relevant points. Trinidad and Tobago was kept informed, either orally or in writing, of the Commission's considerations.
- (11) On the basis of the information gathered, the Commission established that the areas of concern and shortcomings set out in the Decision of 21 April 2016 had not been addressed sufficiently by Trinidad and Tobago. 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 2023/xxx/EU⁵, identifying Trinidad and Tobago as a non-cooperating third country in fighting IUU fishing (the 'Implementing Decision of 25 September 2023').
- (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 21 April 2016 and Implementing Decision of 25 September 2023, it is appropriate to place Trinidad and Tobago on the list of non-cooperating third countries in fighting IUU fishing.

2. IDENTIFICATION OF TRINIDAD AND TOBAGO AS A NON-COOPERATING THIRD COUNTRY

⁵ Commission Implementing Decision 2023/xxx/EU of 25 September 2023 [C(2023) 6303] identifying Trinidad and Tobago as a non-cooperating third country in fighting illegal, unreported and unregulated fishing (OJ L xx, dd.mm.20yy, p. x).

- (14) In the Decision of 21 April 2016, the Commission analysed the duties of Trinidad and Tobago 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.
- (15) The Commission reviewed the compliance of Trinidad and Tobago in line with the findings of the Decision of 21 April 2016 and, with regard to relevant information provided thereon by Trinidad and Tobago, the suggested plan of action, and the measures taken to rectify the situation.
- (16) 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 efficient and adequate monitoring of fishing vessels flying the flag of Trinidad and Tobago and lack of fisheries inspections at port. The identified shortcomings relate, more generally, to the lack of compliance with the obligations contained in the United Nations Convention on the Law of the Sea (UNCLOS)⁶, the United Nations Fish Stocks Agreement (UNFSA)⁷ and the Agreement on Port State Measures to prevent, deter and eliminate IUU fishing (PSMA)⁸.
- (17) In Implementing Decision of 25 September 2023, the Commission therefore identified Trinidad and Tobago as a non-cooperating third country pursuant to the IUU Regulation.
- (18) No evidence has been found to suggest that the failure of Trinidad and Tobago to discharge its duties under international law is the result of development constraints.
- (19) Having regard to the Decision of 21 April 2016 and Implementing Decision of 25 September 2023, and to the dialogue process with Trinidad and Tobago held with the Commission and its outcome, it is concluded that the actions undertaken by Trinidad and Tobago in light of its duties as flag State are insufficient to comply with Articles 94, 117, 118 and 119 of UNCLOS, Articles 18, 19 and 23 of UNFSA and Articles 6, 7, 8, 9 and 12 of PSMA.
- (20) Therefore, Trinidad and Tobago 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 Trinidad and Tobago, that country should be added, in accordance with Article 33 of the IUU Regulation, to the list of non-cooperating third countries established by Council Implementing Decision 2014/170/EU. That Decision should therefore be amended accordingly.
- (22) The inclusion of Trinidad and Tobago 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

⁶ OJ L 179, 23.6.1998, p. 3.

⁷ OJ L 189, 3.7.1998, p. 17.

⁸ OJ L 191, 22.7.2011, p. 1.

non-cooperating countries. In the case of Trinidad and Tobago, that prohibition should cover all stocks and species defined in Article 2(8) of the IUU Regulation, as the lack of appropriate measures adopted in relation to IUU fishing which has led to the identification of Trinidad and Tobago 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 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 Trinidad and Tobago 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*.
- (24) If Trinidad and Tobago 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 Trinidad and Tobago 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 Trinidad and Tobago has taken concrete measures capable of achieving a lasting improvement of the situation,

HAS ADOPTED THIS DECISION:

Article 1

The Republic of Trinidad and Tobago 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