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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.5.2008
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RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to conduct negotiations for the elaboration of an international legally-binding instrument on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing

I. EXPLANATORY MEMORANDUM

At the latest 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 in view of its presentation at the 28th session of the FAO COFI in February 2009¹

An expert consultation on this issue took place in Washington in September 2007.

A technical consultation, open to all FAO Parties, will aim at finalizing the draft international instrument on Port State measures during a session to be held from 23 to 27 June 2008.

Port State measures have been identified as a key tool in the fight of the international community against IUU fishing. 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 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. It is a voluntary and non-binding instrument.

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

The Community is a member of the FAO as well as of 13 RFMOs. Port State mechanisms adopted within RFMOs have been implemented into Community law. Community law also provides for general rules applying to the landing of fisheries products by third country vessels in Community ports.

The fight against IUU fishing constitutes an essential component of the Common Fisheries Policy and the Community should be able to foster international cooperation on this matter by participating actively and constructively in the negotiations on an international instrument on Port State measures.

In addition to the above considerations, the following should be noted:

¹ Cf. para 68 of the Report of the twenty-seventh session of the FAO Committee on Fisheries (Rome, 5-9 March 2007) "Acknowledging the urgent need for a comprehensive suite of port State Measures, the Committee took note of the strong support for the Norwegian proposal to develop a new legally binding instrument based on the Model Scheme on Port State Measures to Combat IUU Fishing and the IPOA-IUU. The Committee endorsed the following timetable: an Expert Consultation to be convened during the latter half of 2007 to prepare a draft agreement and a Technical Consultation to finalize the instrument's text during the first half of 2007 to prepare a draft agreement and a Technical Consultation to finalize the instrument's text during the first half of 2008 and present it to the twenty-eighth COFI Session in 2009. Many Members stressed that the new instrument would represent minimum standards for port States, with flexibility to adopt more stringent measures and some Members also stressed that it should not detract from other previously agreed measures such as the need for capacity reduction."

- in line with settled case law of the ECJ (based on *Kramer et al* and consistently confirmed thereafter) the EC has exclusive external competence in matters of fisheries for the purpose of conservation of the biological resources of the sea;
- the Commission has adopted on 17 October 2007 the proposed Regulation on IUU Fisheries;
- the EC's declaration of competence made upon accession to the FAO provides in point I b) that the EC has exclusive competence for matters of fisheries for the purpose of the conservation of the biological resources of the sea;
- Point 2.1 of the inter-institutional arrangement Council/Commission made upon accession of the EC to the FAO provides that the Commission intervenes and votes on behalf of the EC for issues arising under exclusive EC competence;
- In Case C-25/94 regarding the FAO Compliance Agreement the ECJ has held that this arrangement Council/Commission also applies when FAO organs are conducting negotiations for an FAO convention.

II. RECOMMENDATION

In the light of the above, the Commission recommends:

- that the Council authorise the Commission to negotiate with other interested parties with a view to the elaboration of an international legally-binding instrument on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- that, since in accordance with the Treaty, the commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task ; and
- that the Council issue the appended negotiating directives.

ANNEX

Negotiating Directives

The Commission shall conduct negotiations on behalf of the Community with a view to the elaboration of an international legally binding instrument on Port State measures which shall be geared towards preventing, deterring and eliminating IUU fishing.

The Commission shall make sure that the text of the agreement is consistent with international law, and in particular with the provisions of the UN Convention on Law of the Sea, the UN Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas.

The Commission shall also act in accordance with the objectives pursued by the Community within the framework of the Common Fisheries Policy and, insofar as the agreement affects developing countries, take into account the orientations defined in the context of the "Policy coherence for development" process.

The Commission shall support the establishment of an instrument which binds its Parties to enact measures:

- to deter vessels engaged in or supporting IUU fishing activities from using their ports;
- to inspect vessels present in their ports and presumed to have engaged in or supported such activities;
- to ensure a proper follow up of inspections and adopt appropriate measures, in accordance with international law, towards vessels for which it can be established that they were engaged in or have supported IUU fishing activities.

The Commission shall promote the insertion of the agreement into an integrated approach designed to deter, prevent and eliminate IUU fishing, based notably on international cooperation and monitoring and control measures applying to the whole chain of fishing and related activities ("from the net to the plate").

The Commission shall make sure that the agreement is effectively designed to target IUU fishing activities without discriminating against vessels which operate in compliance with applicable laws, regulations or conservation and management measures.

The Commission shall support the position that the provisions of the agreement shall be constitutive of minimum standards which do not prevent its Parties from enacting, as Port States and in accordance with international law, more stringent measures against IUU fishing.

The Commission shall ensure that the agreement contains appropriate provisions enabling the Community to become a Party thereto.

The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.