

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

## CHAPTER VI

### NON-COOPERATING THIRD COUNTRIES

#### *Article 31*

#### **Identification of non-cooperating third countries**

1 The Commission, in accordance with the procedure referred to in Article 54(2), shall identify the third countries that it considers as non-cooperating third countries in fighting IUU fishing.

2 The identification set out in paragraph 1 shall be based on the review of all information obtained pursuant to Chapters II, III, IV, V, VIII, X and XI, 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, as well as any other information obtained in the ports and on the fishing grounds.

3 A third country may be identified as a non-cooperating third country 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 For the purposes of paragraph 3, the Commission shall primarily rely on the examination of measures taken by the third country concerned in respect of:

- a recurrent IUU fishing suitably documented as 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; or
- b access of fisheries products stemming from IUU fishing to its market.

5 For the purposes of paragraph 3, the Commission shall take into account:

- a whether the third country concerned effectively cooperates with the Community, by providing a response to requests made by the Commission to investigate, provide feedback or follow-up to IUU fishing and associated activities;
- b whether the third country concerned has taken effective enforcement measures in respect of the operators responsible for IUU fishing, and in particular whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied;
- c the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered;
- d for developing countries, the existing capacity of their competent authorities.

6 For the purposes of paragraph 3, the Commission shall also consider the following elements:

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- a the ratification of, or accession of the third countries concerned to, international fisheries instruments, and in particular the Unclos, the UN Fish Stocks Agreement and the FAO Compliance Agreement;
- b the status of the third country concerned as a contracting party to regional fisheries management organisations, or its agreement to apply the conservation and management measures adopted by them;
- c any act or omission by the third country concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.

7 Where appropriate, specific constraints of developing countries, in particular in respect to monitoring, control and surveillance of fishing activities, shall be duly taken into consideration in the implementation of this Article.

### *Article 32*

#### **Démarches in respect of countries identified as non-cooperating third countries**

1 The Commission shall, without delay, notify countries concerned of the possibility of being identified as non-cooperating third countries in accordance with the criteria laid down in Article 31. It shall include in the notification the following information:

- a the reason or reasons for the identification with all available supporting evidence;
- b the opportunity to respond to the Commission in writing with regard to the identification decision and other relevant information, for example, evidence refuting the identification or, where appropriate, a plan of action to improve and the measures taken to rectify the situation;
- c the right to ask for, or to provide, additional information;
- d the consequences of its identification as non-cooperating third country, as provided in Article 38.

2 The Commission shall also include in the notification referred to in paragraph 1 a request that the third country concerned take any necessary measures for the cessation of the IUU fishing activities in question and the prevention of any future such activities, and rectify any act or omission referred to in Article 31(6)(c).

3 The Commission shall, by more than one means of communication, transmit its notification and request to the third country concerned. The Commission shall seek to obtain confirmation from that country that it has received the notification.

4 The Commission shall give to the third country concerned adequate time to answer the notification and a reasonable time to remedy the situation.

### *Article 33*

#### **Establishment of a list of non-cooperating third countries**

1 The Council, acting by qualified majority on a proposal from the Commission, shall decide on a list of non-cooperating third countries.

2 The Commission shall, without delay, notify the third country concerned of its identification as a non-cooperating third country and of the measures applied in accordance with

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Article 38, and shall request it to rectify the current situation and to advise on the measures taken to ensure compliance with conservation and management measures by its fishing vessels.

3 Following a decision taken pursuant to paragraph 1 of this Article, the Commission shall, without delay, notify it to the Member States and shall request them to ensure the immediate implementation of the measures laid down in Article 38. Member States shall notify the Commission of any measures they have taken in response to this request.

#### *Article 34*

### **Removal from the list of non-cooperating third countries**

1 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 Following a decision taken pursuant to paragraph 1 of this Article, the Commission shall, without delay, notify Member States of the lifting of the measures laid down in Article 38 in respect of the third country concerned.

#### *Article 35*

### **Publicity of the list of non-cooperating third countries**

The Commission shall publish the list of non-cooperating third countries in the *Official Journal of the European Union* and take any measure necessary to ensure publicity of this list, including placing it on its website. The Commission shall regularly update the list and shall provide for a system to automatically notify updates to Member States, regional fisheries management organisations and any member of the civil society that should so request. Furthermore, the Commission shall transmit the list of non-cooperating third countries to the FAO and to regional fisheries management organisations for the purposes of enhancing cooperation between the Community and those organisations aimed at preventing, deterring and eliminating IUU fishing.

#### *Article 36*

### **Emergency measures**

1 If there is evidence that the measures adopted by a third country undermine the conservation and management measures adopted by a regional fisheries management organisation, the Commission shall be entitled to adopt, in line with its international obligations, emergency measures which shall last no more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.

2 The emergency measures referred to in paragraph 1 may include, *inter alia*, that:

- a fishing vessels authorised to fish and flying the flag of the third country concerned shall not be granted access to the ports of Member States, except in case of *force majeure* or distress as referred to in Article 4(2) for services strictly necessary to remedy those situations;

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- b fishing vessels flying the flag of a Member State shall not be authorised to engage in joint fishing operations with vessels flying the flag of the third country concerned;
  - c fishing vessels flying the flag of a Member State shall not be authorised to fish in maritime waters under the jurisdiction of the third country concerned, without prejudice to the provisions set out in bilateral fishing agreements;
  - d provision of live fish for fish farming in maritime waters under the jurisdiction of the third country concerned shall not be authorised;
  - e live fish caught by fishing vessels flying the flag of the third country concerned shall not be accepted for the purposes of fish farming in maritime waters under the jurisdiction of a Member State.
- 3 Emergency measures shall have immediate effect. They shall be notified to the Member States and to the third country concerned and published in the *Official Journal of the European Union*.
- 4 The Member States concerned may refer the Commission's decision set out in paragraph 1 to the Council within 10 working days of receipt of the notification.
- 5 The Council, acting by qualified majority, may take a different decision within one month of the date of receipt of the referral.

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