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Committee on Fisheries

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DRAFT RECOMMENDATION

on the proposal for a Council decision on the approval of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
(COM(2010)0792 – C7-0000/2011 – 2010/0389(NLE))

Committee on Fisheries

Rapporteur: Carmen Fraga Estévez

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the approval of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (COM(2010)0792 – C7-0000/2011 – 2010/0389(NLE))

(Consent)

The European Parliament,

- having regard to the draft Council decision (00000/2011),
 - having regard to the draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (00000/2011),
 - having regard to the request for consent submitted by the Council in accordance with Article 43(2) and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0000/2011),
 - having regard to Rules 81 and 90(8) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Fisheries (A7-0000/2011),
1. Consents to conclusion of the agreement;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and to the Director-General of the Food and Agriculture Organisation (FAO).

EXPLANATORY STATEMENT

Background

In 2001, the Food and Agriculture Organisation (FAO) developed within the framework of the 1995 FAO Code of Conduct for Responsible Fisheries an **International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)**. The IPOA-IUU adopted an holistic approach, elaborating actions to be taken by flag, coastal and port states. This was the fourth time that port state measures had been agreed in an international instrument as means of monitoring and controlling fishing activities. The three previous instruments were the **1993 FAO Compliance Agreement**, the **1995 UN Fish Stocks Agreement** and the **1995 FAO Code of Conduct on Responsible Fisheries**.

Global awareness of the potential effectiveness of strengthened and harmonized port state measures expanded rapidly, together with an appreciation of their cost-effectiveness and their **central role in reinforcing other tools for combating IUU fishing**, such as those relating to international trade and flag states responsibility. This resulted in particular in the adoption in **2005** by the FAO of the **Model Scheme on Port State Measures to Combat IUU Fishing**. This Model Scheme is a voluntary and non-binding instrument and provides for minimum standards which should underpin the adoption of measures by States in order to monitor, control and inspect foreign-flagged fishing vessels wishing to use their harbours.

In addition, some Regional Fisheries Management Organisations (RFMOs) have put in place binding Port State mechanisms which shall be applied by parties to these Organisations in order to monitor the legality of landings, transhipments and other operations in their ports. Specific rules have also been enacted in some RFMOs aiming at denying port access to vessels listed by the organisation as having engaged or supported IUU fishing activities.

At the 2007 meeting of the FAO Committee for Fisheries, it was agreed that an **international legally binding instrument** on Port State Measures to Prevent, Deter and Eliminate IUU Fishing should be elaborated. An expert consultation on this issue took place in Washington in September 2007.

The FAO has subsequently held four technical consultations (in June 2008 and in January, May and August 2009), open to all FAO Parties, with the aim of finalizing the draft international instrument on Port State measures.

The European Union (EU) has participated in this process from the start and has played an active and constructive role in the drafting of the Agreement.

Following a year of intense negotiations, **the 36th session of the FAO Conference, held in Rome from 18 to 23 November 2009**, approved the **Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing** (hereinafter "**the Agreement**"), in accordance with Article XIV of the FAO Constitution, for submission to FAO Members.

The Agreement was **signed on 22 November 2009 on behalf of the European Community**, subject to its conclusion at a later date.

This proposal for a Council Decision intends to approve the Agreement on behalf of the EU, following the consent of the European Parliament, in accordance with Article 43 in conjunction with Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU).

The content of the Agreement

The **objective** of the Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, thereby ensuring the long-term conservation and sustainable use of living marine resources and marine ecosystems.

The Agreement will be applied by parties, in their capacities as port states, for vessels not entitled to fly their flags, while seeking entry to ports or while they are in port. It covers not only fishing vessels, but also vessels used for "fishing related activities", such as transport vessels which may be used to carry fisheries products. It also endorses a broad definition of IUU fishing, so as to include a **wide range of unregulated fishing operations**.¹

Parties shall **designate the ports** to which vessels may request entry. The Agreement specifies procedures for vessels to follow when requesting port entry and, conversely, for port states in relation to vessel inspections and other responsibilities such as the transmittal of inspection results.

Parties shall deny the **entry into their ports** if they have sufficient proof that a vessel seeking entry has engaged in IUU fishing or fishing related activities, in particular if the vessel in question is included in a list of IUU vessels adopted by a relevant RFMO. Where a vessel has entered one of its ports, the **use of port** shall also be denied *inter alia* if the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities, if it receives clear evidence that the fish on board was taken in contravention of the applicable requirements or if the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities.

Part 4 of the Agreement relates to **"inspections and follow up actions"**. Parties are requested to inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of the Agreement.

The annexes, as an integral part of the Agreement, specify the **information** to be provided in advance by vessels seeking entry to the parties' ports as well **as guidelines for inspection procedures, the handling of inspection results, information systems and training requirements**.

The real-time exchange of information is a key aspect of the Agreement. Parties must be prepared and capable of exchanging information (with relevant States, FAO, other international organizations and RFMOs) relating to vessels suspected of engaging, or found to have engaged, in IUU fishing.

¹ "Vessels" are defined as any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or "fishing related activities", including "any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea"

Parties should cooperate to establish an **information-sharing mechanism**, preferably coordinated by the FAO, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to the Agreement.

Article 20 relates to the **role of flag States**, which shall cooperate with the port States in inspections and other actions carried out pursuant to the Agreement, including enforcement actions.

The Agreement includes a number of **safeguard mechanisms** consistent with international law (e.g. cases of "force majeure or distress" and procedure for appeal).

Article 21 focuses on the **special requirements of developing States** and recognizes the need to ensure that all parties, irrespective of their geographic location and level of development, have the human and material means necessary to implement the Agreement. Parties shall cooperate to establish appropriate funding mechanisms to assist developing States in this implementation. They shall establish an *ad hoc* working group to periodically report and make recommendations on the establishment of such mechanisms, including a scheme for contributions, identification and mobilisation of funds, the development of criteria and procedures to guide implementation.

The Agreement will enter into force **thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification**, acceptance, approval or accession in accordance.

As at 31 January 2011, 23 FAO Members had signed the Agreement and **two instruments of accession had been deposited**.

Conclusions

IUU fishing remains one of the most serious global threats to the sustainable exploitation of living aquatic resources. The fight against IUU fishing constitutes an **essential component of the Common Fisheries Policy** and the EU should be able to foster international cooperation on this matter by participating actively and constructively in the adoption of an international instrument on Port State measures.

The EU is a member of the FAO as well as of 13 RFMOs. Port State mechanisms adopted within RFMOs have been implemented into EU law, which also provides for comprehensive rules¹ applying to access to port services, landings and transshipments of fisheries products by third country vessels in the Union ports and for cooperation and assistance mechanisms between the EU and third countries.

¹ See in particular **the Council Regulation (EC) No 1005/2008 of 29 September 2008** establishing a Community system to prevent, deter and eliminate IUU fishing and the **Commission Regulation No 1010/2009 of 22 October 2009** laying down detailed rules and measures to its implementation.

The rapporteur welcomes the efforts undertaken by the European Commission for the adoption by RFMOs of resolutions based on the FAO Port State Measures Agreement. During the IOTC (Indian Ocean Tuna Commission) plenary held in March 2010 in Busan, South Korea, a Port State measures resolution tabled by the EU was adopted (resolution 2010/11). Similar proposals were also tabled by the EU in other RFMOs, **in order to strengthen and align their port state measures currently in force with the requirements of the Agreement**. Unfortunately, in several cases, they could not be adopted due to the opposition of a number of countries, such as some Latin-American and small Pacific Islands countries. **The rapporteur firmly supports and encourages the European Commission to continue to push for the adoption of these proposals**, as the measures provided for in the Agreement will only be truly effective in combating IUU fishing **if and when globally enforced in a comprehensive, uniform and transparent manner**, in order to avoid loopholes that can be easily exploited by IUU fishing operators.

The recent 29th Session of the FAO Committee on Fisheries, held in Rome from 31 January to 4 February 2011, agreed that port state measures were a potent and cost-effective tool to combat IUU fishing and requested the FAO to form an open-ended working group or similar mechanism to draft the terms of reference for the *ad-hoc* group envisaged in Article 21 of the Agreement, in order **to assist developing countries in the implementation of this instrument**. Combating IUU fishing requires the **combined application of different tools** and the EU is also strongly involved in other recent initiatives taken by FAO on this matter, such as the development of **international guidelines on criteria for assessing the Flag State Performance** and the development of a comprehensive **Global Record** of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels.

The European Union is a major player in international fisheries and one of the main global markets for fishery products and it is in its interest to approve the Agreement and to play an effective role in its implementation.

In the light of the above, the rapporteur proposes that Parliament give its consent to the conclusion of the Agreement, which is **a major contribution to the ongoing global fight against the IUU fishing**.