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2013/0406 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1005/2008 of 29 September 2008 on establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU 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<sup>1</sup> (the IUU Regulation).

#### **General context**

This proposal is made in the context of the implementation of the IUU Regulation and is the result of investigation and dialogue procedures which were carried out in line with the substantive and procedural requirements laid out in the IUU Regulation foreseeing *inter alia* that all countries should discharge the duties incumbent upon them under international law as flag, port, coastal or market State to prevent, deter and eliminate IUU fishing.

#### **Existing provisions in the area of the proposal**

Commission Decision of 15 November 2012 (OJ C 354 17.11.2012, p.1-47) on notifying the third countries that the Commission considers as possible of being identified as non-cooperating countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Commission Implementing Decision XXXX (OJ C XXXX, XX.XX.2013, p ...) on identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

#### **Consistency with other policies and objectives of the Union**

Not applicable.

### 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

#### **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation and dialogue procedures, in line with the provisions of the IUU Regulation.

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

This proposal is the result of the implementation of the IUU Regulation.

The IUU Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

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<sup>1</sup> OJ L 286, 29.10.2008, p. 1.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

#### Summary of the proposed action

On 15 November 2012 the Commission, by Commission Decision, **notified** eight third countries (Belize, the Kingdom of Cambodia, the Republic of Fiji, the Republic of Guinea, the Republic of Panama, the Democratic Socialist Republic of Sri Lanka, the Togolese Republic and the Republic of Vanuatu) that the Commission **considers as possible of being identified** as non-cooperating countries pursuant to the IUU Regulation.

The Commission initiated *Démarches* in respect of the eight countries. These *démarches* consisted *inter alia* of actions providing reasons of its actions, opportunity for the countries to respond and refute, right to ask for and provide additional information, proposed actions plans to remedy the situation as well as adequate time to answer and reasonable time to remedy the situation.

On XX XXXX 2013 the Commission, by Commission Implementing Decision, **identified** Belize, the Kingdom of Cambodia, the Republic of Guinea as third countries that the Commission **considers as non-cooperating** third countries pursuant to the IUU Regulation.

The attached proposal for a Council Implementing Decision is based on the findings which have confirmed that Belize, the Kingdom of Cambodia and the Republic of Guinea have failed to discharge the duties incumbent upon them under international law as flag, port, coastal or market States.

It is therefore proposed that the Council adopts the attached proposal for a Decision.

#### Legal basis

Council Regulation (EC) No 1005/2008 of 29 September 2008 on establishing a Community system to prevent, deter and eliminate IUU fishing.

#### Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

#### Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the IUU Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimised and proportionate to the objective of the proposal is not applicable.

#### Choice of instruments

Proposed instruments: decision.

Other means would not be adequate for the following reason:

Other means would not be adequate because the IUU Regulation does not provide for alternative options.

### 4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1005/2008 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<sup>2</sup>, and in particular Article 33 thereof,

Having regard to the proposal submitted by the European Commission (the Commission),

Whereas:

### 1. INTRODUCTION

- (1) Council 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 with respect to the identification of non-cooperating third countries, démarches in respect of countries identified as non-cooperating third countries, the establishment of a list of non-cooperating countries, removal from the list of non-cooperating countries, publicity of the list of non-cooperating countries and any emergency measures.
- (3) In accordance with Article 32 of the IUU Regulation, with the Commission Decision of 15 November 2012, the Commission notified eight third countries that the Commission considered as possible of being identified as non-cooperating countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- (4) In its Decision of 15 November 2012 the Commission included the information concerning the essential facts and considerations underlying such identification.
- (5) On 15 November 2012 the Commission notified the eight third countries with separate letters of the fact that it was considering the possibility of identifying them as non-cooperating third countries.
- (6) The Commission highlighted, in these letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as foreseen in Articles 31 and 33 of the IUU Regulation, the third countries concerned were invited to establish, in close cooperation, with the Commission an action plan to rectify the shortcomings identified in the Commission Decision of 15 November 2012.

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<sup>2</sup> OJ L 286, 29.10.2008, p. 1.

- (7) As a consequence, the Commission invited the eight third countries concerned: (1) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (2) to assess the implementation of the actions contained in the action plans suggested by the Commission; (3) to send every six months detailed reports to the Commission assessing the implementation of each action as regards, *inter alia*, their individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (8) The eight third countries concerned were given the opportunity to respond in writing on issues explicitly indicated in the Commission Decision of 15 November 2012 as well as on other relevant information, allowing them to submit evidence in order to refute or complete the facts invoked in the Decision of 15 November 2012 or to adopt, as appropriate, a plan of action to improve and measures taken to rectify the situation. The eight countries were guaranteed of their right to ask for, or to provide, additional information.
- (9) On 15 November 2012, the Commission opened a process of dialogue with the eight third countries and highlighted that it considers a period of 6 months as being in principle sufficient for reaching an agreement on this matter.
- (10) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the eight countries following the Commission Decision of 15 November 2012 were considered and, taken into account. The eight countries were kept informed either orally or in writing on the Commission's considerations.
- (11) Commission Decision xx XXXX 2013 identifies Belize, the Kingdom of Cambodia and the Republic of Guinea as non-cooperating third countries in fighting IUU fishing. It provides the reasons for which the Commission considers that these three countries fail to discharge their duties under international law as flag, port, coastal or market State to take action, prevent, deter and eliminate IUU fishing in accordance with Article 31 of the IUU regulation.
- (12) The Council Implementing Decision placing Belize, the Kingdom of Cambodia and the Republic of Guinea on the list of non-cooperating third countries in fighting IUU fishing is thus taken in the context of the implementation of the IUU Regulation and is the result of investigation and dialogue procedures which were carried out in line with the substantive and procedural requirements laid out in the IUU Regulation. Those investigation and dialogue procedures including the correspondence exchanged and the meetings held, as well as the Commission Decision of 15 November 2012 and Commission decision xx XXXX are at the basis of the present Decision and form integral part of it. This Implementing Decision placing Belize, the Kingdom of Cambodia and the Republic of Guinea on the list of non-cooperating third countries in fighting IUU fishing should entail the consequences stated in Article 38 of the IUU Regulation.
- (13) Pursuant to Article 34 (1) of the IUU Regulation the Council, acting by qualified majority on a proposal from the Commission, shall remove a third country from the list of non-cooperating third countries if the third country concerned demonstrates that the situation that warranted its listing has been rectified. A removal decision shall also take into consideration whether the identified third countries concerned have taken concrete measures capable of achieving a lasting improvement of this situation.

## **2. PROCEDURE WITH RESPECT TO BELIZE**

- (14) On 15 November 2012, the Commission notified Belize with a Commission Decision pursuant to the provisions of Article 32 of the IUU Regulation that it considered the possibility of identifying Belize as a non-cooperating third country<sup>3</sup> and invited Belize to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Commission Decision. During the period from December 2012 to August 2013 Belize made written submissions making its views known and met with the Commission to discuss points pertaining to the matter. The Commission provided in writing to Belize relevant information. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Belize following the Commission Decision of 15 November 2012 were considered and taken into account, while Belize was kept informed either orally or in writing on the Commission's considerations. The Commission took the view that the areas of concern and shortcomings as described in the Commission Decision of 15 November 2012 have not been addressed sufficiently by Belize. Moreover, the Commission concluded that the measures suggested in the accompanying action plan have not been fully implemented either.

### **3. IDENTIFICATION OF BELIZE AS A NON-COOPERATING THIRD COUNTRY**

- (15) In the Commission Decision of 15 November 2012 the Commission analysed the duties of Belize and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of this review the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.
- (16) Pursuant to Article 31(3) of the IUU Regulation the Commission reviewed the compliance of Belize with its international obligations as flag, port, coastal or market State in line with the findings in the Commission Decision of 15 November 2012 and with relevant information provided thereon by Belize, with the proposed plan of action as well as with the measures taken to rectify the situation.
- (17) The main shortcomings identified by the Commission in the suggested action plan were related to several failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework, the lack of an adequate and efficient monitoring, lack of a control and inspection scheme, lack of a deterrent sanctioning system, and of a proper implementation of the catch certification scheme. The identified shortcomings relate, more generally to the compliance with international obligations including Regional Fisheries Management Organisations (RFMOs) recommendations and resolutions and conditions for registration of vessels according to international law. Lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-UN) has also been identified. However, the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification.
- (18) In the Commission Implementing Decision of xx XXXX 2013 the Commission identified Belize as third country considered as non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

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<sup>3</sup> Letter to the Minister of Agriculture and Fisheries of Belize of 15.11.2012.

- (19) With respect to the possible constraints of Belize as developing country it is noted that the development status and overall performance of Belize with respect to fisheries are not impaired by its level of development.
- (20) In the view of all the above decisions, and of the dialogue process with Belize entertained by the Commission and its outcome, it can be concluded that the actions undertaken by Belize in light of its duties as flag State are insufficient to comply with the provisions of Articles 91, 94, 117 118 of United Nations Convention on the Law of the Sea (UNCLOS), Articles 18, 19, 20 of United Nations Fish Stocks Agreement (UNFSA) and Article II(8) of FAO Compliance Agreement.
- (21) Therefore, Belize has failed to discharge its duties under international law as flag State to take action, prevent, deter and eliminate IUU fishing and should be included in the Union list of non-cooperating third countries.

#### **4. PROCEDURE WITH RESPECT TO THE KINGDOM OF CAMBODIA**

- (22) On 15 November 2012, the Commission notified the Kingdom of Cambodia (Cambodia) with a Commission Decision pursuant to the provisions of Article 32 of the IUU Regulation that it considered the possibility of identifying Cambodia as a non-cooperating third country<sup>4</sup> and invited Cambodia to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Commission Decision. During the period from December 2012 to June 2013 Cambodia made written submissions making its views known and met with the Commission to discuss points pertaining to the matter in subject. The Commission provided in writing to Cambodia relevant information. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Cambodia following the Commission Decision of 15 November 2012 were considered and taken into account, while Cambodia was kept informed either orally or in writing on the Commission's considerations. The Commission took the view that the areas of concern and shortcomings as described in the Commission Decision of 15 November 2012 have not been addressed sufficiently by Cambodia. Moreover, the Commission concluded that the measures suggested in the accompanying action plan have not been fully implemented either.

#### **5. IDENTIFICATION OF CAMBODIA AS A NON-COOPERATING THIRD COUNTRY**

- (23) In the Commission Decision of 15 November 2012 the Commission analysed the duties of Cambodia and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of this review the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.
- (24) Pursuant to Article 31(3) of the IUU Regulation the Commission reviewed the compliance of Cambodia with its international obligations as flag, port, coastal or market State in line with the findings in the Commission Decision of 15 November 2012 and with the proposed plan of action, as further elaborated with the relevant information provided by Cambodia.
- (25) The main shortcomings identified by the Commission in the suggested action plan were related to the failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework, an adequate and efficient

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<sup>4</sup> Letter to the Minister of Agriculture, Forestry and Fisheries of the Kingdom of Cambodia of 15.11.2012.

monitoring, control and inspection scheme, a deterrent sanctioning system. The identified shortcomings relate, more generally to the compliance with international obligations and conditions for registration of vessels according to international law. Lack of compliance with recommendations and resolutions from relevant bodies such as the IPOA –UN has also been identified. However, the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification.

- (26) In the Commission Implementing Decision of xx XXXX 2013 the Commission identified Cambodia as third country considered as non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- (27) With respect to the possible constraints of Cambodia as developing country it is noted that the development status and overall performance of Cambodia with respect to fisheries are not impaired by its level of development.
- (28) The actions undertaken by Cambodia in light of its duties as flag State, are insufficient to comply with the provisions of Articles 91 and 94 of the UNCLOS. It is recalled that it is immaterial whether Cambodia has actually ratified UNCLOS since the provisions of UNCLOS on the navigation in the High Seas (Articles 86 to 115 of UNCLOS) have been recognised as customary international law. These provisions indeed codify pre-existing rules of customary international law and take over almost literally the wording of the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone, which Cambodia has respectively ratified and acceded to.
- (29) In the view of all the above decisions, and of the dialogue process with Cambodia entertained by the Commission and its outcome, it can be concluded that the actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the provisions of Articles 91 and 94 of the UNCLOS.
- (30) Therefore, Cambodia has failed to discharge its duties under international law as flag State to take action, prevent, deter and eliminate IUU fishing and should be included in the Union list of non-cooperating third countries.

## **6. PROCEDURE WITH RESPECT TO THE REPUBLIC OF GUINEA**

- (31) On 15 November 2012, the Commission notified the Republic of Guinea (Guinea) with a Commission Decision pursuant to the provisions of Article 32 of the IUU Regulation that it considered the possibility of identifying Guinea as a non-cooperating third country<sup>5</sup> and invited Guinea to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Commission Decision. During the period from December 2012 to July 2013 Guinea made written submissions making its views known and met with the Commission to discuss points pertaining to the matter in subject. The Commission provided in writing to Guinea relevant information. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Guinea following the Commission Decision of 15 November 2012 were considered and taken into account, while Guinea was kept informed either orally or in writing on the Commission's considerations. The Commission took the view that the areas of concern and shortcomings as described in the Commission Decision of 15 November 2012 have not been addressed sufficiently by Guinea. Moreover, the Commission concluded that

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<sup>5</sup> Letter to the Minister of Fisheries and Aquaculture of Guinea of 15.11.2012.



the measures suggested in the accompanying action plan have not been fully implemented either.

## **7. IDENTIFICATION OF GUINEA AS A NON-COOPERATING THIRD COUNTRY**

- (32) In the Commission Decision of 15 November 2012 the Commission analysed the duties of Guinea and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of this review the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.
- (33) Pursuant to Article 31(3) of the IUU Regulation the Commission reviewed the compliance of Guinea with its international obligations as flag, port, coastal or market State in line with the findings in the Commission Decision of 15 November 2012 and with Guinea's relevant information provided thereon, with the proposed plan of action as well as with the measures taken to rectify the situation.
- (34) The main shortcomings identified by the Commission in the suggested action plan were related to reforms still due in order to ensure a sufficiently adequate and efficient monitoring of its fishing fleet, an effective implementation of national law and regulations on fisheries, enforcement of the rules by pursuing and sanctioning the IUU fishing activities detected, reinforcement of the means for inspection and surveillance, deterrent sanctioning system, fisheries policy consistent with administrative capacity in terms of control and surveillance. The identified shortcomings relate, more generally to the compliance with international obligations including RFMOs recommendations and resolutions and conditions for registration of vessels according to international law. Lack of compliance with recommendations and resolutions from relevant bodies such as the IPOA – UN has also been identified. However, the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification.
- (35) In the Commission Implementing Decision of xx XXXX 2013 the Commission identified Guinea as third country considered as non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- (36) With respect to the possible constraints of Guinea as developing country it is noted that the development status of Guinea may be impaired by its level of development. However, account taken of the nature of the established shortcomings of Guinea, the assistance provided by the EU and the Member States, and the actions taken to rectify the situation, the development level of that country cannot explain the overall performance of Guinea as flag or coastal State with respect to fisheries and the insufficiency of its action to prevent, deter and eliminate IUU fishing.
- (37) In the view of all the above decisions, and of the dialogue process with Guinea entertained by the Commission and its outcome, it can be concluded that the actions undertaken by Guinea in light of its duties as flag and coastal State are insufficient to comply with the provisions of Articles 61, 62, 94, 117 and 118 of the UNCLOS and Articles 18, 19 and 20 of the UNFSA.
- (38) Therefore, Guinea has failed to discharge its duties under international law as flag and coastal State to take action, prevent, deter and eliminate IUU fishing and should be included in the Union list of non-cooperating third countries.

## 8. ESTABLISHMENT OF A LIST OF NON COOPERATING THIRD COUNTRIES

- (39) In view of the conclusions reached above with regard to Belize, Cambodia and Guinea, those countries should be included in a list of non-cooperating third countries to be established containing in accordance with Article 33 of the IUU Regulation.
- (40) The action in respect of Belize, Cambodia and Guinea in the form of measures that shall apply are listed in Article 38 of the IUU Regulation. The prohibition of importation covers all stocks and species, as defined in Article 2(8) of the IUU Regulation, since the identification is not justified by the lack of appropriate measures adopted in relation to IUU fishing affecting a given stock or species. In line with the definition in Article 2(11) of the IUU Regulation importation means the introduction of fishery products into the territory of the Union, including for transshipment purposes at ports in its territory.
- (41) It is noted that IUU fishing *inter alia* depletes fish stocks, destroys marine habitats, undermines the conservation and sustainable use of marine resources, distorts competition, endangers food security, puts honest fishermen at an unfair disadvantage and weakens coastal communities. In view of the magnitude of the problems related to IUU fishing it is considered necessary for the Union to implement expeditiously the actions in respect to Belize, Cambodia and Guinea as non-cooperating countries. In the light of the foregoing the present Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (42) If Belize, Cambodia and Guinea demonstrate that the situation that warranted its listing has been rectified, the Council, acting by qualified majority on a proposal from the Commission, shall remove a third country from the list of non-cooperating third countries in line with Article 34 (1) of the IUU Regulation. A removal decision shall also take into consideration whether the Belize, Cambodia and Guinea have taken concrete measures capable of achieving a lasting improvement of this situation.

DECIDES AS FOLLOWS:

### *Article 1*

The Union list of non-cooperating third countries is established in the Annex to this decision.

### *Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*

**ANNEX**

**List of non-cooperating third countries in fighting Illegal Unreported and Unregulated  
("IUU") fishing**

**Belize**

**Kingdom of Cambodia**

**Republic of Guinea**