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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1026/2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

As provided in the United Nations Convention on the Law of the Sea of 10 December 1982¹ ('UNCLOS') and in 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 1995² ('UNFSA'), the management of certain shared, straddling and highly migratory fish stocks requires the cooperation of all the countries in whose waters the stock occurs (the coastal States) and the countries whose fleets exploit that stock (the fishing States). This cooperation may be established in the framework of regional fisheries management organisations ('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. 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 may lead to considerable depletion of the fish stock in question even if other States take measures to moderate 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.

Regulation (EU) 1026/2012 of the European Parliament and of the Council on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing³ lays down a framework for the EU to adopt certain measures regarding the fisheries-related activities and policies of third countries which allow non-sustainable fishing in order to ensure the long-term conservation of stocks of common interest to the Union and those third countries. Such measures can include identifying a country as a country allowing non-sustainable fishing and imposing quantitative restrictions on importations of fish from the stock of common interest that have been caught under the control of that country and on importations of fishery products made of or containing such fish.

The framework laid down in Regulation (EU) 1026/2012 was used only once, in 2013, to impose import restrictions and port measures targeting Faroese fisheries of both herring and mackerel. It played a pivotal role in the conclusion and signature, in 2014, of a mackerel sharing arrangement. The EU lifted the measures adopted pursuant to Regulation (EU) 1026/2012 in 2014, following the signature of the sharing agreement and the decrease of the unilaterally increased quotas which had led to unsustainable fishing.

This proposal is a targeted amendment to Regulation (EU) 1026/2012 and is mostly aimed at clarifying certain elements of the conditions to trigger the identification of a country as allowing unsustainable fishing, for increased legal certainty. The amendment is also intended to clarify and reinforce the process for cooperation before and after the EU takes measures,

¹ United Nations Convention on the Law of the Sea of 10 December 1982.

² 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.

³ Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing.

with the ultimate goal to obtain the cessation of non-sustainable fishing practices as soon as possible.

- **Consistency with existing policy provisions in the policy area**

This proposal complements, and is consistent with, other provisions of Union law in this area. This proposal is in line with Part VI (External Policy) of Regulation (EU) No 1380/2013 on the common fisheries policy (CFP)⁴. This provides for the Union to conduct its external fisheries in accordance with its international obligations and to base its fishing activities on regional fisheries cooperation.

- **Consistency with other Union policies**

The proposal is in line with the Union's environmental and trade policies, supporting the overarching objectives of the European Green Deal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Like Regulation (EU) 1026/2012, this proposal is based on Articles 43(2) and 207 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

As this proposal falls under the exclusive competence of the Union (Article 3(1)(d) TFEU), the subsidiarity principle does not apply.

- **Proportionality**

Since the proposal concerns targeted amendments seeking to clarify certain provisions of Regulation (EU) No 1026/2012, there are no concerns regarding the proportionality principle.

- **Choice of the instrument**

The proposed act is a Regulation to be adopted by the European Parliament and the Council, given that the act to be amended is a Regulation adopted by the European Parliament and the Council.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

This proposal seeks to clarify specific provisions of Regulation (EU) 1026/2012.

- **Stakeholder consultations**

N/A

⁴ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

- **Collection and use of expertise**

N/A

- **Impact assessment**

N/A

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

This proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

This proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

An implementation plan cannot be defined as Regulation (EU) 1026/2012 lays down the framework for the adoption of certain measures regarding fisheries-related activities and policies by third countries. It empowers the Commission to act (identify a country and impose measures) only under specific circumstances and it is not possible to plan in advance when those circumstances will arise and the conditions to trigger the Regulation will be met.

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

This proposal seeks to amend Regulation (EU) No 1026/2012 in three ways.

First, it seeks to add a new indent to the existing Article 2 “Definitions”, in order to clarify the requirement to cooperate under UNCLOS and UNFSA.

Second, it seeks to clarify that a country may be considered to allow non-sustainable fishing if it does not implement the necessary measures, and that such measures include control measures.

Third, it seeks to reinforce the procedures prior and subsequent to the adoption of measures in respect to countries allowing non-sustainable fishing.

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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 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In line with the United Nations Convention on the Law of the Sea of 10 December 1982¹ ('UNCLOS') and 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 1995² ('UNFSA'), the management of certain straddling and highly migratory fish stocks requires the cooperation of all the countries whose fleets exploit that stock.
- (1) Regulation (EU) No 1026/2012³ of the European Parliament and of the Council establishes a framework to allow for the identification and the adoption of measures with regard to third countries which fail to cooperate and allow unsustainable fishing of a stock of common interest for the Union.
- (2) In accordance with Regulation (EU) No 1026/2012 a country may be identified as allowing non-sustainable fishing if, among others, it fails to cooperate in the management of a stock of common interest in full compliance with the provisions of the UNCLOS and the UNFSA, or any other international agreement or norm of international law and if it fails to adopt necessary fishery management measures.
- (3) A definition of "failure to cooperate" should be introduced, to better define, for the purposes of Regulation (EU) No 1026/2012, the scope and meaning of the requirement to cooperate pursuant to UNCLOS and UNFSA.

¹ United Nations Convention on the Law of the Sea, OJ L 179, 23.6.1998, p. 3, ELI: <http://data.europa.eu/eli/convention/1998/392/oj>.

² Agreement for the implementing 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 stocks and highly migratory fish stocks, OJ L 189, 3.7.1998, p. 17.

³ Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing (OJ L 316, 14.11.2012, p. 34, ELI: <http://data.europa.eu/eli/reg/2012/1026/oj>.)

- (4) It is also necessary to clarify that a country may be considered as allowing non-sustainable fishing if it does not implement the necessary fishery management measures, and that those measures include control measures.
- (5) It is also appropriate to reinforce the procedures prior and subsequent to the adoption of measures in respect to countries allowing non-sustainable fishing.
- (6) Regulation (EU) No 1026/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1026/2012 is amended as follows:

- (1) in Article 2, the following point (i) is added:

“

- (i) ‘failure to cooperate’ means the failure to engage in good faith and have meaningful consultations, in which substantial effort is made, with a view to reaching an agreement on the adoption of necessary fishery management measures; examples of failure to cooperate include, but are not limited to:

- (1) refusal to consult;
- (2) refusal to involve in the consultations all the relevant coastal States and/or fishing parties;
- (3) unjustified unilateral breaking off of consultations;
- (4) undue delays;
- (5) unreasonable information requests;
- (6) disregard of agreed procedures;
- (7) systematic refusal to take into consideration counter proposals or other parties’ interests;
- (8) systemically insisting upon own positions;
- (9) refusal to take into account the best available scientific advice regarding the relevant stock or stocks.
- (10) pursuing consultations with a view to concluding partial sharing arrangements excluding some relevant coastal States and/or fishing parties, for stocks of common interest, while consultations for comprehensive sharing arrangements are still on-going.”.

- (1) in Article 3(b), point (i) is replaced by the following:

“(i) it fails to adopt or implement necessary fishery management measures, including control measures in order to ensure the effective conservation and management of stocks of common interest; or”;

- (2) Article 6 is amended as follows:

- (a) the heading is replaced by “Procedures prior and subsequent to the adoption of measures in respect to countries allowing non-sustainable fishing”;
- (b) paragraph (3) is replaced by the following:

“3. Prior to adopting measures referred to in Article 4, the Commission shall provide the country concerned with a reasonable opportunity to respond to the notification in writing and to provide any relevant information.”;

(c) the following paragraphs (4), (5) and (6) are inserted:

“

4. The Commission shall give to the country concerned adequate time to reply to the notification and a reasonable time to remedy the situation.

5. Following the adoption of measures pursuant to Article 4, the Commission shall continue to engage with the country concerned, with a view to that country ceasing to allow non-sustainable fishing.

6. Where the country concerned enters into consultations with the Union in good faith, the Commission shall engage in such consultations expeditiously.”.

Article 2

This Regulation shall enter into force on the 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