IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

COMMISSION DECISION
of 17 February 2021
on notifying the Republic of Cameroon of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing
(notified under document C(2021) 981)
(2021/C 59 I/01)

THE EUROPEAN COMMISSION,

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


Whereas:

1. INTRODUCTION

(1) 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) Pursuant to Article 31 of the IUU Regulation, the Commission is to identify third countries that it considers as non-cooperating countries in the fight against IUU fishing. A third country is to be identified as a 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.

(4) Prior to identifying third countries as non-cooperating under Article 31 of the IUU Regulation, the Commission is to first notify third countries of the possibility of being identified as non-cooperating countries in accordance with Article 32 of that Regulation. This 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 into account 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.

(6) The identification of non-cooperating third countries under Article 31 of the IUU Regulation is to be based on the review of all information as set out under Article 31(2) of that Regulation. It shall be based on the review of all information obtained pursuant to the IUU Regulation or, as appropriate, any other relevant information, such as the catch data, trade information obtained from national statistics and other reliable sources, vessel registers and databases, catch documents or statistical document programmes and IUU vessel lists adopted by regional fisheries management organisations (RFMOs), as well as any other information obtained in the ports and on the fishing grounds.

(7) 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.

(8) 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 from the flag State concerned 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 its fishing vessels.

(9) 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 the provisions of that Regulation relating to catch certification.

2. PROCEDURE WITH RESPECT TO THE REPUBLIC OF CAMEROON

(10) The Republic of Cameroon (hereinafter 'Cameroon') submitted its notification as a flag State pursuant to Article 20 of the IUU Regulation and it was accepted by the Commission on 15 July 2009.

(11) In August 2019, the Commission initiated a process of administrative cooperation with the authorities of Cameroon in the context of the fight against IUU fishing. This cooperation covered in particular the conditions for the grant of Cameroonian nationality to fishing vessels, the national arrangements in place for the registration of fishing vessels in the country's territory, the conditions for the right to fly the country's flag and the resulting control systems. It entailed written exchanges with the authorities where the Commission sought and verified all information deemed necessary, such as the list of vessels registered under Cameroon flag and the list of vessels having obtained a fishing licence by the Cameroon competent authorities in order to assess Cameroon's level of implementation of its international obligations in the fight against IUU fishing.

(12) Cameroon has ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (1). Cameroon is not a contracting party or a cooperating non-contracting party to any RFMOs.

(1) https://treaties.un.org/
In order to evaluate the compliance of Cameroon with its international obligations as flag, port, coastal or market State incumbent upon it under international law, the Commission sought, collected and analysed all necessary information required for the purpose of this exercise, such as information published by RFMOs, information transmitted by port States authorities in the framework of cooperation in the fight against IUU fishing and information retrieved on open and reliable databases and publicly available information.

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

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

3.1. Measures taken in respect of recurrence of IUU fishing activities and trade flows of products stemming from IUU fishing (Article 31(4) of the IUU Regulation)

In accordance with Article 31(4)(a) of the IUU Regulation, the Commission analysed the measures taken by Cameroon with respect to any recurrent IUU fishing activity carried out or supported by fishing vessels flying its flag or by its nationals, or by fishing vessels operating in its maritime waters or using its ports.

The Commission established, on the basis of information retrieved from the Indian Ocean Tuna Commission (IOTC) IUU vessel list and information provided by the relevant authorities of Cameroon, that the following vessels carried the flag of Cameroon after their inclusion in the IOTC IUU list (3), UTHAIWAN (previous name WISDOM SEA REEFER, IMO No 7637527), SEA VIEW (previous name AL WESAM 2, IMO No 8692342) and SEA WIND (previous name AL WESAM 1, IMO No 8692354) (4).

The authorities of Cameroon confirmed to the Commission that these vessels have been flying the flag of Cameroon after their inclusion in the IOTC IUU vessel list.

In addition, the IUU listed vessel AL WESAM 5 has been reflagged to Cameroon under the name PROGRESO, and therefore the IOTC IUU vessel list has been amended accordingly in November 2020 (5).

In this respect, the procedures put in place in Cameroon prior to the registration of a fishing vessel do not entail a comprehensive prior assessment of a vessel’s history of compliance and ability to comply with any applicable regulations and international measures, as well as the verification of IUU vessel lists adopted by RFMOs as foreseen under points 36 and 42 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (6). Such practices could lead to IUU fishing activities by vessels under the Cameroonian flag.

(4) These vessels are also listed on the CCSBT, ICCAT and SIOFA IUU vessel lists, in accordance with cross-listing decisions.
(5) https://www.iotc.org/vessels
This is also demonstrated by the fact that the fishing vessel UTHAIWAN was also still flying the flag of Honduras while being registered by Cameroon under its flag. This was confirmed by Honduran authorities in a communication to the IOTC (7). This situation contravenes Article 92(2) of UNCLOS, which establishes that ships cannot sail the flag of more than one State, in which case they could be considered as ships without nationality.

In view of the information provided by the authorities of Cameroon, the Commission has also established that the list of registered vessels flying its flag is not properly maintained. The authorities have confirmed the Cameroon flag of fishing vessels which did not appear on the list of registered vessels provided to the Commission (UTHAIWAN, MAYI SEIS IMO No 8803630) as referred to under recital (11). Furthermore, pursuant to information gathered by the Commission on open databases, at least 12 fishing vessels seem to have been registered under Cameroon flag in 2019 and 2020 (8), while they are not included in the list provided to the Commission. With these actions, the authorities of Cameroon contravene Article 94(2)(a) of UNCLOS and the recommendation of paragraph 42 of the IPOA-IUU which provide that every State shall maintain a register of ships containing the names and particulars of ships flying its flag. This also confirms that Cameroon does not possess a robust and established registration procedure of vessels under its flag.

Besides, the registration of several fishing vessels during a limited period of time (2019 and 2020) poses question as regards the capacity for the authorities of Cameroon to establish a genuine link between Cameroon and these vessels which is in breach of the conditions set out for the nationality of ships in Article 91 of UNCLOS.

Furthermore, publicly available information (9) highlighted that a vessel flying the flag of Cameroon (OLUTORSKY, IMO No 8826151) was caught undertaking illegal fishing activities in a third country's waters in 2020. The vessel was arrested and a fine was imposed on the operator of the vessel by the coastal State.

In addition, in 2019, the vessel UTHAIWAN, when flying the flag of Cameroon, was detained in a third country's port and its operator has been imposed a fine by the authorities of that third country for entering the port without notification and for being an IUU listed vessel (10).

With regard to the information laid out in the recitals above, the Commission concluded that Cameroon failed to uphold its responsibilities as a flag State to exercise control over its fleet and prevent its fleet from engaging in IUU activities in waters outside its jurisdiction. This is in breach of Article 94(1) and (2) of UNCLOS, which provides that every State shall effectively ensure its jurisdiction and control over vessels flying its flag. Cameroon thus failed to discharge its due diligence obligation to deploy adequate means, to exercise best possible efforts and to do the utmost to prevent IUU fishing by ships flying its flag (11). This failure is also not in line with paragraphs 34 and 35 of the IPOA-IUU which provide that States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing and that also ensure that, before registering a fishing vessel, flag States can exercise their responsibility to ensure that such vessels do not engage in IUU fishing.

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(8) OLUTORSKY (IMO No 8826151); TRONDHEIM (IMO No 8832112); HELSINGFORS (IMO No 8033297); SVEABORG (IMO No 7610414); SEI WHALE (IMO No 7703950); AVACHINSKY (IMO No 8138695); FORSA (previous name BORNHOLM, IMO No 8721208); GREY WHALE (IMO No 7703962); MARSHAL VASILEVSKY (IMO No 8033869); FREDERIKSHAMN (IMO No 8730132); VEGA (previous name SKAGEN, IMO No 8325353); HUMPBACK WHALE (IMO No 9120821).
(11) International Tribunal for the Law of the Sea, Case No 21, par. 129.
As a consequence, it also cannot be excluded that fishing vessels registered in Cameroon referred to in recitals (16) to (24), thereby having its nationality and being entitled to fly its flag, have carried out IUU fishing or fishing-related activities in areas beyond the national jurisdiction of Cameroon, including in areas under jurisdiction of third countries and have used third countries’ ports. In addition, Cameroon’s lack of control over vessels flying its flag enables such vessels to land and/or tranship fishery products and therefore cannot impede the entry of fishery products stemming from IUU fishing into the markets.

In view of the considerations presented in this section, and on the basis of all factual elements gathered by the Commission, it could be established, pursuant to Articles 31(3) and 31(4)(a) of the IUU Regulation, that Cameroon has failed to discharge the duties incumbent upon it under international law as a flag State to take action to prevent, deter and eliminate IUU fishing.

On the basis of information provided under recital (26), it is concluded, pursuant to Article 31(3) and 31(4)(b) of the IUU Regulation, that Cameroon has failed to prevent access of fisheries products stemming from IUU fishing to the markets.

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

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

The Commission had difficulties to establish contact with the competent fisheries and maritime authorities of Cameroon. In addition, the referred authorities have not been responsive to demands raised by the Commission and the Commission only received partial replies, with limited follow-up on the issues raised. As an example, the Commission did not receive clear and comprehensive explanations on the status of fishing vessels flying the flag of Cameroon and their activities nor on the procedure of registration of fishing vessels under the Cameroon flag.

Furthermore, Cameroon has also failed to demonstrate that it cooperates and coordinates activities with other States and relevant RFMOs with regards to vessels flying its flag and listed on IUU vessel lists by such organisations, in relation to the conservation and management of fishery resources as set out in paragraph 28 of the IPOA-IUU. Cameroon has not replied to mutual assistance requests sent by one Member State in 2020 pursuant to Article 51 of the IUU Regulation as well as to requests addressed by another Member State in 2019 and 2020 as regards fishing vessels flying its flag that used ports of the European Union.

In accordance with Article 31(5)(b) of the IUU Regulation, the Commission analysed existing enforcement measures to prevent, deter and eliminate IUU fishing adopted by Cameroon.

Pursuant to information collected by the Commission on open databases and as stated in recital (21), Cameroon has registered at least 12 fishing vessels under its flag in 2019 and 2020. All these fishing vessels operate outside waters under Cameroon’s jurisdiction. Despite having inquired about the relevant legal framework applicable in Cameroon, the Commission did not receive any information. According to information available on public sources, it appears that the existing national legislation on fisheries (‘Loi n° 94/01 portant régime des forêts, de la faune et de la pêche’ (12)) does not contain any specific provisions as regards the management and control of fishing vessels, neither in Cameroon’s sovereign or jurisdictional waters nor beyond its waters.

(34) This legal framework is not in line with Article 94(2)(b) of UNCLOS, which provides that the flag State assumes jurisdiction under its internal law over ships flying its flag. Besides, points 31, 32 and 33 of the FAO Voluntary Guidelines for Flag State Performance require that flag States implement a control scheme over vessels flying their flag and must have in place enforcement measures that allow, among others, to detect violations of applicable laws, regulations and international conservation and management measures (\(^{13}\)) as well as apply adequate sanctions and measures against offenders. Sanctions and measures shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.

(35) Despite operating in areas under jurisdiction of third countries, none of the fishing vessels mentioned in recital (33) appeared on the list of fishing licenced vessels, which has been provided by the competent authorities of Cameroon to the Commission in 2019. This situation seems not to be in line with point 30 of the FAO Voluntary Guidelines for Flag State Performance that prescribes that flag States implement a regime for authorising fishing and fishing related activities, as well as with Article 3(2) of the FAO Compliance Agreement and paragraph 45 of the IPOA-IUU, which require that States shall ensure that fishing vessel flying its flag fishing in waters outside its sovereignty or jurisdiction hold a valid authorisation issued by the appropriate authorities of the flag State.

(36) Furthermore, the fishing vessel OCEAN MARIA (IMO No 8719164) flying the flag of Cameroon, has provided an outdated, and therefore invalid, registration act to Member State’s authorities when requesting entry to a port of the European Union in 2020. Despite the fact that a valid certificate was then presented to authorities before the entry of the vessel into the port, the vessel seems to have continued operating while not having a valid registration certificate between the 4 February 2020 and 13 April 2020. The authorities of Cameroon did not reply to requests from the Commission as well as from the concerned Member State as regards this vessel and its status.

(37) In addition, Cameroon has confirmed to the Commission the de-registration of IOTC IUU listed vessels SEA WIND and SEA VIEW for illegal fishing activities and, according to information retrieved on publicly available database and information provided by other third countries authorities, IOTC IUU listed vessel UTHAIWAN is now also flying the flag of another State. The authorities of Cameroon have however not informed the Commission of any other measures taken against these IUU listed vessels and their operators. De-registration of fishing vessels is not a sufficient measure for a flag State to take, as such measure does not address the IUU fishing activity, and it does not ensure application of sanctions or measures against IUU fishing activities carried out.

(38) This contravenes the recommendations to take enforcement measures in respect of IUU fishing activities and to sanction offenders with sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing, as set out in paragraph 21 of the IPOA-IUU, paragraph 8(2)(7) of the FAO Code of Conduct for Responsible Fisheries as well as points 31 to 33, 35 and 38 of the FAO Voluntary Guidelines for Flag State Performance.

(39) On the basis of information provided under recitals (33) to (37) it is concluded, pursuant to Article 31(5)(b) of the IUU Regulation, that Cameroon has failed to implement adequate enforcement measures to prevent, deter and eliminate IUU fishing.

(40) In accordance with Article 31(5)(c) of the IUU Regulation, the Commission analysed the extent and gravity of the manifestations of IUU fishing considered.

Despite the fact that the Commission underlined to the competent authorities of Cameroon, through several written exchanges, that fishing vessels under its flag were listed under IOTC IUU vessel lists, the authorities of Cameroon confirmed that the fishing vessel UTHAIWAN was flying its flag and did not indicate if any measures were going to be taken against this vessel. Moreover, the authorities have also not informed the Commission of any measures taken with respect to IOTC IUU listed vessels SEA WIND and SEA VIEW, neither prior to nor following the vessels' de-registration from the national registry.

The competent authorities of Cameroon have also failed to ensure proper cooperation with other countries and international organisations as mentioned in recital (31). Moreover, the IOTC listing of Cameroon vessels shows the lack of cooperation as flag State with other relevant States in the context of regional fisheries management measures.

In view of the considerations presented in this section, and on the basis of all factual elements gathered by the Commission as well as all the statements made by the Cameroonian authorities, it could be established, pursuant to Article 31(3) and (5) of the IUU Regulation, that Cameroon 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)

In accordance with Article 31(6)(a) and (b) of the IUU Regulation, the Commission analysed Cameroon's ratification or accession to relevant international fisheries instruments and its status as a contracting party to RFMOs or its agreement to apply the conservation and management measures adopted by them.

With the exception of UNCLOS as described in recital (12), Cameroon has not ratified the Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA), neither the FAO Compliance Agreement, nor the 2009 FAO Port State Measures Agreement (PSMA).

This is not in accordance with the duty to cooperate and the obligation to take, or to cooperate to take measures necessary for the conservation of marine living resources in the high seas as established in Articles 117 and 118 of UNCLOS. This lack of cooperation is also against the recommendations of paragraph 11 of the IPOA-IUU, which encourages States, as a matter of priority, to ratify, accept or accede to the UNFSA and the FAO Compliance Agreement. It also contravenes paragraph 14 of the IPOA-IUU that provides that States should fully and effectively implement the FAO Fisheries Code of Conduct and its associated International Plans of Action.

As described in recital (12), Cameroon is not a contracting party or a cooperating non-contracting party to any RFMOs.

In accordance with Article 31(6)(c) of the IUU Regulation, the Commission analysed whether Cameroon might have been involved in any acts or omissions that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.

By registering fishing vessels listed under IOTC IUU list in Cameroon and therefore granting them the right to fly its flag, the authorities of Cameroon have diminished the effectiveness of conservation and management measures adopted by RFMOs and contravened the internationally agreed rules such as Article 3(1)(a) of the FAO Compliance Agreement, Article 18(2) of the UNFSA, point 35 of the FAO Voluntary Guidelines for Flag State Performance, and paragraphs 38 and 39 of the IPOA-IUU.
In view of the considerations presented in this section and on the basis of all factual elements gathered by the Commission and the statements made by Cameroon, there are strong indications, pursuant to Article 31(3) and (6) of the IUU Regulation, that Cameroon failed to discharge all 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)

According to the United Nations Human Development Index (UNHDI) (14), in 2019 Cameroon was considered a medium human development country ranked 153 out of 189 countries.

Although specific capacity constraints may exist with respect to monitoring, control and surveillance of its fleet, the specific constraints of Cameroon derived from its level of development do not justify all the deficiencies identified in the previous sections. This is particularly the case in relation to the absence of specific provisions in the national legal framework referring to the management of its fishing fleet and to combat, deter and eliminate IUU fishing activities, including enforcement measures, as well as the lack of procedures ensuring proper verification of the registration of fishing vessels under its flag and the lack of cooperation among national administrations, with the Commission, RFMOs or administrations of other countries.

In view of the facts presented in this section and on the basis of all factual elements gathered by the Commission as well as the statements made by Cameroon, it could be established, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Cameroon with respect to fisheries management may be impaired by its level of development. However, account taken of the nature of the established shortcomings of Cameroon, the development level of Cameroon cannot excuse or otherwise justify lack of cooperation and the country’s 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 POSSIBLE IDENTIFICATION AS A NON-COOPERATING THIRD COUNTRY

In view of the conclusions reached with regard to the failure of Cameroon 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, Cameroon 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 the fight against IUU fishing.

The Commission should also take all the démarches set out in Article 32 of the IUU Regulation with respect to Cameroon. 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 Cameroon of the possibility of being identified as a country which the Commission considers to be a non-cooperating third country 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 third countries.

(14) http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CMR.pdf
HAS DECIDED AS FOLLOWS:

Sole Article

Cameroon 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, 17 February 2021.

For the Commission

Virginijus SINKEVIČIUS
Member of the Commission