COMMISSION DECISION
of 1 October 2015

on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing

(2015/C 324/10)

THE EUROPEAN COMMISSION,

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


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) The concept of flag state responsibility and coastal state responsibility has been steadily strengthened in international fisheries law and is today envisaged as an obligation of ‘due diligence’, which is an obligation to exercise best possible efforts and to do the utmost to prevent IUU fishing, including the obligation to adopt the necessary administrative and enforcement measures to ensure that fishing vessels flying its flag, its nationals, or fishing vessels engaged in its waters are not involved in activities which infringe the applicable conservation and management measures of marine biological resources, and in case of infringement to cooperate and consult with other states in order to investigate and, if necessary, impose sanctions which are sufficient to deter violations and deprive offenders of the benefits from their illegal activities.

Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third 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.

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 FISHING ENTITY TAIWAN

The notification of the fishing entity Taiwan (*) (hereinafter ‘Taiwan’) as a flag State (**) pursuant to Article 20 of the IUU Regulation was accepted by the Commission as of 28 January 2010.

From 20 to 24 February 2012, the Commission, with the support of the European Fisheries Control Agency (EFCA), carried out an evaluation mission to Taiwan in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation and an on-spot report was conducted.

The visit sought to verify information concerning Taiwan'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, measures taken by Taiwan in order to implement its obligations in the fight against IUU fishing and to fulfil its duties for the implementation of the catch certification scheme of the Union.

Taiwan submitted additional information on 8 March 2012 and comments on the report on 19 March 2012.

Taiwan submitted additional information (statistics on imports/exports of fisheries products to/from Taiwan broken down by fishery products and country of origin/country of destination from 2010 to the first quarter of 2012) on 2 July 2012.

Asubsequent mission of the Commission to Taiwan to follow up any actions taken by Taiwan subsequent to the first mission was conducted from 17 to 19 July 2012.

A technical meeting between Taiwan and the Commission took place on 14 December 2012 in which a preliminary outline of a 'National Plan of Action of Taiwan to prevent, deter and eliminate IUU fishing' (NPOA-IUU) was presented.

Subsequent to that meeting, on 21 December 2012, the Commission provided a detailed and elaborated overview of the Union rules on control, traceability, fisheries management policies and IUU policies implemented by the Union.

Taiwan submitted a draft version of the National Plan of Action on 27 February 2013.

Taiwan submitted the final version of the NPOA-IUU and a copy of the Taiwan's plan of Work against IUU fishing in response to Taiwan-EU cooperation against IUU fisheries on 29 March 2013.

A technical meeting between the Commission and Taiwan to follow up any actions taken by Taiwan took place on 27 February 2014 and conclusions were sent to Taiwan on 12 March 2014.

The Commission sent a detailed overview of its observations and comments on Taiwan's concluded or planned actions under the NPOA-IUU on 20 August 2014.

Taiwan submitted an updated version of Taiwan's Progress on Cooperation of Combating IUU Fisheries Activities on 23 October 2014.

A videoconference between the Commission and Taiwan to follow up any actions taken by Taiwan took place on 24 October 2014 and the Commission sent its conclusions on 31 October 2014.

(*) The separate customs territory of Taiwan, Penghu, Kinmen and Matscu (Chinese Taipei).
(**) The terms ‘state’ and ‘country’ with respect to the fishing entity Taiwan are used in the context of the IUU Regulation only.
Taiwan submitted the National Plan of Action for the Management of the Fishing Capacity (NPOA-Fishing Capacity) on 28 October 2014.

Taiwan submitted detailed plan of e-logbook coverage and the outline of the landing declarations scheme on 17 December 2014.

A videoconference between the Commission and Taiwan to follow up any actions taken by Taiwan took place on 18 December 2014.

The Commission sent samples of published Union inspection programmes and an analysis of the deficiencies detected on catch certificates validated by the Taiwanese authorities on 19 January 2015.

Taiwan submitted written comments on the analysis of the detected deficiencies of the validated catch certificates on 11 February 2015.

The Commission sent a request for a mission to Taiwan and subsequent information related to the mission, catch certification issues and fisheries management policies to address IUU fishing on 27 February 2015, 13 March 2015 and 18 March 2015.

Taiwan submitted written comments concerning catch certification, serious infringements, landing declarations and audits of fishing trading companies on 17 and 19 March 2015.

A subsequent mission of the Commission to Taiwan to follow up any actions taken by Taiwan was conducted on 24 March 2015.

Taiwan submitted written comments concerning compliance records to rules of Regional Fisheries Management Organisations, Taiwan flagged fishing vessels and catch certification on 7 April 2015, on 14 May 2015 and 4 August 2015. The Commission provided written explanations on implementation of catch certification on 10 August 2015.

Taiwan submitted written comments on its plan to work in the fight against IUU fishing on 16 April 2015.

The report of the visit was sent to Taiwan on 27 May 2015. The Commission established during the visit that little or no progress had been achieved on the critical weaknesses detected from 2012. In addition the plan to work in the fight against IUU fishing was elusive with planned work running up to 2017.

Taiwan submitted written comments on the report on 29 June 2015. These comments did not provide any commitment for addressing the established shortcomings within a reasonable period of time.

It is noted that Taiwan, due to its political status, is not a member of the United Nations (UN). In this respect Taiwan did not sign or ratify any of the international agreements governing fisheries, inter alia, the United Nations Convention on the Law of the Sea (UNCLOS), the United Nations Fish Stocks Agreement (UNFSA), the Food and Agriculture Organisation (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement). Nevertheless, it has signed the 1958 Geneva Convention on the High Seas (1) and the 1958 Convention on the Territorial Sea and the Contiguous Zone during the period that the authorities formed part of the UN (2). In order to evaluate the compliance of Taiwan with its international obligations as flag, port, coastal or market State, the Commission considered appropriate to use, besides the agreements to which Taiwan is party, UNLCOS as the primary applicable international legal framework. These provisions codify pre-existing rules of customary law and take over, almost literally, some of the wording of the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone. It is also noted that the obligation of flag States to comply with their due diligence responsibilities concerning, inter alia, IUU fishing activities of their vessels forms part of international customary law.

(1) Information retrieved from:
https://treaties.un.org/pages/HistoricalInfo.aspx#China

(2) Information retrieved from:
https://treaties.un.org/pages/HistoricalInfo.aspx#China
Taiwan is a contracting member of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the South Pacific Regional Fisheries Management Organisation (SPRFMO) and the North Pacific Fisheries Commission (NPFC) and a cooperating non-contracting Party to the Western and Central Pacific Fisheries Commission (WCPFC), the Inter-American Tropical Tuna Commission (IATTC) and the International Commission for the Conservation of Atlantic Tuna (ICCAT). Furthermore, Taiwan is invited expert to the Indian Ocean Tuna Commission (IOTC).

In order to evaluate the compliance of Taiwan with its international obligations as flag, port, coastal or market State as set out in the international agreements referred to in recital 36 and established by the relevant Regional Fisheries Management Organisations (RFMOs) mentioned in that recital, the Commission sought and analysed all the information it deemed necessary for the purpose of that exercise. The main current internal legal framework for Taiwan fisheries management is the Fisheries Act (promulgated in November 1929 and last amended in November 2012) and a body of Ministerial agreements. The authorities of Taiwan have accepted the need for revision of the legal framework for fisheries and development of the new instrument.

The Commission also used information derived from available data published by the relevant RFMOs as well as publicly available information.

3. POSSIBILITY OF TAIWAN BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

Pursuant to Article 31(3) of the IUU Regulation, the Commission analysed the duties of Taiwan as flag, port, coastal or market State. For the purpose of that review the Commission took into account the criteria listed in Article 31(4) to (7) of the IUU Regulation.

3.1. Recurrence of IUU Vessels and IUU trade flows and measures taken in respect thereof (Article 31(4) of the IUU Regulation)

The Commission established on the basis of information retrieved from its on-the-spot visits and of publically available information that at least 22 vessels have been involved in IUU activities during the 2010 to 2015 period.

One Taiwanese flagged fishing vessel (Yu Fong 168) is still listed in WCPFC IUU vessel list for fishing in 2009 in the EEZ of Marshal Islands without permission and in breach of Conservation and Management Measures (1). Taiwan has explained that the vessel is not under its control since 2009 and the only action authorities could take is to impose sanction for breaching the rule of returning to port. Taiwan explained that it has imposed such sanctions repeatedly without providing any additional information. In this respect it is noted that the Fisheries Act foresees for such infringement imposition of fine between 3 400 and 8 500 euros.

Based on the evidence retrieved, one Taiwanese flagged fishing vessel was arrested in 2015 in the Marshall Islands for fishing illegally and interfering with fisheries observers (2). The Taiwanese authorities have not up till now imposed any sanction to the fishing vessel and Taiwanese nationals involved or engaged with this vessel's fishing activities. The only action that they have taken was to continue investigation on the case and inform the Commission that the case has been referred to the Marshall Islands courts.

Twenty Taiwanese flagged vessels are reported by the Indian Ocean Tuna Commission to have committed infringements contrary to the conservation and management measures of coastal States in the Indian Ocean in 2013 and 2014. These vessels have conducted operations: with fishing gears non-marked, with no original documents on board of the vessel or with missing fishing related documentations, with outdated fishing licences, with no clearance from the last fishing port called, with no fishing licence from the flag State, with no Vessel Monitoring System (VMS) on-board working or with VMS on-board disrupted, conducted shark finning operations, conducted illegal at-sea transhipments and without reporting transhipments.


(2) Information retrieved from: http://www.radionz.co.nz/international/pacific-news/266070/arrests-in-marshalls-over-illegal-fishing
The Commission provided this information to Taiwan and requested Taiwanese authorities to investigate incidents. The Taiwan Fisheries Agency argued that according to their preliminary investigation all vessels have been duly authorized to operate in coastal States waters and there were no issues with VMS reporting or active fishing licences. Nevertheless, the Taiwanese Authorities have not explained if they were aware of the issues from the coastal States and if they were going to cooperate with the relevant coastal States for the activities of these vessels, its masters, officers and crew.

With regard to information laid down in recitals 42, 43 and 44, the Commission considers that Taiwan has failed to uphold its responsibilities as a flag State to prevent its fleet from engaging in IUU activities. In this respect it is recalled that, pursuant to Article 94(2)(b) of UNCLOS, the flag State must assume jurisdiction under internal law over ships flying its flag, including the actions of master, officers and crew on-board (see Article 5 of the 1958 Geneva Convention on the High Seas (1)). It is noted that the flag State has the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of living resources of the high seas. Furthermore, pursuant to points 31, 32, 33, 35 and 38 of FAO Voluntary Guidelines for Flag State Performance (2), flag States must implement control regimes over its vessels and must have in place an enforcement regime that, inter alia, detects and takes enforcement actions and effective sanctions against violations of applicable laws, regulations and international conservation and management measures.

Under Article 31(4)(b), the Commission also examined the measures taken by Taiwan in respect of access of fisheries products stemming from IUU fishing to its market.

The Commission analysed documentation and other information relating to Taiwan's monitoring and control of its marine capture fisheries and that of imported, exported or traded internationally products. Following this assessment, the Commission considers that Taiwan cannot ensure fishery products entering its ports and processing plants do not stem from IUU fishing. The Taiwanese authorities were not able to demonstrate they have all the necessary information required to certify the legality of imports and processed products destined for the Union market. The main elements at the basis of the Commission's assessment are summarised hereinafter.

The 2012 and 2015 visits revealed that Taiwan was lacking a traceability system that is able to ensure full transparency in all stages of fishing transactions i.e. catch, transhipment, landing, transport, factory processing, export and trading. In 2012 the Commission visited operators and brokers to evaluate transparency and traceability in the Taiwan fishery market. A number of deficiencies were identified which were communicated to the authorities without any subsequent follow up.

The Commission established that the trading companies are not incorporating in their accounting systems information concerning traceability of fishing transactions and there is no certainty that what is recorded in the authorities' systems corresponds with what is recorded in the companies' accounting and production systems. This situation undermines the reliability of the traceability chain at company level. It also exposes the system to potential abuse by allowing trading operators to over declare incoming quantities from erroneous catch certificates and to launder fish through these overestimations. Furthermore, the Taiwanese electronic databases supporting the authorities' systems are incomplete and crucial documents in the supply chain such as landing declarations, e-logbooks and information from designated ports are still either not fully recorded or missing. This highlights the failures of the traceability system as a whole.

The risk of deficient traceability is amplified by the specific conditions of the Taiwanese fleet. Taiwan has a significant number of long distance fleet fishing vessels i.e. 468 vessels of more than 100 gross tonnage (GT) and between 1 200 and 1 400 vessels with less than 100 GT. In addition Taiwan nationals have invested and are operating 238 foreign flagged fishing vessels. Taiwanese flagged long distance fleet fishing vessels are operating in high seas and coastal States waters, using as fishing and landing bases ports in third countries and rarely calling back to home ports. Fisheries products are either send from fishing grounds in high seas or coastal States waters to Taiwan for further processing or dispatched from Taiwanese trading companies to third countries for further processing. There is an absence of cooperation between Taiwan and third country authorities and significant problems in the ability of Taiwan to monitor the size and capacity of the fleet. This situation allows operators and traders intending to commit illegal acts, to operate from Taiwan without risk of detection.

The risk that Taiwanese vessels operate in breach of applicable conservation and management rules and Taiwanese trading companies trade undeclared catches for processing is still high. This situation increases the risk that fish products destined to the Union market, stemming from Taiwanese origin fish, cannot be guaranteed as not being sourced from IUU fishing.

(52) Taiwan fails to comply with requirements to ensure comprehensive and effective monitoring, control and surveillance of fishing under Article 94 of UNCLOS, point 33 of FAO Voluntary Guidelines for Flag State Performance and point 24 of the International Plan Of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing (IPOA-IUU (1)).

(53) The Taiwanese authorities are developing traceability schemes to effectively monitor and control fish stemming from their vessels and subsequent fishery products entering its ports for processing and onward export. The authorities have also introduced this year a Strategy Plan for Auditing Trading Companies. Nevertheless, up to this moment this plan has not been implemented and audits of fishing trading companies have never been conducted. The lack of audits by the Fisheries Agency shows an unwillingness to ensure transparency in the supply chain and a failure to take measures against operators connected directly or indirectly with IUU fishing activities in line with those outlined in point 72 to 74 of IPOA-IUU.

(54) Paragraphs 11(2) and 11(3) of the FAO Code of Conduct state that international trade in fish and fishery products should not compromise sustainable development of fisheries and should be based on transparent measures as well as on simple and comprehensive laws, regulations and administrative procedures. In addition paragraph 11(1)(11) of the FAO Code of Conduct provides that States should ensure that international and domestic trade in fish and fishery products complies with sound conservation and management practices by improving the identification of the origin of fish and fishery products traded. The IPOA-IUU further provides guidance on internationally agreed market-related measures (points 65 to 76) which support reduction or elimination of trade in fish and fish products derived from IUU fishing. The traceability systems observed by the Commission (as described in recitals 48 to 53) clearly demonstrate how Taiwan has failed to take measures to improve the transparency of their markets which would prevent the risk of IUU products being traded through Taiwan or Taiwan based trading companies.

(55) In preparation for the 2015 visit, the European Fisheries Control Agency (EFCA) analysed a few hundred catch certificates presented at Union borders for consignments originating from Taiwan. These catch certificates were validated from the Taiwanese fishing authorities on the basis of information provided from the Taiwanese operators. The impact of problems with data recording systems as outlined above can be seen in the irregularities listed below (as described in recitals 56 and 57).

(56) The analysis of products caught by Taiwanese flagged vessels revealed the following inconsistencies: catch certificates with data amended or without all required data, inconsistent information concerning catch, master declarations, logbook, ICCAT statistic documents, dolphin safety declarations, transhipment, landing and processing data and dates, lack of access to Vessel Day Scheme actual fishing effort data for vessels operating in the Pacific, no records of licences from coastal States, inconsistencies on fishing and carrier vessels with vessels changing names and vessels not listed in the Union sanitary approved establishments lists, incomprehensible trade patterns (i.e. fish caught in Atlantic/Indian ocean, transported in Asia, processed and export to the Union) and incomplete information on processing statements and relevant production yields.

(57) The Commission provided detailed information on results of the EFCA analysis to the Taiwanese authorities. The authorities investigated the matter and submitted satisfactory replies for production yields in processing statements. They have taken full note of issues and admitted the need to update their internal rules to resolve the problems. They have also reported that they would like to cooperate with the Commission in correcting their operating procedures.

(58) The situation described in recital 56 underlines the risk of having Taiwanese processed fishing products or Taiwanese stemming fish raw materials derived from catches directly linked to IUU activities. In addition, the existence of clearly identifiable errors, as referred to in recital 56, demonstrates that Taiwan has failed to cooperate with other States and regional fisheries management organizations to adopt appropriate market related measures to prevent, deter or eliminate IUU fishing as is specified in point 68 and 72 of IPOA-IUU.

The information described in recital 56 demonstrate that products processed or traded through Taiwan undermine sustainable post-harvest rules as described in Article 11 of the FAO Code of Conduct and further highlight how Taiwan has failed to impose rules to ensure adequate cooperation with third countries to which its vessels fish and land and to implement measures that ensure transparency and traceability of products through the market in accordance with points 67 to 69 and 71 to 72 of IPOA-IUU of the markets in order to allow the traceability of fish or fish products.

In view of the situation explained 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 that, pursuant to Article 31(3) and 31(4) (a) and (b) of the IUU Regulation, that Taiwan has failed to discharge the duties incumbent upon it under international law as a flag, port, coastal or market State in respect of IUU vessels and IUU fishing carried out or supported by fishing 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)

Under Article 31(5)(a) the Commission analysed its collaboration with Taiwan to see if they had effectively cooperated in responding to questions, providing feedback or investigating matters related to IUU fishing and associated activities.

Following the 2012 visit, the Commission invited Taiwan to cooperate on a number of fisheries management issues that needed urgent attention. These are listed hereinafter. The legal and administrative framework for fisheries management needed updating with the adoption of a revised Fisheries Law and IUU Code of Conduct (National Plan of Action on IUU) to ensure transposition of international and regional fisheries management legislation and non-binding recommendations into national law. The Commission invited Taiwan to develop a coherent and deterrent sanctioning scheme supported by a register of infractions and sanctions. The Commission suggested an improvement of the monitoring, control and surveillance (MCS) framework to ensure control of the Taiwan fleet operating in high seas and third country waters, and the development of logbook, catch reporting and landing declaration systems, designated ports as well as that of an inspection plan to control fishing operations, transhipments and landings. The effectiveness and transparency of the catch certification and traceability scheme for exports destined to the Union market should have been improved.

Taiwan responded in 2013 with its NPOA-IUU and in 2014 with its NPOA-Fishing Capacity. The Commission and the Taiwanese authorities had a number of written exchanges, video conferences and meetings on these documents.

With respect to NPOA-IUU the Commission analysis revealed that although the ideas contained in the plan are in principle correct, the time plan for implementation is unreasonably lengthy covering actions up to 2020. Account taken of the size of the Taiwan fleet which is operating in more than 30 third countries and the fact that the Taiwanese fishing vessels are important suppliers of raw material for processing plants and canneries, it is important for Taiwan to implement swiftly its actions on MCS, observers, landings and transhipments and to address effectively in its Fisheries Law the matters related with serious infringements and control of nationals.

With respect to NPOA-Fishing Capacity the Commission analysis revealed that this plan is not ensuring the link between the control capabilities of Taiwan with the number of Taiwanese long distant fishing vessels. The measures introduced by Taiwan (i.e. logbooks, E-logbooks, landing declaration and catch reporting systems, designated ports, inspection and control of landings, transhipments, boarding and inspection of vessels, national inspection(observer plans and traceability) to monitor its fleet are not comprehensive since measures are partially covering the long distance fleet, they are partially implemented or are still plans that have not been developed yet. Furthermore, this policy has no quantifiable management targets, no indications on fishing effort levels, quotas, licences, authorizations for fishing to third countries, number of vessels in RFMOs, stock assessments and targets or scientific advice. There is no analysis on link between the number of vessels, the number of licences, the volume of catches and the available financial and human resources needed to control and monitor industry. There is lack of any benchmarks to achieve policy targets or a methodology for having such benchmarks. Finally, future actions provided are vague and offer no indication on how and when the authorities will implement this policy.
During the period 2012 to 2015 the Commission provided detailed comments on the various plans of Taiwan to address IUU fishing and reiterated the need for cooperation and corrective actions. Taiwan without disputing the findings of the Commission repeatedly argued for need for reflecting on actions and additional time to implement.

The 2015 visit to Taiwan revealed little or no progress in the areas of concern highlighted by the Commission in period 2012 - 2015 (as described in the recital above). The Fisheries Act was still in draft, the NPOA-IUU was reported being in implementation process but in reality without actual introduction of the measures described in this Section of the Decision and unclear timelines, the NPOA-Fishing Capacity was still a document missing actual targets and with non-existing timelines for any implementation. Developments in the MCS framework were minimal with e-logbooks covering only a part of the fleet, designated ports being non-existent, landing declarations covering only domestic fishing and with plans to expand in the future to long distance fleet and measures to control transhipments in a developing phase. The Commission report of July 2012 details the various issues mentioned in this recital, these are the same as those found in the recent visit of March 2015. The Commission report of the March 2015 mission provided again all the critical issues and highlighted the possible consequences of lack of progresses.

For these reasons, the Commission considers that Taiwan failed to address all the issues identified in the period 2012-2015.

It has also failed to adopt a legal framework foreseeing definitions of IUU fishing and serious infringements in line with the IOTC Resolution 11/03 (1) and Article 25(4) of WCPFC Convention (2). It has also failed to exercise its jurisdiction over the administrative and technical matters of its fleet in line with Article 94 of UNCLOS (see also Article 5 of the 1958 Geneva Convention on the High Seas). It has also failed to implement provisions of points 31-33 of FAO Voluntary Guidelines for Flag State Performance. Furthermore, it has failed to implement provisions of point 24 of IPOA IUU in respect of monitoring, control and surveillance over its fleet.

Overall the Taiwanese authorities were cooperative and generally quick to respond to requests for information or verifications from both Member States and the Commission under Article 17(6) of EC 1005/2008. Some issues concerning access of Member States to information related to VMS data of Taiwanese flagged vessels were resolved with the intervention of the Commission. However the accuracy of the responses of the Taiwanese authorities was undermined by the inadequacies of their traceability systems as outlined in Section 3.1 of this Decision.

In accordance with Article 31(5)(b), the Commission also analysed existing enforcement measures to prevent, deter and eliminate IUU fishing in Taiwan.

During the period 2012-2015, the Commission highlighted the need for Taiwan to promulgate a new Fisheries Act. The existing law lacks clear definitions on scope and serious infringements while there is no provision for an aggravated infringement in case of repeated offences. The current level of fines in the law is not sufficient to deprive large commercial vessels of the benefits accrued from potential illegal activities (maximum fines set to approximately 9,000 euros). Penalties in their current form are not comprehensive in scope and not severe enough in level to achieve deterrence. There is also lack of specific provisions in the law concerning nationals supporting or engaged in IUU fishing activities. Some facultative sanctioning provisions are contained in the Ordinance for Taiwanese investments in the operation of foreign flagged fishing vessels with sanctions for fish origin laundering and operating foreign flagged fishing vessels in contravention of the flag State established rules. Nevertheless, the monetary sanctions foreseen are not mandatory and it is not clear whether they are applied in case other countries have imposed fines of insufficient severity to Taiwanese nationals on the same infringement.

Finally, there is no clear legal framework concerning transposition of RFMOs conservation and management measures. Taiwanese authorities confirmed that the legal framework has to be revised in order to address the aforesaid issues. Taiwan has also indicated that it is fully committed in ensuring that its fishing vessels that have been sanctioned by coastal States for infringements with sanctions of insufficient severity will be further punished in Taiwan. The Taiwanese authorities announced that a new Fisheries Law would be ready by end 2014. Nevertheless, up till now this has not happened. Taiwan fails to uphold its obligations to impose effective

---

(2) WCPFC Convention, retrieved from: https://www.wcpfc.int/system/files/text.pdf
enforcement measures under Article 94 of UNCLOS (see also Article 5 of the 1958 Geneva Convention on the High Seas). It also fails to follow points 31-33, 35 and 38 of FAO Voluntary Guidelines for Flag State Performance and to demonstrate that it has in place an adequate sanction regime to combat IUU as recommended in point 21 of IPOA IUU and that it has adopted measures concerning nationals subject to its jurisdiction supporting or engaged in IUU fishing as recommended in point 18 of IPOA IUU.

(74) The MCS capabilities of Taiwan are not sufficiently developed. There is no national inspection plan to ensure a coherent policy on surveillance and monitoring of its fleet operations. Specific MCS measures and tools are still deficient as explained in recitals 65 and 67 thus undermining the ability of Taiwanese enforcement measures to prevent, deter and eliminate IUU fishing. According to available information Taiwan is covering only 60% of its long distance fleet of over 100 GT which is operating outside Taiwan waters, including all the existing purse seiners. Taiwan is working with more than 30 countries on the establishment of designated ports but currently has no operational arrangements in place. It has put in place since September 2014 a new landing declaration scheme and is in the process of upgrading this with new legal provisions but the new landing declaration scheme still does not cover all types of long distance fleet vessels. Finally, it is still working on developing an effective system of control of transhipments of its long distance fleet vessels.

(75) The absence of an effective MCS system demonstrates the inability to monitor fishing operations at sea and undermines the ability of the Fisheries Agency to effectively enforce rules applicable to the different sea areas concerned. This, combined with the lack of effective cooperation with third countries with respect to designated ports and transhipments exacerbates the risk of IUU fishing activities conducted by Taiwanese vessels. The Commission therefore believes that Taiwan does not ensure comprehensive and effective MCS system for fishing vessels flying its flag. Taiwan’s failure to implement an effective MCS system adversely affects its compliance with Article 94 UNCLOS (see also Article 5 of the 1958 Geneva Convention on the High Seas). It also constitutes a failure to follow the recommendations of point 33 of FAO Voluntary Guidelines for Flag State Performance and point 24 of IPOA-IUU.

(76) The Commission notes that, on the basis of information derived from the Commission missions in 2012 and 2015 and the discussions with the Taiwanese authorities during the period 2012 to 2015, it cannot be considered that the Taiwanese authorities are lacking financial resources but rather the necessary legal and administrative environment to ensure efficient and effective performance of their duties as flag, port and market state.

(77) It is recalled that Taiwan, due to its political status, is not a member of the United Nations (UN). Based on the United Nations Human Development Index (HDI) statistics that Taiwan has collected using the methodology of the UN, Taiwan is considered to be a high human development country (ranked 21st out of 188 countries) (1).

(78) Considering these elements, the Commission considers that Taiwan does not lack financial resources to fulfill its duties as flag, port and market states but rather the necessary legal and administrative instruments to ensure efficient and effective performance of its duties.

(79) In view of the situation explained in this Section and on the basis of all the factual elements gathered by the Commission as well as all the statements made by Taiwan, it could be established, pursuant to Article 31(3) and (5) of the IUU Regulation, that Taiwan failed to discharge its duties under international law with respect to cooperation and enforcement efforts.

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

(80) Taiwan did not sign or ratify any of the international agreements specifically governing fisheries. As explained in recital 36 Taiwan is considered covered by pre-existing rules of customary law as well as by due diligence obligation with respect to its fishing vessels conducting IUU fishing. Taiwan is a Contracting Member to CCSBT, SPRFMO and NPFC and a cooperating non-contracting Party to WCPFC, IATTC and ICCAT. Furthermore, Taiwan is invited expert to the IOTC.

(81) Under Article 31(6)(b) the Commission analysed all information regarding the status of Taiwan as Contracting Party of CCSBT, SPRFMO and NPFC, as a cooperating non-contracting Party to WCPFC, IATTC, ICCAT and as invited expert to IOTC.

The Commission also analysed any information deemed relevant with respect to the agreement of Taiwan to apply conservation and management measures adopted by WCPFC, IATTC, ICCAT, CCSBT, SPRFMO and IOTC.

According to information derived from the IOTC Compliance Report for Taiwan produced on 23 March 2015 (1), several repeated compliance issues were identified in 2014. In particular, according to available information Taiwan has not provided all the mandatory information to IOTC standard on the List of vessels for tropical tuna during 2006 as required by IOTC Resolution 12/11. It has not provided all the mandatory information to IOTC standard on the List of vessels for swordfish and albacore during 2007, as required by IOTC Resolution 12/11. It has not provided all the mandatory information to IOTC standard on the List of Authorized vessels 24 metres in length or more, as required by IOTC Resolution 14/04. It has not reported size frequency for the longline fisheries to IOTC standard, as required by Resolution 10/02. It has not reported size frequency on sharks to IOTC Standard, as required by Resolution 05/05. It has not provided observer report, as required by Resolution 11/04. In addition Taiwan has not provided the report on VMS summary, as required by Resolution 12/13, it has not implemented the marking of passive fishing gears, as required by Resolution 13/02, it has not provided a detailed report on transhipments in port, as required by Resolution 12/05. It was also established that Taiwan failed to comply with the IOTC Resolution 14/06.

On these grounds, Taiwan has been identified by IOTC as repeated offender in 2014 because forty eight large scale tuna longline fishing vessels (LSTLVs) of its fleet have records of repeated infringements in 2014 and thirty eight of those have a record of possible infractions in 2013 as well (2).

It was also established that Taiwan still needs to address issues the cases involving vessel and a national from Taiwan which have been identified as IUU fishing activity in 2013 (see recital 86).

According to information derived from the IOTC Compliance Report for Taiwan produced on 26 April 2014 (3), it is recalled that IOTC has identified Taiwan for its failure to comply with the IOTC Resolution 12/05. More specifically, Taiwan has been identified by IOTC as repeated offender in 2013 because one hundred and two LSTLVs of its fleet have records of repeated infringements in 2013 and thirty four of those have a record of possible infractions in 2012 as well. Furthermore Taiwan has failed to provide proof that adequate investigations have been conducted and that sanctions of adequate severity have been imposed with respect to one vessel (under the name ‘MAN YIH FENG’) on the Provisional IOTC IUU list (4).

Following the 2015 visit, Taiwan has submitted to the Commission that it recognises the importance of the issues with respect to transhipments of large scale fishing vessels and explained that it has taken measures to prohibit transhipments, ensure valid fishing licences and distribute to vessels new logbooks. Taiwan also acknowledged need for actions on issue related to size data on sharks, observer report, marking of passive fishing gears and detailed report on transhipment in port.

The problems of Taiwan with IOTC are exacerbated by the fact that Taiwan has a large long distance fishing fleet and according to estimations 73 % of transhipments at sea in IOTC area are conducted by Taiwanese vessels (5).

The compliance issues of Taiwan with IOTC demonstrate the failure of Taiwan to fulfil its obligations as flag State laid down in Article 94 of UNCLOS (see also Article 5 of the 1958 Geneva Convention on the High Seas). In addition Taiwan thereby fails to follow the recommendations of points 31-33, 35 and 38 of FAO Voluntary Guidelines for Flag States Performance and of point 24 of IPOA-IUU.

The Commission also analysed information available from ICCAT on the compliance of Taiwan with ICCAT rules and MCS obligations. For this the Commission used the ICCAT tables for the issues of potential non-compliance arising from ICCAT Regional Observer Programmes detected during the observations made by ICCAT Regional observers (6).

---

(2) IOTC Doc. No IOTC-2015-CoC12-08c Add_1, 27 March 2015.
(3) IOTC Doc. No IOTC-2014-CoC11-08c Add_1, 26 April 2014.
(6) ICCAT Regional Observer Programmes and Responses, 5 November 2014, COC-305/2014, pp. 33-49.
Information available for 2014 from ICCAT revealed that Taiwanese vessels have failed to present to the ICCAT observers valid authorisations to tranship and up to date versions of the Transhipment Declaration (previous versions were used, which did not include the last changes such as the inclusion of a reference to the stock and the area). In addition, Taiwanese vessels have failed to present valid authorisations to fish for the ICCAT area and numerous cases of non-compliance in connection with the logbooks were identified such as logbooks which were not bound in contravention of Recommendation 03-13 and the logbook sheets which were not numbered as required in ICCAT Recommendation 11-01, Annex I. Furthermore, non-compliance with marking and VMS requirements and inconsistencies in the reporting of information to the ICCAT observers were detected as well.

It is also recalled that ICCAT issued in 2014 a Letter of Concern (1) to Taiwan concerning the possible at-sea transhipments and the possible IUU activities by Taiwanese nationals in particular with respect to control over catches and irregularities between catch declarations and total reported catches.

Following the 2015 visit, Taiwan argued that it was fully compliant to ICCAT rules from 2007 to 2012, and in 2014. For the admitted compliance issues concerning the year 2013 Taiwan alleged that it has taken all the appropriate measures to address ICCAT issues and consequently no actions were taken by ICCAT.

With respect to WCPFC, it is noted that the Commission and the Taiwanese authorities discussed during the 2015 mission the compliance of Taiwan to the conservation and management measures (CMMs) adopted by that regional organisation.

Taiwan has submitted to the Commission that it has incorporated WCPFC Convention and CMMs in its national legal system and has been working in solving a number of established non-compliance issues with respect to WCPFC CMMs.

It is also noted that the WCPFC 10th Scientific Committee raised the issue of data gaps in Taiwan’s purse-seine fleet and requested that Taiwan provide a paper to the 11th Scientific Committee describing the methodology used to estimate the tuna species catches in their aggregate purse-seine data provided to WCPFC (2).

Information available from the SPRFMO (3), demonstrates that with respect to 2014 Taiwan has failed to reach the standards for Collection, Reporting, Verification and Exchange of Data (CMM 2.02 (1e)) and has failed to fully comply with the requirements for Landings and Transhipment Data (CMM 2.02 (1d)).

Following the 2015 visit, Taiwan has submitted to the Commission that it was obliged to provide summary data under CMM 2.02 (1e) because of national data protection issues. It also explained that was only partial non-compliant with CMM 2.02 (1d).

The compliance issues of Taiwan with WCPFC and SPRFMO demonstrates the failure of Taiwan to fulfil its obligations as flag State laid down in Article 94 of UNCLOS (see also Article 5 of the 1958 Geneva Convention on the High Seas). In addition Taiwan did not follow the recommendations as in points 31-33, 35 and 38 of FAO Voluntary Guidelines for Flag States Performance and point 24 of IPOA-IUU.

In view of the situation explained in this Section of the Decision and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the country, it could be established, pursuant to Article 31(3) and (6) of the IUU Regulation, that Taiwan 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 (Article 31(7) of the IUU Regulation)

It is recalled that Taiwan, due to its political status, is not a member of the United Nations. Based on the HDI statistics that Taiwan has collected using the methodology of the UN, Taiwan is considered to be a high human development country (ranked 21st out of 188 countries) (4).

(1) Letter of Concern on the 13 February 2014.
(2) Summary Report of the WCPFC Scientific Committee 10th Regular Session, point 82.
(3) Assessment of Compliance of Members and CNCPs, 2nd Meeting of the Compliance and Technical Committee, Auckland, New Zealand, 30-31 January 2015.
It should be noted that the notification of Taiwan as flag State was accepted by the Commission in accordance with Article 20 of the IUU Regulation as of 28 January 2010. Taiwan confirmed, as required by Article 20(1) of the IUU Regulation, that it has national arrangements in place for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels.

Account taken of the above HDI ranking and observations during the 2012 to 2015 visits, no evidence suggests that the failure of Taiwan to discharge its duties under international law is the result of low levels of development. No tangible evidence exists to correlate shortcomings in fisheries monitoring, control and surveillance with poor capacity and infrastructure. Taiwan has never argued that development constraints affect their ability to deliver strong MCS and has never requested support from the Union.

In view of the situation explained in this Section and on the basis of all the factual elements gathered by the Commission as well as all 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 Taiwan with respect to fisheries management are not impaired by its level of development.

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

In view of the conclusions reached with regard to the failure of Taiwan 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, Taiwan 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.

In accordance with Article 32(1) of the IUU Regulation, the Commission should notify Taiwan 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 Taiwan. 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.

Furthermore, the notification to Taiwan of the possibility of being identified as a non-cooperating country 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

Taiwan 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, 1 October 2015.

For the Commission

Karmenu VELLA

Member of the Commission