COMMISSION DECISION
of 23 May 2017
notifying the Republic of Liberia of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing
(2017/C 169/12)

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) Pursuant to Article 31 of the IUU Regulation, the Commission is to identify third countries that it considers as non-cooperating 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.

(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. 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 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.

(5) 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.

(6) In accordance with Article 33 of the IUU Regulation, the Council is to establish a list of non-cooperating third countries. The measures set out, inter alia, in Article 38 of the IUU Regulation apply to those countries.

(7) Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third country flag States is subject to a notification to the Commission of the arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by the fishing vessels of the concerned third countries.

(8) In accordance with Article 20(4) of the IUU Regulation, the Commission is to cooperate administratively with third countries in areas pertaining to the implementation of that Regulation.

2. PROCEDURE WITH RESPECT TO THE REPUBLIC OF LIBERIA

(9) The Republic of Liberia (hereafter ‘Liberia’) has not submitted its notification as a flag State pursuant to Article 20 of the IUU Regulation to the Commission.

(10) From 5 February 2014 to present the Commission cooperated administratively with the authorities of Liberia in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation. This cooperation covered issues pertaining to the implementation, control and enforcement of laws, regulations and conservation and management measures by Liberia. It entailed exchange of oral and written comments as well as a visit to Liberia between 19 and 23 October 2015, where the Commission sought and verified all information deemed necessary concerning the measures taken by Liberia in order to implement its obligations in the fight against IUU fishing.

(11) Liberia is a contracting party of the International Commission for the Conservation of Atlantic Tunas (ICCAT); a Cooperating Non-Contracting Party of the Indian Ocean Tuna Commission (IOTC), the North East Atlantic Fisheries Commission (NEAFC) and the South Pacific Regional Fisheries Management Organisation (SPRFMO); and a Cooperating Non-Member of the Western and Central Pacific Fisheries Commission (WCPFC) as well as the Inter-American Tropical Tuna Commission (IATTC). Liberia has ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA).

(12) In order to evaluate the compliance of Liberia with its international obligations as flag, port, coastal or market State as set out in the international agreements referred to in recital 11 and established by the relevant Regional Fisheries Management Organisations (RFMOs), the Commission sought, collected and analysed all necessary information required for the purpose of this exercise.

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

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

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

(14) The Liberian national fisheries legal framework (the 2010 Fisheries Regulations) defines fishing vessels as ‘any vessel used for fishing or related activities’. The scope of the 2010 Fisheries Regulations covers all fishing and fishing related activities in waters under the jurisdiction of Liberia as well as the activities of all Liberian vessels and persons in any area beyond the jurisdiction of Liberia, in so far as this is not in conflict with the jurisdiction of another State.

(15) While the Liberian national authority in charge of national vessel registration consults with the fisheries authorities about the registration of new fishing vessels that will operate in national waters, the entity in charge of the international vessel registry (Liberian Maritime Authority) does not consult the national fisheries authorities before registering any fishing vessel which will operate outside Liberia’s Exclusive Economic Zone (EEZ). This prevents the establishment of a consolidated list containing all fishing vessels flying the flag of Liberia. It appears that the national fisheries authority does not have any information on Liberian fishing vessels operating beyond the Liberian EEZ. The apparent lack of cooperation between Liberian Maritime Authority and the national fisheries authorities could be considered as a situation compromising Liberia’s ability to monitor the size and activities of its fleet, potentially allowing illegal operators to use the flag of Liberia without proper control.

(16) The Commission established that there are over 100 Liberian flagged fishing vessels operating beyond Liberia’s EEZ without authorisation from the relevant Liberian fisheries authorities. The Liberian fisheries authorities acknowledged that while the Liberian Maritime Authority does monitor the international Liberian flagged fleet, the fishing vessels operating beyond the EEZ are not subject to monitoring, control and surveillance by the fisheries authority. They do not report their geographic position to Liberia’s fisheries monitoring centre or share information with Liberia’s fisheries authorities on catch data, landings or transhipments.

(*) https://treaties.un.org/
(1) This is implemented through the Liberian International Ship and Corporate Registry
(2) Bureau of National Fisheries
(17) Pursuant to Article 31(4)(b) of the IUU Regulation the Commission examined the measures taken by Liberia in respect of access of fisheries products stemming from IUU fishing to its market.

(18) Liberian vessels operating beyond the EEZ of Liberia are not subject to any form of control by Liberia’s fisheries authorities. These vessels do not report or transmit any information regarding their activities, landings and transhipments to the Liberian fisheries authorities. Therefore it is unlikely that the traceability of fish or fish products stemming from these vessels can be guaranteed.

(19) The performance of Liberia described in recitals 15 to 17 is not in line with Articles 94(1) and (2) of UNCLOS which provide that every State shall effectively ensure its jurisdiction and control over ships flying its flag. It is also not in line with point 24 of the Food and Agriculture Organisation of the United Nations’ (FAO) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU) (1) that provides for the obligation to undertake comprehensive and effective control of fishing activities and with point 35 of the IPOA IUU that provides that a flag State should ensure that, before it registers a vessel, it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing. It also contravenes point 36 of the IPOA IUU, that provides that flag States should avoid flagging vessels with a history of non-compliance and point 42 of IPOA IUU which provides that every State shall maintain a register of ships containing the names and particulars of ships flying its flag. It also fails to comply with point 71 of the IPOA IUU which advises States to take steps to improve the transparency of their markets in order to ensure the traceability of fish or fish products. Equally, it fails to comply with Article 11 of the FAO Code of Conduct for Responsible Fisheries (FAO Code of Conduct) which sets good practices for post-harvest activities and responsible international trade.

(20) 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 country, it could be established, pursuant to Article 31(3), (4)(a) and (4)(b) of the IUU Regulation, that Liberia failed to discharge its duties under international law as a flag port, coastal and market State in respect of IUU vessels and IUU fishing carried out or supported by vessels flying its flag or by its nationals and to prevent access of fisheries products stemming from IUU fishing to its market.

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

(21) While the fisheries authorities of Liberia were generally cooperative with the Commission and responded to requests for information and provided feedback, their capacity to reply to certain requests was limited by the status of the international vessel registry and the lack of cooperation between the Liberian Maritime Authority and the national fisheries authorities, as established in Section 3.1.

(22) Liberia is a significant flag State, operating the second largest international registry in the world attracting vessels from third countries with no direct link to the country. As explained in recital 16, these vessels operate beyond the EEZ of Liberia, on the high seas and in the waters of third countries. Liberia is also a member or party to six RFMOs and cooperates with other countries at sub-regional level through the Fishery Committee for the West Central Gulf of Guinea (FCWC). However, the Commission found that the Liberian fisheries authorities do not appear to cooperate or to be in a position to cooperate with third countries in all regions where Liberian fishing vessels operate except in the east Atlantic. This apparent lack of cooperation subsists despite the fact Liberia is a member or party to six RFMOs, and may result from the fact that Liberia’s fisheries authorities seem to have no information about vessels flying the flag of Liberia operating outside the national EEZ and the area under the responsibility of the International Commission for the Conservation of Atlantic Tunas, due to the lack of internal administrative coordination with the Liberian Maritime Authority registered vessels.

(23) The 2010 Fisheries Regulations are outdated, and need to be revised to ensure consistency between national law and international and regional applicable rules. The definition of fishing activities provided by the 2010 Fisheries Regulations includes searching for, catching, taking and harvesting fish as well as any activity in support of or preparation of these activities, including through the use of aircraft. The definition of fishing vessels includes vessels conducting fishing related activities. Fishing related activities include transhipment, storage, processing, transportation and refuelling and supplying fishing vessels. The sanctioning system is categorised in terms of severity of the offence reflected by the amount of the fine for each type of offence and sanctions may be deterrent and proportionate as required by international obligations. However, these texts do not specifically define IUU fishing activities or serious infringements in line with international law.

(1) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Food and Agriculture Organisation of the United Nations, 2001
The Liberian Bureau of National Fisheries operates a Fisheries Monitoring Centre (FMC) to comply with fisheries monitoring, control and surveillance (MCS) duties. The FMC is equipped to carry out MCS functions. However, only vessels licensed to operate in the national EEZ are monitored by the FMC; Liberian flagged vessels operating in the high seas or in the waters of third countries are not monitored by the FMC. Furthermore, due to limited funding, in particular for aerial surveillance, certain MCS functions appear to be constrained. This impedes Liberia from ensuring an effective and comprehensive MCS system for fishing vessels flying its flag. Therefore, Liberia seems to lack or fails to allocate adequate resources to fight IUU fishing.

The Liberian legal framework and enforcement measures appear not to comply with the basic requirements in Articles 61, 62 and 117 to 119 of UNCLOS. The facts described in recitals 20 to 23 indicate that Liberia fails to fulfil the conditions of Article 94 of UNCLOS, which requires the flag State to assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew, and breaches Article 18(3) of UNFSA, which specifies the measures to be taken by a State in respect of vessels flying its flag. Liberia appears to fail to take into consideration the recommendations in point 24 of the IPOA IUU which advises flag States to ensure comprehensive and effective monitoring, control and surveillance of fishing, from the catch to the point of landing, to final destination, including through the use of Vessel Monitoring Systems (VMS) on board fishing vessels in accordance with the relevant national, regional and international standards.

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 country, it could be established, pursuant to Article 31(3) and (5) of the IUU Regulation, that Liberia 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)

The Commission analysed all information deemed relevant with respect to the status of Liberia as a contracting party of UNCLOS, UNFSA and ICCAT; as a Cooperating Non-Contracting Party of NEAFC, SPRFMO and IOTC and as a Cooperating Non-Member of WCPFC and IATTC.

Between 2014 and 2016 Liberia became cooperating party, cooperating non-contracting party or cooperating non-member of six RFMOs (1). However, during the evaluation mission to Monrovia between the 19 and 23 October 2015 it transpired that it was the Liberian Maritime Authority that had taken the steps to join all these RFMOs, except ICCAT, without consulting the national fisheries authorities. The national fisheries authorities were responsible for joining ICCAT. This situation risks to impede Liberia’s ability to meet their compliance commitments in each RFMO and has resulted in late report submission (ICCAT) or failure to report (SPRFMO) in breach of their obligations under the respective RFMO.

Liberia has ratified two international legal instruments related to fisheries management: UNCLOS and UNFSA. The performance of Liberia in implementing international instruments is not in accordance with the recommendations of point 11 of the IPOA IUU which encourages States, as a matter of priority, to ratify, accept or accede not only to UNCLOS and UNFSA, but also to the FAO Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas. It also contravenes point 14 of the IPOA IUU which provides that States should fully and effectively implement the Code of Conduct and its associated International Plans of Action.

Liberia has not ratified the 2009 FAO Port State Measures Agreement (PSMA). While direct landings of fisheries products in Liberia are not frequent at present, some landings do occur and Liberia is developing landing facilities under an international project. They will then need to be able to carry out their port State obligations.

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(1) Contracting party of ICCAT; Cooperating Non-Contracting Party of NEAFC, SPRFMO and IOTC; Cooperating Non-Member of WCPFC and IATTC. Liberia is not a member/Cooperating-non member to CCSBT, but 18 vessels are authorised to operate in this RFMO.
Contrary to the recommendations in points 25 to 27 of the IPOA IUU, Liberia has not developed a national plan of action against IUU fishing.

Furthermore, the Liberian authorities explained to the Commission during the evaluation meeting held on 24 March 2015 that the management of Liberia’s international registry is carried out by a private company located outside of Liberia. During this meeting and subsequent exchanges Liberia failed to demonstrate how it ensures that fishing vessels flying its flag have a genuine link with the country. This contravenes Article 91 of UNCLOS which provides that a genuine link must exist between the flag State and its ships.

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 country, it could be established pursuant to Article 31(3) and (6) of the IUU Regulation, that Liberia 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 Regulations)

According to the United Nations Human Development Index (UNHDI) (1), in 2015 Liberia was considered to be a low human development country ranked 177 out of 188 countries.

Although specific capacity constraints may exist with respect to monitoring, control and surveillance, the specific constraints of Liberia derived from its level of development do not justify all the deficiencies identified in the previous sections. This concerns especially the lack of internal coordination regarding registration of fishing vessels under the Liberian international registry and the lack of consolidated information on the identity of these vessels, with the consequent inability to exercise effective control.

It appears that the shortcomings identified result primarily from an inadequate administrative environment to ensure the effective performance by Liberia of its duties as flag, coastal, port and market State. Liberia has received support from regional initiatives which aim to strengthen governance and fight IUU fishing including through improved MCS, as well as sectoral support under the Sustainable Fisheries Partnership Agreement (SFPA) concluded with the European Union. It also received support for aerial surveillance through the United Nations Mission in Liberia. However, the drawdown of that Mission has brought an end to that support and no national support has been provided to maintain this MCS activity, thereby impeding Liberian MCS from operating effectively.

In view of the considerations presented in this Section and on the basis of all factual elements gathered by the Commission as well as the statements made by the country, it could be established, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Liberia with respect to fisheries management may be impaired by its level of development. However, account taken of the nature of the established shortcomings of Liberia, the development level of Liberia cannot fully excuse or otherwise justify its overall performance as flag, port, coastal or market State with respect to fisheries and the insufficiency of its actions to prevent, deter and eliminate IUU fishing.

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

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

The Commission should also take all the démarches set out in Article 32 of the IUU Regulation with respect to Liberia. 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 Liberia 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,

HAS DECIDED AS FOLLOWS:

Sole Article

Liberia 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, 23 May 2017.

For the Commission

Karmenu VELLA

Member of the Commission