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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008
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Delegations will find attached document COM(2017) 633 final.

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Brussels, 25.10.2017
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2015/0289 (COD)

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TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament and
of the Council on the sustainable management of external fishing fleets, repealing
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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 10 December 2015
(document COM(2015) 636 final – 2015/0289 COD):

Date of the opinion of the European Economic and Social Committee: 25 May 2016

Date of the position of the European Parliament, first reading: 2 February 2017

Date of transmission of the amended proposal: 14 July 2017

Date of adoption of the position of the Council: 17 October 2017

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

As an integral part of the reform the Common Fisheries Policy¹ (CFP), the Commission proposed a revision of the Fishing Authorisations Regulation² (FAR) in its Communication³ on the External Dimension of the CFP in 2011. The proposal for a Regulation on the sustainable management of external fishing fleets will strengthen the supervision of the EU's external fishing fleet wherever it operates.

The aim of this proposal is to revise the current rules in the FAR Regulation, so as to improve ocean governance, address the objectives of the new CFP, and provide consistency with the Control Regulation and the Regulation on Illegal, Unreported and Unregulated (IUU) fishing⁴. The proposal also intends to achieve level playing field between different fleets, so

¹ 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 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)

² Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters (OJ L 286, 29.10.2008, p. 33)

³ COM (2011) 424 of 13.7.2011

⁴ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008, 1-32)

that the EU fishing fleet fishing outside EU waters is subject to the same rules as third country vessels fishing in EU waters.

There are new rules regulating direct authorisations (also known as "private agreements"), to deter abusive reflagging, to regulate chartering of Union vessels, and to create a database for fishing authorisations, including a secured and a public part.

The proposal is based on the principle of flag state responsibility and establishes provisions whereby flag Member States will screen vessels against given eligibility criteria before these vessels are allowed to fish outside EU waters. Strong provisions on the monitoring of the fleets will allow stopping EU vessels from fishing if they do not comply with the rules.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1 General comments on the Council's position

The position of the Council reflects the political agreement reached by the European Parliament ('EP') and the Council on 20 June 2017. The Commission supports this agreement.

3.2 Amendments by the European Parliament at first reading

The EP has agreed on new elements derived from compromises reached with the Council during the trilogues, however the first reading position of the EP has always been maintained and is reflected in the final political agreement.

3.3 Provisions introduced by the Council and Commission position in this regard

The Council position departs from the Commission proposal concerning the scope of the proposal, the definitions used, and the procedures for issuing fishing authorisations. The Council position further strengthened provisions on equal treatment, ensuring that EU vessels, operating inside and outside EU waters, are treated equally, and third country vessels in EU waters are to abide by the same conditions as EU vessels. Hence, level playing field is ensured all across the board.

The Commission considers that these changes contribute to reinforce the consistency of the proposal, simplify and streamline the procedures foreseen, minimise administrative burden and refer as much as possible to existing rules under RFMOs, International Fisheries Agreements, including Northern Agreements and SFPAs.

The Commission proposal was therefore amended to provide for the following measures reflected in the political agreement:

Inclusion of new Section 2 on "fishing activities under agreements on exchange or joint management". This section was included to clarify the scope of the proposal and ensure that all third country fishing vessels fishing in EU waters are covered by the Regulation.

Article 5(1)(d) on Eligibility criteria: "Absence of serious infringements in the last 12 months prior to applying for a fishing authorisation". This eligibility criterion, for EU vessels intending to fish outside EU waters, was proposed as a precondition for having access to a fishing authorisation. However, the Council considered that this eligibility criterion is a double sanctioning system and expressed a very strong opposition to it. The EP, however, supported it. As a part of an overall compromise, the Commission accepts to remove this

eligibility criterion from the text provided a legal basis allowing the Commission to intervene in order to stop a vessel from fishing under Article 7 is agreed.

Article 7(6) on "Monitoring of fishing activities": This provision would allow the Commission to intervene, as an ultimate resort, in order to stop a vessel from fishing when the flag Member State does not take action (the "claw-back" clause). The Commission's original proposal is not acceptable for the Council because it is seen as an inference on the competences of flag Member States. The EP supports a solid legal basis for the Commission to intervene in order to stop a vessel from fishing when that vessel does not comply with the rules.

As a part of an overall compromise, the Commission has accepted that the intervention by the Commission to stop a vessel from fishing is limited to areas where there is an international fisheries agreement binding the Union vis-à-vis RFMOs or third countries under SFPAs.

Article 6(2) on reflagging operations: EU vessels shall not fish in waters of non-cooperating third countries pursuant to Articles 31 and 33 of the IUU Regulation. Article 31 concerns the "identification" by the Commission, and Article 33 concerns the "listing" by the Council. The Council is of the position that it is for the Council (through its Decision) to list a country as non-cooperating, and therefore the identification by the Commission should not have any effect in the context of this proposal.

As a part of an overall compromise, the Commission has accepted that a six weeks' notice would be given to the vessel to leave the third country waters, once the third country is identified as non-cooperating under Article 31 of the IUU Regulation.

Articles 13-15 on "reallocation of unused fishing opportunities": Under the current rules, the Commission reallocates unused fishing opportunities ((please add the specific article of this regulation°Council Regulation (EC) No 1006/2008) via a Commission decision. The proposal for the external fleets foresees implementing powers for the Commission to do this reallocation. The Council insists on doing the reallocation based on Article 43(3) TFEU.

As a part of an overall compromise, the Commission accepts this legal basis for the reallocation of unused fishing opportunities.

Article 26a on "transshipment": the EP had difficulties to accept the Council's definition for "fishing activities" in Article 3(g), arguing that it is not as holistic as the one in the CFP. The EP is mainly interested in including "landings" and "transshipments" in the definition, however this would entail substantial administrative burdens for issuing authorisations for the said activities. As a compromise, the Council accepted expanding the scope of Article 26a to transshipments in the high seas and for direct authorisations, including a prior notification to the flag Member State and an annual reporting for Member States to the Commission. The Commission has accepted this compromise because it will help the Commission to obtain information on transshipments.

Article 39(2) public information in the data base: The Commission proposal and the Council general approach agreed to make public data on the name and flag of the vessel, the type of authorisation and the authorised time and zone of fishing. The EP position was to include: (1) the CFR⁵ and IMO numbers, (2) name, city and country of residence of the company owner and the beneficial owner, and (3) the type of authorisation and fishing opportunities.

Neither the Council, nor the Commission can support the demand from the EP as such because of concerns in relation to the right of privacy, data protection and the protection of commercial interests. A compromise was reached by the co-legislators whereby the data on

⁵ CFR stands for Community Fleet Register (number).

the company owner and the beneficial owner will be stored on the secure part of the database. In addition, the following data will be made public: (1) the CFR and IMO numbers, (2) the type of authorisation including target species or group of species, and (3) authorised time and zone of fishing activity. The Commission has accepted this compromise as it will increase transparency in full compliance with data protection rules.

The position a first reading adopted by the Council the 17th October 2017 reinforces the main elements of the Commission proposal and puts forward a balanced text that takes into account the main considerations of the European Parliament, the Commission and the Council.

4. CONCLUSION

The legal services and lawyer linguists of the European Parliament and the Council were mandated to make all relevant adjustments to the text. The resulting document therefore represents the political agreement reached by the co-legislators on 20 June 2017.