



EUROPEAN COMMISSION

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on certain measures in relation to countries allowing non-sustainable fishing for the  
purpose of the conservation of fish stocks**

{SEC(2011) 1575 final}

{SEC(2011) 1576 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

The UN Convention on the Law of the Sea<sup>1</sup> as well as the UN Fish Stocks Agreement<sup>2</sup> require coastal States and States whose fleets fish for such stocks on adjacent high seas to cooperate in managing responsibly straddling and highly migratory fish stocks and stocks occurring in adjacent economic exclusive zones in order to ensure their long-term sustainability, either by direct consultation amongst each other or via the appropriate Regional Fisheries Management Organizations (RFMOs).

Agreement on the management of straddling and highly migratory stocks is often difficult to reach and requires a genuine willingness of all States concerned to cooperate. The adoption of unilateral measures by certain States lacking good will to work towards agreed measures may lead to considerable depletion of the fish stock in question even if other States engage in moderating their fishing effort.

The EU being a lucrative market of destination for fisheries products, it has a particular responsibility in ensuring that the above-mentioned obligation of cooperation is respected. Therefore, it is necessary to provide the EU with the means to take effective measures against States not cooperating in good faith in the adoption of agreed management measures or responsible for measures and practices that lead to over-exploitation of stocks, in order to create a disincentive for the continuation of this unsustainable fishing. The present proposal aims at setting out a swift and effective mechanism to use trade and other type of measures in situations like the ones described above. These measures would aim at promoting cooperation among States concerned for the adoption of appropriate and, to the extent possible, agreed conservation measures for the stocks in question so as to ensure the optimum utilization of such stocks.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The annual consultations with non-EU coastal states on the management of stocks of common interest gives an occasion to consult with stakeholders on how to react in cases where cooperation by a given third country is not forthcoming. Generally speaking, stakeholders request from the Commission the adoption of trade restrictions and other types of measures as a means to put pressure on those countries so that they would agree to enter into a meaningful negotiation and find a fair solution guaranteeing the sustainability of the stocks of common interest.

The preparation of an impact assessment for this proposal was preceded by a targeted consultation on the use of trade and other types of measures as a means to induce a reduction in the intensity of fishing by third countries allowing non-sustainable fishing . Most

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<sup>1</sup> United Nations Convention on the Law of the Sea of 10 December 1982

<sup>2</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995

stakeholders, with the sole exception perhaps of the processing industry, were plainly in favour of the adoption of trade-related and other types of measures.

An impact assessment was conducted for this proposal and its executive summary is accompanying this proposal. Essentially, the impact assessment analysed the environmental, economic and social impacts of measures ranging from a "zero option" to a total ban on importations of the fish and fishery products in question, and including both measures that might extend beyond the trade context and non-legislative approaches. The conclusion of the impact assessment was that it would be pertinent to provide the EU with an instrument allowing the swift adoption of measures, mostly trade-related. The measures would be introduced against countries which allow fishing that is conducted in a non-sustainable way that threatens the conservation of fish stocks. Indications of the possible form and content of the instrument were also suggested in the impact assessment. During preparation of the measure, it has become clear that the legal basis should be Article 43(2) and 207 TFEU since the ultimate objective of the regulation is to promote conservation of fish stocks and the range of measures considered is not limited to trade-related ones.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

Article 1 defines the main purpose of the Regulation: to set out a procedure so that equitable cost-effective measures can be taken in order to promote fisheries sustainability.

Articles 2 to 5 describe which countries are to be targeted by the measures (countries allowing non-sustainable fishing), the different types of measures that may be adopted and the conditions determining where and when they may be adopted. Article 4 stipulates in particular that the measures are to be adopted as Commission implementing acts (in general the examination procedure would be applicable). Where a requirement for measures to be consistent with the EU international commitments is mentioned, compatibility with the obligations of the EU under the WTO Agreement is meant in particular as far as trade restrictions are concerned.

Article 6 defines certain due process steps that shall be undertaken prior to the adoption of the measures vis-à-vis the countries allowing non-sustainable fishing. These demarches should allow the countries concerned to be heard and provide them an opportunity to rectify their actions. Article 7 determines the period of application of the measures, subject to the adoption of corrective measures by the countries concerned.

Article 8 defines the Committee that will assist the Commission in implementing the Regulation.

The entry into force of the Regulation is set out in Article 9 as 20 days after publication.

### **4. BUDGETARY IMPLICATION**

There is no budgetary implication

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) and Article 207,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) As provided in the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "UNCLOS") and in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (hereinafter referred to as "UN Fish Stocks Agreement"), the management of certain straddling and highly migratory fish stocks requires the cooperation of all the countries whose fleets exploit that stock. This cooperation may be established in the framework of regional fisheries management organizations (RFMOs) or, where RFMOs have no competence for the stock in question, by means of ad-hoc arrangements among the countries having an interest in the fishery.
- (2) Where third countries having an interest in a fishery involving stocks of common interest to that country and the Union conduct, without due regard to existing fishing patterns and/or the rights, duties and interests of other States and those of the Union, fisheries activities that jeopardize the sustainability of the stock, failing to cooperate with the Union in its management, specific measures should be adopted in order to promote the contribution of those countries to the conservation of the stock.
- (3) Fish stocks should be considered in a sustainable state when they are continuously maintained at or above the levels than can produce maximum sustainable yield as referred to in Articles 61(3) and 119(1) of UNCLOS and Article 5(b) of the UN Fish Stocks Agreement.

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<sup>3</sup> OJ C , , p . .

- (4) It is necessary to define the conditions upon which a country can be considered as allowing non-sustainable fishing and subject to measures under this Regulation, including a process granting the countries concerned the right to be heard and allowing them an opportunity to adopt corrective action.
- (5) In addition, it is necessary to define the type of measures that may be taken with regard to countries allowing non-sustainable fishing and to establish general conditions for the adoption of such measures so they are based on objective criteria, equitable, cost-effective and compatible with international law, in particular the Agreement establishing the World Trade Organization.
- (6) Such measures should aim at removing incentives for the fleets of the country allowing non-sustainable fishing to fish on the stock of common interest. This can be achieved by, for example, restricting imports of fish products caught by vessels conducting fisheries on a stock of common interest under the responsibility of a country allowing non-sustainable fishing, restricting the provision of port services to those vessels, or avoiding that Union fishing vessels or Union fishing equipment may be used for fishing the stock of common interest under the responsibility of the country allowing non-sustainable fishing.
- (7) In order to ensure effective and coherent Union action for the conservation of fish stocks, it is important that the measures set out in Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing,<sup>4</sup> are taken into consideration.
- (8) It is necessary that the adoption of such measures be preceded by an evaluation of their expected environmental, trade, economic and social effects.
- (9) The measures adopted pursuant to this Regulation should cease to apply whenever the country allowing non-sustainable fishing has adopted the necessary measures to contribute to the conservation of the stock of common interest.
- (10) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred upon the Commission. Those powers should be exercised by implementing acts providing for the examination procedure in accordance with Article 2(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control of by Member States of the Commission's exercise of implementing powers<sup>5</sup>. However, for reasons of urgency, the decisions whether the measures would cease to apply should be adopted as immediately applicable implementing acts in accordance with Article 8 of the said regulation
- (11) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the end of application of measures taken pursuant to this Regulation, imperative grounds of urgency so require,

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<sup>4</sup> OJ L 286, 29.10.2008, p.1

<sup>5</sup> OJ L 55, 28.2.2011, p. 13.

HAVE ADOPTED THIS REGULATION:

*Article 1*  
*Subject matter and scope*

1. This Regulation lays down the framework for the adoption of certain measures regarding fisheries-related activities and policies by third countries with the aim of ensuring long-term sustainability of fish stocks of common interest between the European Union and those third countries.
2. The measures adopted pursuant to this Regulation may apply in all cases where cooperation with the Union is required in the joint management of the stocks of common interest, including where that cooperation takes place in the context of a regional fisheries management organization or a similar body.

*Article 2*  
*Definitions*

For the purposes of this Regulation the following definitions shall apply,

- (a) "stock of common interest" means a fish stock whose geographical distribution makes it available to the fleets of both Member States and third countries and whose management requires the cooperation between these third countries and the Union;
- (b) "associated species" means any fish species that occur in a mixed fishery with a stock of common interest;
- (c) "mixed fishery" means a fishery where more than one species are present in the area being fished and are vulnerable to being caught in the fishing gear.
- (d) "regional fisheries management organisation" means a sub-regional, regional or a similar organisation with competence, as recognised under international law, to establish conservation and management measures for living marine resources placed under its responsibility by virtue of the convention or agreement by which it was established;
- (e) "importation" means the introduction of fish or fishery products into the territory of the Union, including for transshipment purposes at ports in its territory;
- (f) "transshipment" means the unloading of all or any fish or fishery products on board a fishing vessel to another fishing vessel;
- (g) "maximum sustainable yield" means the maximum catch that may be taken from a fish stock indefinitely

*Article 3*  
*Countries allowing non-sustainable fishing*

1. A third country may be identified as a country allowing non-sustainable fishing where
  - (a) it fails to cooperate with the Union in the management of a stock of common interest in full accordance with the provisions of the United Nations Convention on the Law of the Sea or of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995, and
  - (b) that third country
    - (a) has failed to adopt any fishery management measures, or
    - (b) has adopted such measures without due regard to the rights, interests and duties of others including the European Union, and those fishery management measures lead to fishing activities which would lead the stock below the levels that can produce maximum sustainable yield, when considered in conjunction with measures taken by the Union either autonomously or in cooperation with other countries.
2. For the purposes of paragraph 1(b)(ii), the stock levels that can produce maximum sustainable yield shall be determined on the basis of best available scientific advice.

*Article 4*  
*Measures which may be adopted in respect to countries allowing non-sustainable fishing*

1. The Commission may adopt, by means of implementing acts, the following measures in respect to countries allowing non-sustainable fishing:
  - (a) identify the countries allowing non-sustainable fishing;
  - (b) identify, where necessary, the specific vessels or fleets to which certain measures apply;
  - (c) impose quantitative restrictions on importations into the Union of fish, and fishery products made of or containing such fish, stemming from the stock of common interest and that had been caught under the control of the country allowing non-sustainable fishing;
  - (d) impose quantitative restrictions of importations into the Union of fish of any associated species, and fishery products made of or containing such fish, when caught while conducting fisheries on the stock of common interest under the control of the country allowing non-sustainable fishing; in such a case, the Commission shall define appropriate means to determine which catches fall within the scope of the measure;

- (e) impose restrictions of the use of Union ports by vessels flying the flag of the country allowing non-sustainable fishing that fish the stock of common interest and by vessels transporting fish and fishery products stemming from the stock of common interest that had been caught either by vessels flying the flag of the country allowing non-sustainable fishing or by vessels authorised by it while flying another flag; such restrictions shall not apply in cases of *force majeure* or distress within the meaning of Article 18 of the UNCLOS (*force majeure* or distress) for services strictly necessary to remedy those situations;
  - (f) prohibit the purchase by Union economic operators of a fishing vessel flying the flag of countries allowing non-sustainable fishing ;
  - (g) prohibit the reflagging of fishing vessels flying the flag of a Member State to countries allowing non-sustainable fishing;
  - (h) prohibit Member States to authorise the conclusion of chartering agreements with economic operators from countries allowing non-sustainable fishing;
  - (i) prohibit the exportation to countries allowing non-sustainable fishing of fishing vessels flying the flag of a Member State or of fishing equipment and supplies needed to fish on the stock of common interest ;
  - (j) prohibit the conclusion of private trade arrangements between nationals of a Member State and countries allowing non-sustainable fishing in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of such countries;
  - (k) prohibit joint fishing operations involving fishing vessels flying the flag of a Member State and fishing vessels flying the flag of a country allowing non-sustainable fishing;
2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(2).

#### *Article 5*

#### *General requirements concerning the measures adopted pursuant to this Regulation*

1. The measures adopted in accordance with this Regulation shall be:
- (a) related to the conservation of the stock of common interest;
  - (b) made effective in conjunction with restrictions on fishing by Union vessels or on production or consumption within the Union applicable to fish, and fishery products made of or containing such fish, of the species for which the measures have been adopted pursuant to this Regulation. These restrictions, in the case of associated species, may apply only when these are caught while conducting fisheries on the stock of common interest.
  - (c) compatible with the obligations imposed by international agreements to which the Union is a party and any other relevant norms of international law.



2. The measures adopted in accordance with this Regulation shall take into account measures already taken pursuant to Regulation (EC) No 1005/2008.
3. The measures adopted in accordance with this Regulation shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.
4. In adopting measures in accordance to this Regulation, the Commission shall evaluate the environmental, trade, economic and social effects of those measures in the short and long terms and the administrative burden associated to their implementation.
5. The measures adopted in accordance with this Regulation shall foresee an appropriate system for their enforcement by Competent Authorities.

#### *Article 6*

#### *Procedures prior to the adoption of measures in respect to countries allowing non-sustainable fishing*

1. Where it considers necessary to adopt measures pursuant to Article 4, the Commission shall notify the country concerned of the intention to identify it as a country allowing non-sustainable fishing .
2. That notification shall include information on the reasons for the identification of that country as a country allowing non-sustainable fishing and describe the possible measures that could be taken in relation to it in accordance with this Regulation.
3. Prior to adopting measures pursuant to Article 4, the Commission shall provide the third country concerned with a reasonable opportunity to respond to the notification in writing and to remedy the situation.

#### *Article 7*

#### *Period of application of the measures in respect to countries allowing non-sustainably fishing*

1. The measures adopted in accordance with this Regulation shall cease to apply upon adoption by the country allowing non-sustainable fishing of appropriate corrective measures for the management of the stock of common interest that
  - (a) have been agreed in the context of consultations with the Union and, where applicable, other countries concerned, or
  - (b) Do not undermine the effect of measures taken by the EU either autonomously or in cooperation with other countries on the conservation of the fish stocks concerned.
2. The Commission shall, by means of implementing acts, determine whether the conditions laid down in paragraph 1 have been complied with and shall, where necessary, decide that the measures adopted pursuant to Article 4 cease to apply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(2).

On duly justified imperative grounds of urgency relating to unforeseen economic or social disruption, the Commission shall adopt immediately applicable implementing acts to decide that the measures adopted pursuant to Article 4 cease to apply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(3).

*Article 8*  
*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so requests.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

*Article 9*  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*