

COMMISSION DECISION**of 21 April 2016****on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing**

(2016/C 144/06)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999⁽¹⁾, and in particular Article 32 thereof,

Whereas:

1. INTRODUCTION

- (1) Regulation (EC) No 1005/2008 ('the IUU Regulation') establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
- (2) Chapter VI of the IUU Regulation lays down the procedure to identify non-cooperating third countries, the *démarches* in respect of such countries, the establishment of a list of such countries, the removal from that list, the publicity of that list and any emergency measures.
- (3) In accordance with Article 32 of the IUU Regulation, the Commission is to notify third countries of the possibility of their being identified as non-cooperating countries. Such notification is of a preliminary nature. The notification is to be based on the criteria laid down in Article 31 of the IUU Regulation. The Commission is also to take all the *démarches* set out in Article 32 of that Regulation with respect to the notified third countries. In particular, the Commission is to include in the notification information concerning the essential facts and considerations underlying such identification, provide those countries with the opportunity to respond and provide evidence refuting the identification or, where appropriate, a plan of action to improve and measures taken to rectify the situation. The Commission is to give to the notified third countries adequate time to answer the notification and reasonable time to remedy the situation.
- (4) Pursuant to Article 31 of the IUU Regulation, the Commission is to identify third countries that it considers as non-cooperating countries in fighting IUU fishing. A third country is to be identified as non-cooperating if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market state, to take action to prevent, deter and eliminate IUU fishing.
- (5) The identification of non-cooperating third countries is to be based on the review of all information as set out under Article 31(2) of the IUU Regulation.
- (6) In accordance with Article 33 of the IUU Regulation, the Council is to establish a list of non-cooperating third countries. The measures set out, inter alia, in Article 38 of the IUU Regulation apply to those countries.
- (7) Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third-country flag states is subject to a notification to the Commission of the arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by the fishing vessels of the concerned third countries.
- (8) In accordance with Article 20(4) of the IUU Regulation, the Commission is to cooperate administratively with third countries in areas pertaining to the implementation of that Regulation.

2. PROCEDURE WITH RESPECT TO THE REPUBLIC OF SIERRA LEONE

- (9) The Republic of Sierra Leone (hereafter 'Sierra Leone') has not submitted its notification as a flag state pursuant to Article 20 of the IUU Regulation to the Commission.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

- (10) Between 2014 and 2016 the Commission cooperated administratively with the authorities of Sierra Leone. This cooperation covered issues pertaining to the implementation, control and enforcement of laws, regulations and conservation and management measures by Sierra Leone. It entailed exchange of oral and written comments as well as an on-the-spot visit. The Commission sought and verified all information deemed necessary concerning Sierra Leone's arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels, as well as measures taken by Sierra Leone in order to implement its obligations in the fight against IUU fishing.
- (11) Sierra Leone is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Indian Ocean Tuna Commission (IOTC). Sierra Leone has ratified the 1982 United Nations Convention on the Law of the Sea (Unclos).
- (12) In order to evaluate the compliance of Sierra Leone with its international obligations as flag, port, coastal or market State as set out in the international agreements referred to in recital 11 and established by the relevant regional fisheries management organisations (RFMOs), the Commission sought, collected and analysed all necessary information.

3. POSSIBILITY OF THE REPUBLIC OF SIERRA LEONE BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

- (13) Pursuant to Article 31(3) of the IUU Regulation, the Commission analysed the duties of the Republic of Sierra Leone as flag, port, coastal or market state. For the purpose of this review the Commission took into account the criteria listed in Article 31(4) to (7) of the IUU Regulation and applicable international law.

3.1. Recurrence of IUU fishing activities and IUU trade flows (Article 31(4) of the IUU Regulation)

- (14) The 1994 Fisheries Management and Development Decree and the 1995 Fisheries Regulations only cover the activities of Sierra-Leone-flagged fishing vessels in waters under the jurisdiction of Sierra Leone.
- (15) On the basis of publically available information as well as information gathered by the Commission, the Commission has established that there is evidence vessels previously flagged to Sierra Leone have been involved in IUU fishing activities. These vessels are mentioned on RFMO IUU vessel lists ⁽¹⁾ as having flown the flag of Sierra Leone after their inclusion on these lists ⁽²⁾. These vessels are Baroon, Gorilero, Kunlun, Viking and Yongding.
- (16) There are strong indications that the authority in charge of vessel registration does not systematically inform the fisheries authorities about the registration of new fishing vessels or request fisheries history checks on these vessels. Similarly, it appears that the entity in charge of the international vessel registry does not consult the national authorities before registering any fishing vessel which will operate outside Sierra Leone's Exclusive Economic Zone (EEZ). Thus, the list of fishing vessels flying the flag of Sierra Leone could be considered to not be consolidated: it appears the authority in charge of fisheries does not have any information on Sierra Leone fishing vessels operating beyond the Sierra Leone EEZ, while the authority responsible for the registration of vessels only has partial information on the status of Sierra Leone's fleet register. The apparent lack of cooperation between the entity in charge of the international vessel registry and the national authorities could be considered to diminish Sierra Leone's ability to monitor the size and activities of its fleet potentially allowing illegal operators to use the flag of Sierra Leone without detection.
- (17) The Commission established that there are up to 50 Sierra-Leone-flagged fishing vessels operating beyond Sierra Leone's EEZ without authorisation from the relevant Sierra Leonean authorities. This appears to be in contravention of the national Cabinet Decision of 2010 that suspended the registration of fishing vessels through the international registry. Moreover, the Sierra Leone authorities acknowledged that these Sierra-Leone-flagged fishing vessels operating beyond the EEZ are not subject to monitoring, control and surveillance by the fisheries authority. They do not report their geographic position to Sierra Leone's fisheries monitoring centre or share information with Sierra Leone's fisheries authorities on catch data, landings or transshipments.
- (18) The Commission examined the measures taken by Sierra Leone in respect of access of fisheries products stemming from IUU fishing to its market. Sierra Leonean vessels operating beyond the EEZ of Sierra Leone are not subject to any form of control by Sierra Leone's authorities. These vessels do not report or transmit any information regarding their activities, landings and transshipments to the Sierra Leonean authorities. Therefore it is unlikely the traceability of fish or fish products stemming from these vessels can be guaranteed.

⁽¹⁾ The relevant RFMOs are CCAMLR, SEAFO, GFCM, NEAFC, NAFO and IOTC. Information from: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.199.01.0012.01.ENG

⁽²⁾ See Part B of the Annex to Regulation (EU) No 468/2010.

- (19) The performance of Sierra Leone described in recitals 15 to 18 is not in line with Articles 94(1) and (2) of UNCLOS which provide that every state shall effectively ensure its jurisdiction and control over ships flying its flag. It is also not in line with point 24 of the Food and Agriculture Organisation of the United Nations' (FAO) International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA IUU) that provides for the obligation to undertake comprehensive and effective control of fishing activities and point 35 of the IPOA IUU that provides that a flag state should ensure that, before it registers a vessel, it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing. It also contravenes point 36 of the IPOA IUU, that provides that flag states should avoid flagging vessels with a history of non-compliance and point 42 of IPOA IUU which provide that every state shall maintain a register of ships containing the names and particulars of ships flying its flag. It also failed to comply with point 71 of the IPOA IUU which advises states to take steps to improve the transparency of their markets in order to ensure the traceability of fish or fish products. Equally, it failed to comply with Article 11 of the FAO Code of Conduct for Responsible Fisheries (FAO Code of Conduct) which sets good practices for post-harvest and responsible international trade.
- (20) In view of the facts presented in this section of the Decision and on the basis of all factual elements gathered by the Commission as well as all the statements made by the country, it could be established that, pursuant to Article 31(3), (4)(a) and (4)(b) of the IUU Regulation, there are strong indications that Sierra Leone fails to discharge its duties under international law as a flag, port, coastal and market state in respect of IUU vessels and IUU fishing carried out or supported by vessels flying its flag or by its nationals and to prevent access of fisheries products stemming from IUU fishing to its market.

3.2. Failure to cooperate and to enforce (Article 31(5) of the IUU Regulation)

- (21) While the fisheries authorities of Sierra Leone were generally cooperative with the Commission and responded to requests for information and provided feedback, their capacity to reply to certain requests was limited by the status of the international registry and the lack of cooperation between the entity in charge of the international vessel registry and the national authorities, as established in Section 3.1.
- (22) Sierra Leone is an important coastal state in West Africa, whose waters are rich fishing grounds attracting vessels from third countries. In November 2015, 155 foreign-flagged vessels were licensed to fish in the waters of Sierra Leone. All of these vessels, except tuna vessels, have an observer on board. Not all vessels have a vessel monitoring system (VMS) device on board. Without complete observer coverage on all fleet components and VMS on all industrial vessels, Sierra Leone cannot reliably control that no vessels are engaged in IUU fishing activities. The number of licences attributed could be considered to be neither in line with control capacity nor with available resources.
- (23) Sierra Leone is also an important flag state, operating an international registry, attracting vessels from third countries with no direct link to the country. As explained in recital 17, these vessels operate beyond the EEZ of Sierra Leone, on the high seas and in the waters of third countries. The Commission established that, while Sierra Leone cooperates with the countries of the subregion through the Sub Regional Fisheries Commission (SRFC), it does not appear to cooperate with third countries outside the region where Sierra Leonean fishing vessels operate. This lack of cooperation may result from the fact that Sierra Leone's authorities seem to have little or no information about vessels flying the flag of Sierra Leone operating outside the national EEZ.
- (24) The national fisheries legal framework⁽¹⁾ is outdated, and needs revising to ensure consistency between national law and international and regional applicable rules. The definition of fishing activities includes searching for, catching, taking and harvesting fish as well as any activity in support of or preparation of these activities, including through the use of aircraft. The definition of fishing vessels includes vessels conducting fishing-related activities. Fishing-related activities include transshipment, storage, processing, transportation and refuelling and supplying fishing vessels. However, these texts do not specifically define IUU fishing activities or serious infringements as defined under international law, and do not expressly foresee enforcement measures and sanctions for activities conducted by Sierra Leonean vessels outside the jurisdiction of Sierra Leone or nationals supporting or engaged in IUU fishing. There are strong indications that the sanctioning system of Sierra Leone is not deterrent and proportionate, in line with international obligations. The value of fines is not linked to the value of the fish caught illegally and as such does not systematically deprive offenders of the benefits accruing from their illegal activities. The value of fines is not linked to the damages caused to the fishing resources and environment.

⁽¹⁾ 1994 Fisheries Management and Development Decree and the 1995 Fisheries Regulations.

- (25) The Joint Operations Centre (JOC) is responsible for implementing the duties of fisheries monitoring and control and surveillance (MCS). Through funding from international projects the JOC has been equipped to carry out MCS functions. However, due to limited funding, the operationality of the JOC appears to be constrained, with no or inadequate budget assigned to cover the operational costs of the JOC. Therefore, Sierra Leone seems to lack material and financial resources to fight IUU fishing.
- (26) The legal framework and enforcement measures in Sierra Leone do not comply with the basic requirements in Articles 61, 62 and 117 to 119 of Unclos. The facts described in recitals 20 to 24 indicate that Sierra Leone failed to fulfil the conditions of Article 94 of Unclos which stipulates that a flag state assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew. Sierra Leone appears to fail to demonstrate that it has in place an adequate sanction regime to combat IUU as recommended in point 21 of IPOA IUU. Sierra Leone also appears to fail to take into consideration the recommendations in point 24 of the IPOA IUU which advises flag states to ensure comprehensive and effective monitoring, control and surveillance of fishing, through the point of landing, to final destination, including by implementing the VMS in accordance with the relevant national, regional and international standards.
- (27) In view of the facts presented in this section of the Decision and on the basis of all factual elements gathered by the Commission as well as all the statements made by the country, it could be established that, pursuant to Article 31(3) and (5) of the IUU Regulation, there are strong indications that Sierra Leone failed to discharge its duties under international law with respect to cooperation and enforcement.

3.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

- (28) Sierra Leone ratified Unclos in 1994 and is a contracting party to ICCAT and IOTC.
- (29) From 2009 to 2012 Sierra Leone was identified as non-compliant by ICCAT. The identified status was lifted in 2013, but the situation in year 2014 raised concerns as no annual reports or compliance tables were received by ICCAT in 2015. Several repeated compliance issues have also been identified in the IOTC Compliance Report for Sierra Leone, in particular a general lack of compliance with IOTC measures and a failure to provide reports and information in line with Resolutions 12/11, 01/06, 10/09, SC04 and S17. Sierra Leone is only a contracting party to ICCAT and IOTC, and not any other RFMOs, and this despite the structure and area of operation of Sierra Leone's fishing vessel fleet.
- (30) Sierra Leone's compliance issues in ICCAT and IOTC demonstrate the failure of Sierra Leone to fulfil its obligations as flag state laid down in Article 94 of Unclos and point 24 of IPOA IUU.
- (31) Sierra Leone has not ratified any international legal instruments related to fisheries management except Unclos. The performance of Sierra Leone in implementing international instruments is not in accordance with the recommendations of point 11 of the IPOA IUU which encourages States, as a matter of priority, to ratify, accept or accede to the United Nations Agreement for the Implementation of the Provisions of Unclos relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) and the FAO Compliance Agreement. It also contravenes point 14 that provides that states should fully and effectively implement the Code of Conduct and its associated international plans of action.
- (32) In addition, while there is no dedicated fishing port in Sierra Leone, fishing vessels do land directly onto company jetties or in the commercial port. Sierra Leone has not ratified the 2009 FAO Port State Measures Agreement (PSMA).
- (33) Contrary to the recommendations in points 25 to 27 of the IPOA IUU, Sierra Leone has not developed a national plan of action against IUU fishing.
- (34) Furthermore, as mentioned in recital 17, the management of Sierra Leone's international registry is carried out by a private company located outside Sierra Leone, and Sierra Leone appears to have failed to ensure that vessels flying its flag have a genuine link with the country. This contravenes Article 91 of Unclos which provides that a genuine link must exist between the flag state and its ships.
- (35) In view of the facts presented in this section of the Decision and on the basis of all factual elements gathered by the Commission as well as all the statements made by the country, it could be established that, pursuant to Article 31(3) and (6) of the IUU Regulation, there are strong indications that Sierra Leone has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

3.4. Specific constraints of developing countries

- (36) According to the United Nations Human Development Index (UNHDI) ⁽¹⁾, in 2015 Sierra Leone is considered to be a low human development country ranked 181 out of 188 countries.
- (37) Although specific capacity constraints may exist with respect to monitoring, control and surveillance, the specific constraints of Sierra Leone derived from its level of development do not justify all the deficiencies identified in the previous sections. This concerns especially the registration of fishing vessels under the Sierra Leonean international registry and the lack of knowledge about these vessels.
- (38) It appears that the shortcomings identified result primarily from an inadequate administrative environment to ensure the efficient and effective performance by Sierra Leone of its duties as flag, coastal, port and market state. Sierra Leone has received support from regional initiatives which aimed to strengthen governance and fight IUU fishing including through improved MCS. However this funding was suspended in 2015 due to governance concerns and without these funds the Sierra Leonean JOC cannot operate effectively.
- (39) In view of the facts presented in this section of the Decision and on the basis of all factual elements gathered by the Commission as well as the statements made by the country, it could be established, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Sierra Leone with respect to fisheries management may be impaired by its level of development. However, account taken of the nature of the established shortcomings of Sierra Leone, the development level of Sierra Leone cannot fully excuse or otherwise justify its overall performance as flag, port, coastal or market state with respect to fisheries and the insufficiency of its actions to prevent, deter and eliminate IUU fishing.

4. CONCLUSION ON THE POSSIBILITY OF IDENTIFICATION AS A NON-COOPERATING THIRD COUNTRY

- (40) In view of the conclusions reached with regard to the failure of Sierra Leone to discharge its duties under international law as flag, port, coastal or market state and to take action to prevent, deter and eliminate IUU fishing, that this country should be notified, in accordance with Article 32 of the IUU Regulation, of the possibility of being identified by the Commission as a non-cooperating third country in fighting IUU fishing.
- (41) In accordance with Article 32(1) of the IUU Regulation, the Commission should notify Sierra Leone of the possibility of being identified as a non-cooperating third country. The Commission should also take all the *démarches* set out in Article 32 of the IUU Regulation with respect to Sierra Leone. In the interest of sound administration, a period should be fixed within which that country may respond in writing to the notification and rectify the situation.
- (42) Furthermore, the notification to Sierra Leone of the possibility of being identified as a country which the Commission considers to be non-cooperating for the purposes of this Decision does neither preclude nor automatically entail any subsequent step taken by the Commission or the Council for the purpose of the identification and the establishment of a list of non-cooperating countries,

HAS DECIDED AS FOLLOWS:

Sole Article

The Republic of Sierra Leone shall be notified of the possibility of being identified by the Commission as a non-cooperating third country in fighting illegal, unreported and unregulated fishing.

Done at Brussels, 21 April 2016.

For the Commission

Karmenu VELLA

Member of the Commission

⁽¹⁾ Information from: http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf