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COUNCIL IMPLEMENTING DECISION

of 24 March 2014

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

(2014/170/EU)

(OJ L 91, 27.3.2014, p. 43)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Implementing Decision 2014/914/EU of 15 December 2014	L 360	53	17.12.2014

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COUNCIL IMPLEMENTING DECISION

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

(2014/170/EU)

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 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 ([1]), and in particular Article 33(1) thereof,

Having regard to the proposal from the European Commission,

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 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, the Commission notified by a Decision of 15 November 2012 ([2]) ('Decision of 15 November 2012') eight third countries of the possibility of their being identified as third countries that the Commission considers as non-cooperating third countries.

(4) In the Decision of 15 November 2012, the Commission included the information concerning the essential facts and considerations underlying such identification.

([1]) OJ L 286, 29.10.2008, p. 1.

([2]) Commission Decision of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified 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 (OJ C 354, 17.11.2012, p. 1).

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(5) Also on 15 November 2012, the Commission notified the eight third countries by separate letters of the fact that it was considering the possibility of identifying them as non-cooperating third countries.

(6) The Commission highlighted, in thoese letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as provided for 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 Decision of 15 November 2012.

(7) As a consequence, the Commission invited the eight third countries concerned: (i) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plans suggested by the Commission; and (iii) 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 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 assured 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 considered a period of six months as being in principle sufficient for reaching an agreement on the matter in question.

(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 Decision of 15 November 2012 were considered and taken into account. The eight countries were kept informed, either orally or in writing, of the Commission's deliberations.

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(11) By an Implementing Decision of 26 November 2013 ([1]) ('Implementing Decision of 26 November 2013'), the Commission identified Belize, the Kingdom of Cambodia and the Republic of Guinea as non-cooperating third countries in fighting IUU fishing. In accordance with the IUU Regulation, the Commission provided the reasons why it considered that those three countries failed to discharge their duties under international law as flag, port, coastal or market States to take action, to prevent, deter and eliminate IUU fishing.

(12) A 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 should therefore be taken in the context of the implementation of the IUU Regulation as a 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 Decision of 15 November 2012 and the Implementing Decision of 26 November 2013 are at the basis of this Decision and the reasons underlying are the same. This 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 the situation.

2. PROCEDURE WITH RESPECT TO BELIZE

(14) On 15 November 2012, the Commission notified Belize pursuant to the Article 32 of the IUU Regulation that it considered the possibility of identifying Belize as a non-cooperating third country and invited Belize to establish in close cooperation with its services an action plan to rectify the shortcomings

([1]) Commission Implementing Decision of 26 November 2013 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 (OJ C 346, 27.11.2013, p. 2).

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identified in the Decision of 15 November 2012. During the period from December 2012 to August 2013, Belize made written submissions making its views known and met the Commission to discuss the matter. The Commission provided to Belize relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Belize following the Decision of 15 November 2012 were considered and taken into account, while Belize was kept informed either orally or in writing of the Commission's deliberations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 15 November 2012 had not been addressed sufficiently by Belize. Moreover, the Commission concluded that the measures suggested in a plan of action presented by Belize had not been fully implemented.

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

(15) In the 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 that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation. The Commission reviewed the compliance of Belize in line with the findings in the Decision of 15 November 2012, and having regard to relevant information provided thereon by Belize, the suggested plan of action, as well to the measures taken to rectify the situation.

(16) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement international law obligations, linked in particular to the failure to adopt an adequate legal framework, the lack of adequate and efficient monitoring, the lack of a control and inspection scheme, the lack of a deterrent sanctioning system, and to improper implementation of the catch certification scheme. Other identified shortcomings relate, more generally, to compliance with international obligations, including Regional Fisheries Management Organisations' (RFMOs) recommendations and resolutions, and the conditions for the registration of vessels according to international law. A 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) was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.

(17) In the Implementing Decision of 26 November 2013, the Commission identified Belize as a non-cooperating third country pursuant to the IUU Regulation.

(18) With respect to the possible constraints upon Belize as a developing country, it is noted that the specific development status and overall performance of Belize with respect to fisheries are not impaired by its general level of development.

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(19) Having regard to the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013, and to the dialogue process with Belize entertained by the Commission and the outcome thereof, it can be concluded that the actions undertaken by Belize in light of its duties as flag State are insufficient to comply with the Articles 91, 94, 117 118 of the United Nations Convention on the Law of the Sea (UNCLOS), Articles 18, 19, 20 of the United Nations Fish Stocks Agreement (UNSFA), and with the Article II(8) of FAO Compliance Agreement.

(20) Thus, Belize has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing and it should therefore be included in the Union list of non-cooperating third countries.

4. PROCEDURE WITH RESPECT TO THE KINGDOM OF CAMBODIA

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

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

(22) In the 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 that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation. The Commission reviewed the compliance of Cambodia in line with the findings in the Decision of 15 November 2012, and having regard to the suggested plan of action, as further elaborated with relevant information provided by Cambodia.

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(23) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement international law obligations, linked in particular to the failure to adopt an adequate legal framework, the lack of adequate and efficient monitoring, the lack of a control and inspection scheme, and to the lack of a deterrent sanctioning system. Other identified shortcomings relate, more generally, to compliance with international obligations and the conditions for the registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the IPOA –UN was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.

(24) In the Implementing Decision 26 November 2013, the Commission identified Cambodia as a non-cooperating third country pursuant to the IUU Regulation.

(25) With respect to the possible constraints upon Cambodia as a developing country, it is noted that the specific development status and overall performance of Cambodia with respect to fisheries are not impaired by its general level of development.

(26) The actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the Articles 91 and 94 of the UNCLOS. It is recalled that it is immaterial whether Cambodia has actually ratified the UNCLOS, since its provisions on navigation on the High Seas (Articles 86 to 115 of the UNCLOS) have been recognised as customary international law. Moreover, those provisions 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, both of which have been acceded to and ratified by Cambodia.

(27) Having regard to the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013, and to the dialogue process with Cambodia entertained by the Commission and the outcome thereof, it can be concluded that the actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the Articles 91 and 94 of the UNCLOS.

(28) Thus, Cambodia has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing and it should therefore be included in the Union list of non-cooperating third countries.

6. PROCEDURE WITH RESPECT TO THE REPUBLIC OF GUINEA

(29) On 15 November 2012, the Commission notified the Republic of Guinea (Guinea) pursuant to the Article 32 of the IUU Regulation that it considered the possibility of identifying Guinea as a non-cooperating third country and invited Guinea to establish in close

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cooperation with its services an action plan to rectify the shortcomings identified in the Decision of 15 November 2012. During the period from December 2012 to July 2013, Guinea made written submissions making its views known and met the Commission to discuss the matter. The Commission provided to Guinea relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Guinea following the Decision of 15 November 2012 were considered and taken into account, while Guinea was kept informed either orally or in writing of the Commission's deliberations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 15 November 2012 had not been addressed sufficiently by Guinea. Moreover, the Commission concluded that the measures suggested in a plan of action presented by Guinea had not been fully implemented.

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

(30) In the 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 that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation. The Commission reviewed the compliance of Guinea in line with the findings in the Decision of 15 November 2012, and having regard to the suggested plan of action, as further elaborated with relevant information provided by Guinea.

(31) The main shortcomings identified by the Commission in the suggested plan of action were related to reforms still dues 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. Other identified shortcomings relate, more generally, to compliance with international obligations including RFMOs recommendations and resolutions and the conditions for the registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the IPOA – UN was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.

(32) In the Implementing Decision of 26 November 2013 the Commission identified Guinea as non-cooperating third country pursuant to the IUU Regulation.

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(33) With respect to the possible constraints upon Guinea as a developing country, it is noted that the specific 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 Union 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.

(34) Having regard to the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013, and to the dialogue process with Guinea entertained by the Commission and the outcome thereof, 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 Articles 61, 62, 94, 117 and 118 of the UNCLOS and Articles 18, 19 and 20 of the UNFSA.

(35) Thus, 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 it should therefore be included in the Union list of non-cooperating third countries.

8. ESTABLISHMENT OF A LIST OF NON COOPERATING THIRD COUNTRIES

(36) 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 in accordance with Article 33 of the IUU Regulation.

(37) Actions in respect of Belize, Cambodia and Guinea in the form of measures that should be applied 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 laid down in Article 2(11) of the IUU Regulation,' importation' means the introduction of fishery products into the territory of the Union, including for transhipment purposes at ports in its territory.

(38) 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 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, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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(39) If Belize, Cambodia or Guinea demonstrates that the situation that warranted its listing has been rectified, the Council, acting by qualified majority on a proposal from the Commission, removes that country from the list of non-cooperating third countries in line with Article 34(1) of the IUU Regulation. Any removal decision shall also take into consideration whether Belize, Cambodia or Guinea has taken concrete measures capable of achieving a lasting improvement of the situation.

HAS ADOPTED THIS DECISION:

Article 1

The Union list of non-cooperating third countries provided for in Article 33 of the Regulation (EC) No 1005/2008 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*.

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ANNEX

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

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Kingdom of Cambodia

Republic of Guinea