

COMMISSION DECISION

of 26 November 2013

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

(2013/C 346/03)

THE EUROPEAN COMMISSION,

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 32 thereof,

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 should notify third countries of the possibility of their being identified as non-cooperating countries. Such notification is of a preliminary nature. The notification of third countries of the possibility of their being identified as non-cooperating countries shall be based on the criteria laid down in Article 31 of the IUU Regulation. The Commission should also take all the *démarches* set out in Article 32 with respect to those countries. In particular, the Commission should include in the notification information concerning the essential facts and considerations underlying such identification, the opportunity of those countries 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 should give to the third countries concerned adequate time to answer the notification and reasonable time to remedy the situation.

(4) Pursuant to Article 31 of the IUU Regulation, the European Commission may identify third countries that it considers as non-cooperating countries in fighting IUU fishing. 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.

(5) The identification of non-cooperating third countries will be based on the review of all information as set out under Article 31(2) of the IUU Regulation.

(6) In accordance with Article 33 of the IUU Regulation, the Council may establish a list of non-cooperating 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, third-country flag States are requested to notify the Commission of their arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by their fishing vessels.

(8) Pursuant to Article 20(4) of the IUU Regulation, the Commission cooperates administratively with third countries in areas pertaining to the implementation of that Regulation.

2. PROCEDURE WITH RESPECT TO THE REPUBLIC OF KOREA

(9) The notification of the Republic of Korea (Korea) as flag State was accepted by the Commission in accordance with Article 20 of the IUU Regulation as of 1 January 2010.

(10) From 11 to 15 July 2011, the Commission, with the support of the EFCA, carried out a mission to Korea in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation.

(11) The mission sought to verify information concerning Korea's arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels, the measures taken by Korea in order to implement its obligations in the fight against IUU fishing and to fulfil its requirements and points pertaining to the implementation of the catch certification scheme of the Union.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

- (12) The final report of the mission was sent to Korea on 5 October 2011.
- (13) The comments of Korea on the final report of the mission were received on 28 March 2012.
- (14) In the letter dated 11 October 2011, the Commission submitted to the Korean authorities information regarding identified IUU activities by Korean vessels.
- (15) A subsequent mission of the Commission to Korea to follow up the actions taken in the first mission was conducted from 17 to 18 April 2012.
- (16) Korea submitted additional written comments on 16 May 2012, 25 June 2012, 21 December 2012, 19 June 2013 and 21 June 2013. It also provided replies during meetings that took place in Brussels on 26 January 2012, 8 June 2012, 6 September 2012, 9 October 2012, 8 March 2013, 13 March 2013, 22 April 2013, 31 May 2013 and 25 July 2013. The two sides exchanged written comments at political level on 27 June 2013 and 17 July 2013.
- (17) Korea is a Contracting Party to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tuna (ICCAT), the Indian Ocean Tuna Commission (IOTC), the Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean (SPRFMO), the WCPFC, the Northwest Atlantic Fisheries Organisation (NAFO) and the South East Atlantic Fisheries Organisation (SEAFO). South Korea has ratified the UNCLOS and UNFSA. It accepted the 2003 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ('FAO Compliance Agreement').
- (18) The Commission analysed all relevant information in order to evaluate the compliance of Korea with its international obligations as flag, port, coastal or market State⁽²⁾ as set out in the international agreements and established by the RFMOs mentioned in recital 17.
- (19) The Commission used information derived from available data published by CCAMLR, IOTC and ICCAT either in the form of compliance reports or in the form of IUU

vessel lists as well as publicly available information retrieved from the United States Department of Commerce Report to Congress Pursuant to Section 403(a) of the Magnuson-Stevens Fisheries Conservation and Management Reauthorisation Act of 2006, January 2013 (the National Marine Fisheries Service (NMFS) report).

3. POSSIBILITY OF THE REPUBLIC OF KOREA OF BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

- (20) Pursuant to Article 31(3) of the IUU Regulation, the Commission analysed the duties of Korea 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.

3.1. Recurrence of IUU vessels and IUU trade flows (Article 31(4)(a) of the IUU Regulation)

- (21) The Commission established on the basis of the information retrieved from its missions on-the-spot and from written confirmation by the concerned third coastal States involved that, during 2011 and 2012, 19 Korean-flagged vessels committed serious IUU infringements.
- (22) Based on the evidence retrieved, these Korean-flagged vessels are considered to have committed the following serious infringements contrary to the conservation and management measures applicable within the fishing areas concerned, as they have: fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State; fished in closed areas or during a closed season; used falsified coastal State administrative documents to import into the EU fisheries products caught under illegal conditions in the coastal State jurisdictional waters; used falsified or invalid documents for obtaining validation of catch certificates from the Korean authorities and importation of the products into the EU; falsified or concealed their markings, identity or registration; obstructed the work of coastal State officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures; not paid any of the sanctions applied by the competent authorities of the coastal State; unilaterally and illegally renamed vessels and altered their call signs. Furthermore, when these vessels decided to leave the coastal State EEZ, they have not fulfilled their obligations to record and report catch or catch-related data and they have not previously informed the coastal State authorities. Finally, they have engaged in transhipment operations without complying with the conditions of their authorisations to tranship delivered by the competent coastal States, without having previously informed the coastal States and without having applied for and obtained authorisation to tranship from the competent States. All of these elements have been submitted to the Korean authorities by the letter of 11 October 2011.

⁽²⁾ For market State and corresponding measures, see FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing, paragraphs 65 to 76, and FAO 1995 Code of Conduct for Responsible Fisheries, Article 11.2.

- (23) Furthermore, the Commission considered that the behavioural pattern of these Korean-flagged vessels should be taken into account for establishing the particular gravity of the facts. The value, the extent and the repetition of the illegal activities committed, as described in the recital 22, are additional indications of the seriousness of the committed infringements.
- (24) Non-compliances with the legal requirements of coastal States for enforcing closed seasons, a moratorium or a closed area reserved for artisanal fisheries are particularly harmful for the sustainability of the fisheries resources in the developing coastal States concerned, and are damaging the livelihood of local populations.
- (25) Moreover, in operating in the way explained in recital 22, these vessels have obstructed the ability of the competent fisheries authorities of the coastal States to monitor and supervise their activities at sea. The Commission considered that conducting transshipment at sea in violation of conditions imposed by ICCAT or without the permission of the coastal State concerned in contravention of its laws and regulations is of particular gravity, and could seriously undermine the attainment of the objectives of the violated rules, jeopardise the sustainability of the fisheries resources in the coastal State concerned and deprive the competent authorities of the only possibility to monitor these activities, which pose a risk in terms of traceability and control of the fisheries products. Indeed, in some cases, the continuous non-cooperative behaviour of the Korean vessel reinforced the gravity of the infringements committed. Finally, most of these infringements are defined as serious by the laws of the competent coastal States.
- (26) On the basis of information collected, the Commission concluded that Korea did not take appropriate measures for preventing, detecting and sanctioning recurrent IUU fishing activities carried out by fishing vessels operating in its waters. Indeed, available information confirms that recurrent infringements were committed by Korean-flagged fishing vessels operating within third-country waters. The Commission established that for several cases in spite of relevant available information, the competent Korean authorities: did not initiate proceedings; did not sanction the vessels concerned; did not effectively enforce the sanctions when they imposed them; in some cases, they even decreased the level of the accompanying sanctions. In addition, due to the lack of cooperation by the flag State (Korea), the coastal States concerned were unable to take effective enforcement actions. Furthermore, the Commission established that in cases where the Korean authorities took sanctions, the level of the penalties imposed towards those Korean-flagged vessels was manifestly inadequate and the sanctions were lacking the proportionate, effective and dissuasive character required under international rules and recommendations, in particular in Article 19 of the UNFSA and point 21 of the IPOA IUU.
- (27) From information provided by a Korean company and information collected during the Commission mission in March 2011, the Commission established that illegal transshipments at sea in violation of Panamanian and coastal States laws and regulations were taking place along the West African coast from Angola to Guinea Bissau during four years.
- (28) The Commission has evidence of illegal transshipments performed by Korean-owned vessels. In line with Article 62 of the UNCLOS, nationals of other States fishing in the EEZ of a coastal State shall comply with the conservation measures and with other terms and conditions established in the laws and regulations of the coastal State. Thus, the Commission considers that conducting transshipments at sea in violation of conditions imposed or without the permission of coastal State concerned in contravention of its laws and regulations is an IUU infringement of particular gravity and could seriously undermine the sustainability of the fisheries resources in the coastal State concerned.
- (29) In view of the situation explained in this Section of the Decision and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the concerned country, it could be established, pursuant to Article 31(3) and Article 31(4)(a) of the IUU Regulation, that Korea has failed to discharge the duties incumbent upon it under international law as a flag State in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or by its nationals and has not taken sufficient action to counter documented and recurring IUU fishing by vessels previously flying its flag.
- 3.2. Failure to cooperate and to enforce (Article 31(5) of the IUU Regulation)**
- (30) With respect to whether Korea cooperates effectively with the Commission and coastal States on investigations of IUU fishing and associated activities, it is noted that evidence gathered by the Commission indicates that Korea failed to fulfil its flag State obligations as set out under international law.
- (31) With respect to the 19 Korean-flagged vessels referred to in recital 21, it is noted that considering that the Korean authorities failed to cooperate with the Commission in the framework of Article 26 of the IUU Regulation, the Commission initiated the procedure of Article 27 of that Regulation vis-à-vis the operators concerned.

- (32) This situation indicates that Korea also failed to cooperate and coordinate activities with the EU and other States in preventing, deterring and eliminating IUU fishing as set out in point 28 of the IPOA IUU. Korea also failed 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, through the point of landing, to final destination, including by implementing the VMS in accordance with the relevant national, regional and international standards. This includes the requirement for vessels under its jurisdiction to carry VMS on board. In the same manner, Korea failed to take into consideration the recommendations in point 45 of the IPOA IUU which advises flag States to ensure that each vessel entitled to fly their flag fishing in waters outside their sovereignty or jurisdiction holds a valid authorisation to fish issued by the flag State concerned. Furthermore, Korea fails to comply with point 47(7) of the IPOA IUU by not requesting the history of the vessel in terms of possible infringements committed before granting a fishing licence.
- (33) It should be also noted that the 2005 Korean National Plan of Action against IUU fishing (NPOA), contrary to the recommendations in points 26 and 27 of the IPOA IUU, has not been updated. The May 2013 Korean's Plan to Enhance the Mechanism to Prevent and Deter IUU Fishing Activities by Korean-flagged vessels is a draft that cannot be considered as a detailed and clear national plan of action against IUU fishing. Korea has not improved its level of implementation of the NPOA to ensure that national efforts to prevent, deter and eliminate IUU fishing are internally coordinated. In particular, in terms of monitoring, control and surveillance of the long-distance fleet a number of objectives has not been met. The Commission revealed during its missions that the level of the exchange of information with the coastal States is unsatisfactory. Korea still does not meet the requirements to fulfil its flag and port State responsibilities under international law.
- (34) In the course of the mission conducted in Korea in July 2011, the Commission observed that there was no Fishing Monitoring Centre (FMC) as such, to control the Korean long-distance fishing fleet, and the operators of the Long-Distance Waters Fisheries Division cannot confirm whether a given vessel is in or out of a given geographical area and if a given vessel when fishing in a given area (EEZ or RFMO) is actually authorised to operate there. Moreover, concerning the validation of catch certificates for the long-distance fleet, it was revealed that the competent Korean authority, the National Fisheries Products Quality Inspection Service, has no means to crosscheck the information mentioned in the catch certificates and other reliable sources of information such as the fishing licences held by the economic operator, the VMS positions of the fishing vessels, the catch reports or copies of the logbooks. Following the information provided by the Government of Korea, a new Ministry of Oceans and Fisheries has been established, and a FMC will be commissioned to monitor its fleet. However, the existing legislation is still not in line with Article 18(3)(e)(g)(iii) and Article 18(4) of the UNFSA. In this regard, the deficiencies identified in terms of human resources, availability of data on the fishing vessels positions in real time or historic data, methods used and training of the officials in charge need to be corrected.
- (35) With respect to administrative rules concerning transshipment at sea of fish, it was submitted by Korea that such rules exist only in cases covered by RFMOs or if coastal States regulate such activity. In the latter case, it was clarified that the Government of Korea receives no report of such operations of transshipment at sea. In this respect, it is pertinent to note that transshipments at sea effectuated by Korean fishing vessels in West African waters gave rise to infringements as referred in recitals 21 to 28, and were subject to requests for verification in 2011 from different Member States ⁽³⁾.
- (36) The existence of a procedure under Article 27 of the IUU Regulation constitutes a further indication of the failure of Korea to exercise its responsibilities vis-à-vis its vessels operating on the high seas as set out in Article 18(1) and (2) of the UNFSA. Furthermore, pursuant to Article 19(1) of the UNFSA, the flag State is required to ensure compliance by vessels flying its flag with RFMO conservation and management rules.
- (37) The Commission analysed whether Korea has taken effective enforcement measures in respect of operators responsible for IUU fishing and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied.
- (38) The recurrence of the cases of IUU fishing described in the recitals 21 to 28 indicate that Korea failed to take enforcement actions in response to such IUU fishing following relevant requests made by the Commission.

⁽³⁾ Letter of 12 July 2011 of the QIA.

- (39) The Korean failure to effectively monitor and sanction the participation of Korean vessels in these illegal activities undermines its ability to fulfil its obligations under Article 117 of the UNCLOS which stipulates the duties of States to adopt national measures for their respective nationals for the conservation of living resources of the high seas. In this respect, it should be noted as well that the importance of effective actions vis-à-vis beneficial owners is confirmed by relevant FAO and OECD documentation which highlights the importance of information on beneficial owners in order to combat illicit activities⁽⁴⁾ and the need for records of fishing vessels and beneficial ownership⁽⁵⁾. That administrative practice, that could attract IUU operators for registration of IUU vessels, is not in compliance with Article 94 of the UNCLOS.
- (40) The failure of Korea as a flag State to fulfil its compliance and enforcement obligations as laid down in Article 19 of the UNFSA is also confirmed by the information gathered during the missions held in 2011 and 2012 and by information collected by the Commission in accordance with Article 25 of the IUU Regulation. The Commission established that fishing vessels flying the Korean flag were committing recurrent IUU fishing activities. This situation prompted the initiation of procedures under Articles 26 and 27 of the IUU Regulation. The procedures under Article 27 are currently ongoing in order to establish if IUU fishing activities are adequately sanctioned in a manner that ensures compliance, discourages violations and deprives offenders of the benefits accruing from their illegal activities. The Korean authorities were informed of these procedures by letters of 11 October 2011, 22 December 2011 and 2 March 2012.
- (41) Points 34 and 35 of the IPOA IUU also provide that States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing and, before they register a vessel, they can exercise their responsibility to ensure that the vessel does not engage in IUU fishing. Furthermore, the actions referred to in recital 59 regarding the activities of Korean nationals in the tropical tuna fisheries in the Gulf of Guinea, which included prohibited transshipments by vessels flagged to Ghana, undermine the ability of Korea to fulfil its obligations under Article 94(2)(b) of the UNCLOS which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.
- (42) Available evidence confirms that Korea has not fulfilled its obligations under international law with respect to effective enforcement measures. In this respect, it is recalled that, according to the Korean Ocean Industry Development Act of 2007 as amended in March 2013, Korean-flagged fishing vessels are only required to carry the VMS when fishing in the framework of RFMOs requesting VMS, or when operating in national waters under fishery agreements that Korea has signed with third countries⁽⁶⁾. As a result, there is no legal requirement for vessels to carry VMS if fishing in the high seas outside RFMOs scope of competence or in waters of coastal States with which no fishing agreement exists. According to information provided by the Korean authorities on 25 July 2013, at present 97 out of the 344 Korean long-distance fishing vessels are not fitted with VMS system. Under the July 2013 Ocean Industry Development Act the installation of VMS is not clearly foreseen as compulsory for all long-distance fishing Korean fleet irrespectively of where they operate. Compulsory VMS tracking is by now a practice internationally accepted, which therefore forms part naturally of the duties of flag States according to Article 18(3)(e) of the UNFSA. The facts described in this recital and in recitals 21 to 28 indicate that Korea failed to fulfil the conditions of Article 94 of the UNCLOS which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew. Furthermore, Korea does not fulfil its compliance and enforcement obligations as a flag State stipulated in Article 19 of the UNFSA, since it has failed to demonstrate that it acted and operated in accordance with the detailed rules laid down in that Article.
- (43) Furthermore, with respect to the enforcement measures put in place by Korea, the missions conducted by the Commission in Korea also revealed that there is a need to review the applicable sanctions in respect of violations, as provided for in Korean Ministerial Directive of 29 December 2009 on the EU's IUU rules, the 'Fishery Resources Control Act'. The criminal sanctions provided for in the legal system of Korea set a general maximum limit for fines at USD 1 000 for infringement. The level of such sanctions is manifestly inadequate and is clearly not proportionate to the seriousness of possible infringements, to the potential impact of the infringements on the resource and to the potential benefit that could derive from such illegal actions to perpetrators. The recently adopted (July 2013) Ocean Industry Development Act does not establish a clear catalogue of dissuasive sanctions (criminal and administrative) and accompanying sanctions. The current revised system foresees several derogations on suspension of licences, does not define clearly serious infringements, contains unclear definitions and unclear methods of calculating the level of sanctions. In the course of the mission conducted

⁽⁴⁾ OECD, 'Ownership and Control of Ships' Report, retrieved from: <http://www.oecd.org/dataoecd/53/9/17846120.pdf>

⁽⁵⁾ FAO, 'Comprehensive record of fishing vessels, refrigerated transport vessels, supply vessels and beneficial ownership', Report of a Study by the FAO Department of Fisheries, March 2010 (retrieved from: ftp://ftp.fao.org/FI/DOCUMENT/global_record/eims_272369.pdf) and IPOA IUU, point 18.

⁽⁶⁾ Korea has signed fishing agreements with 13 countries (Russia, Japan, China, Tuvalu, Solomon Islands, Kiribati, Papua New Guinea, Cook Islands, France, Iran, Australia, Mauritania and Ecuador).

in March 2011 and the following communications held with Korea, the Commission observed that, in spite of the availability of sufficient information for notifying infringements committed by their fishing vessels operating in high seas and third-country waters, the competent Korean authorities were failing to undertake prompt actions to initiate proceedings and, where appropriate, to properly sanction the vessels concerned. Pursuant to Article 62 of the UNCLOS, nationals of other States fishing in the EEZ of a third country must comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal States. In this respect, the administrative practices observed in Korea are not consistent with its international obligations as flag State under the UNCLOS.

(44) It is pertinent to note that Korea was also mentioned in the NMFS report ⁽⁷⁾. Korea has been identified for failing to apply sufficient sanctions to deter its vessels from engaging in fishing activities that violate conservation and management measures required under an international fishery management agreement. Specifically, NMFS is concerned that Korea is not effectively controlling its nine fishing vessels currently authorised to fish in the CCAMLR Convention Area. Similar concerns were expressed during the 18th Special Meeting of ICCAT in November 2012 regarding the activities of Korean nationals involved in possible illegal transshipments as is further explained in the recital 59. The Government of Korea further indicated that an amendment of the relevant law to strengthen sanctions against IUU fishing activities has been adopted. Despite the July 2013 Ocean Industry Development Act, the new sanctioning system is still insufficient to deter IUU fishing activities, as explained in 43.

(45) Account taken of the situation explained in recitals 43 and 44, it is concluded that the level of sanctions for IUU infringements provided for in Korean legislation is not in accordance with Article 19(2) of the UNFSA which provides that the sanctions applicable in respect of violations shall be adequate in severity in order to be effective in securing compliance and to discourage violations wherever they occur and should deprive offenders of the benefits accruing from their illegal activities. Furthermore, the performance of Korea with respect to effective enforcement measures is also not in accordance with the recommendations in point 21 of the IPOA IUU which advises States to ensure that sanctions for IUU fishing by vessels are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive the benefits accruing from such fishing.

(46) The failure of Korea to fulfil its compliance and enforcement obligations, as explained in this Section,

also infringes Article III(8) of FAO Compliance Agreement stating that each party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of the FAO Compliance Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall indeed be of sufficient gravity as to be effective in securing compliance with the requirements of the FAO Compliance Agreement and to deprive offenders of the benefits accruing from their illegal activities.

(47) With respect to the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered, the Commission has taken into account the recurrent and repetitive IUU fishing activities of Korean-flagged vessels until 2013 as referred in recitals 21 to 24.

(48) With respect to the existing capacity of the Korean authorities, it should be noted that, according to the United Nations Human Development Index ⁽⁸⁾, Korea is considered as a very high human development country (12th in 186 countries). Account taken of its position, it is not considered necessary to analyse the existing capacity of the Korean competent authorities. This is because the level of development of Korea, as referred to in this recital, cannot be considered as a factor undermining the capacity of the competent authorities to cooperate with other countries and pursue enforcement actions.

(49) In line with the analysis under recital 48, it is also noted that on the basis of information derived from the mission in July 2011 it cannot be considered that the Korean authorities are lacking financial resources; by way of contrast, these authorities rather suffer from the absence of the necessary legal and administrative environment and empowerments to perform their duties.

(50) In view of the situation explained in this Section of the Decision and on the basis of all the 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 Korea has failed to discharge the duties incumbent upon it under international law as flag State in respect of cooperation and enforcement efforts.

⁽⁷⁾ NMFS report, p. 24.

⁽⁸⁾ Information retrieved from: <http://hdr.undp.org/en/statistics/>

3.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

- (51) Korea has ratified the UNCLOS and the UNFSA. It accepted the FAO Compliance Agreement. Furthermore, Korea is a Contracting Party to CCAMLR, CCSBT, IATTC, ICCAT, IOTC, SPRFMO, WCPFC, NAFO and SEAFO.
- (52) The Commission analysed any information deemed relevant with respect to the status of Korea as Contracting Member of CCAMLR, IOTC and ICCAT.
- (53) At the 2011 CCAMLR meeting ⁽⁹⁾, in relation to the vessel *Insung No 7*, concerns were expressed on Korea's level of sanctions towards the operator, vessel and master, given the seriousness of the illegal activity. CCAMLR's Standing Committee on Implementation and Compliance (SCIC) proposed placing the *Insung No 7* on the Contracting Party IUU Vessel List, but Korea blocked its inclusion during the 30th meeting of CCAMLR.
- (54) In the IOTC Compliance Report for Korea issued by the Compliance Committee in its session of 2011 ⁽¹⁰⁾, Korea was identified as non-compliant with mandatory statistical requirements set out in Resolution 05/05, 09/06 and 10/06 (by-catch of marine turtles and seabirds not submitted, sharks partially submitted). The Committee also detected several breaches in the compliance with Korean reporting obligations regarding: Resolution 10/04 on regional observer scheme, as Korea had not submitted observer reports; and Resolutions 01/06 and 03/03, concerning the IOTC bigeye tuna statistical document programme, as Korea had not reported to IOTC its assessment of export data versus import data. The concerns of the Committee about the level of compliance by Korea were communicated to this country by the Chair of the IOTC in a letter dated 22 March 2011.
- (55) According to information derived from the IOTC Compliance Report produced on 10 March 2012 ⁽¹¹⁾, Korea was non-compliant or only partially compliant in 2011 with several resolutions adopted by IOTC. In particular, not all fishing gears were marked as required by Resolution 01/02 concerning management standards. As regards VMS, Korea is not in compliance with

Resolution 10/01 because no information on the summary of VMS record has been provided in the Report of Implementation. Korea has only partially fulfilled its obligation to submit data regarding sharks as required in Resolution 05/05. Moreover, the Chair of the Compliance Committee identified significant non-compliance actions against IOTC legal framework. In this regard, Korea had not submitted observer reports as required by IOTC Resolution 11/04 and had not provided a report on the results of examination of bigeye tuna export data.

- (56) Furthermore, in accordance with the IOTC Circular 2013-2014 ⁽¹²⁾, during 2012, one Korean vessel was reported as involved in possible infractions observed under the IOTC Regional Observer Programme for monitoring at sea transshipments.
- (57) It is recalled that ICCAT issued a letter of identification to Korea in 2010 ⁽¹³⁾. In its letter, Korea has been identified for its failure to fully and effectively comply with its obligation to communicate statistics as set out in ICCAT Recommendation 05-09. In the same letter, ICCAT highlighted that Korea had not provided all the necessary data and information such as: data on Task I (data submitted after the deadline); Task II (catch and effort submitted after the deadline and catch size not submitted); compliance tables submitted after the deadline; transshipment reports not submitted; information on the large-scale tuna longline vessel management standard submitted after the deadline; report on implementation of Recommendation 08-05 submitted after the deadline; report on implementation of an annual fishing plan received after the deadline and capacity management plan submitted after the deadline. The Committee also noted the following overharvests by Korea: overharvest of South Atlantic albacore in violation of Recommendation 07-03; overharvest of South Atlantic swordfish for the second consecutive year in violation of Recommendation 06-03; and overharvest of North Atlantic swordfish for the third consecutive year in violation of Recommendation 08-02. With reference to Recommendation 08-01, as a minor harvester, Korea did not have a specified catch limit for bigeye tuna. However, the Committee also highlighted that it was not intended that minor harvesters would increase catches above 2 100 metric tons. The Committee expressed its concern about the upward trend in Korea's bigeye catches. The Committee also was concerned about the fact that Korea was not taking effective action to restrict white marlin harvests within the limits specified by Recommendation 06-09.

⁽⁹⁾ CCAMLR, Report of the 30th Meeting of the Commission, Australia, Hobart, 24 October-4 November 2011, CCAMLR-XXX, paragraphs 9.12-9.28.

⁽¹⁰⁾ IOTC Compliance Report for Korea by the Compliance Committee, 8th Session of the CoC, 14-16 March 2011, IOTC-2011-S15-CoC25Rev1[E].

⁽¹¹⁾ IOTC Compliance Report of 10 March 2012, IOTC-2012-CoC09-CR14_Rev1[E].

⁽¹²⁾ IOTC Circular of 12 February 2013.

⁽¹³⁾ ICCAT letter of identification, 4 March 2010, ICCAT Circular No 590, 4 March 2010.

- (58) A letter of identification was issued to Korea concerning several deficiencies in compliance with management measures and reporting requirements in 2010⁽¹⁴⁾. In this letter, Korea is informed that ICCAT decided to maintain the identification of Korea under its Recommendation concerning trade measures (Recommendation 06-13). Furthermore, Korea has been identified for its failure to comply with its obligations as set out in ICCAT Recommendations on compliance with statistical reporting obligations (Recommendation 05-09); to further strengthen the plan to rebuild blue marlin and white marlin populations (Recommendation 06-09); and on the southern albacore catch limits for 2008, 2009, 2010 and 2011 (Recommendation 07-03). In this vein, the Compliance Committee determined that Korea did not provide all necessary data and reports by the established deadlines. Problems regarding lack of reporting, late submissions, incomplete reporting and poor data quality were identified. The Committee also expressed concern that Korea has not taken effective action to control harvests of southern albacore within the limits specified by Recommendation 07-03 and harvests of billfish specified by Recommendation 06-09, as shown by the overharvests of southern albacore and white marlin in 2008 and 2009. As result of these deficiencies identified, ICCAT requested Korea, in the same letter of identification: to respond promptly to the Secretariat's annual circular regarding the applicability of ICCAT reporting requirements and, to this end, review its data collection and reporting procedures; to submit to the Secretariat preliminary management plans for southern albacore and billfish, including measures to be taken to maintain landings within the established target levels and fleet capacity information for the fisheries in which the overharvests were occurring.
- (59) ICCAT issued a letter of concern to Korea regarding several deficiencies in compliance in 2011⁽¹⁵⁾. Indeed, the Compliance Committee decided to express its concern that Korea has not fully complied with its obligations in accordance with the Recommendation by ICCAT to promote compliance by nationals of contracting parties, cooperating non-contracting parties, entities, or fishing entities with ICCAT conservation and management measures (Recommendation 06-14). The Committee also expressed its concern regarding the activities of Korean nationals in the Gulf of Guinea tropical tuna fisheries which may involve prohibited transshipments by vessels flagged to Ghana. The Committee encouraged Korea to address the involvement of Korean nationals in illegal activities taking place in that fishery. Finally, Korea was requested to inform ICCAT about actions it had taken to promote compliance by its nationals who are involved in the Gulf of Guinea tropical tuna fisheries.
- (60) ICCAT issued a letter of concern to Korea regarding the activities of Korean nationals in the Gulf of Guinea tropical tuna fisheries which may involve prohibited at-sea transshipments in 2012⁽¹⁶⁾. In this letter, ICCAT requested Korea to take all necessary actions in order to ensure that Korean vessels and nationals are not involved in illegal activities taking place in that fishery.
- (61) On account of its failure to control of vessels in high seas in line with RFMOs rules and of its failure to ensure compliance of the vessels flying its flag with CCAMLR, ICCAT and IOTC recommendations, Korea acts in breach of Article 18(3)(a) of the UNFSA which requires States whose vessels fish on the high seas to take control measures to ensure that those vessels comply with RFMO rules.
- (62) As described in recital 57, Korea does not fulfil its obligations stemming from Article 18(3)(b)(ii) of the UNFSA by allowing its vessels to fish in violation of the conditions established by ICCAT. By not fulfilling the management standards for marking of fishing gear, Korea fails to comply with Article 18(3)(d) of the UNFSA. Korea does not comply with the recording and timely reporting requirements of Article 18(3)(e) and (g) of the UNFSA on account of its failure to submit to IOTC and ICCAT information on annual, statistical and observer reports, trade and by-catch data. Korea does not fulfil the conditions stipulated in Article 18(3)(g) of the UNFSA in view of its failure to comply with the obligation to report to IOTC on the summary of VMS record and to monitor at sea transshipments.
- (63) Finally, it should be noted that, contrary to the recommendations in points 25, 26 and 27 of the IPOA IUU, Korea has not effectively updated a national plan of action against IUU fishing.
- (64) In view of the situation explained in this Section of the Decision and on the basis of all the 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 Korea has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

⁽¹⁴⁾ ICCAT letter of identification, 18 January 2011, ICCAT Circular No 173, 18 January 2011.

⁽¹⁵⁾ ICCAT letter of concern, 21 February 2012, ICCAT Circular No 636, 21 February 2012.

⁽¹⁶⁾ ICCAT letter of concern, 11 February 2013, ICCAT Circular No 610, 11 February 2013.

3.4. Specific constraints of developing countries

- (65) It is recalled that, according to the United Nations Human Development Index ⁽¹⁷⁾, Korea is considered as a very high human development country (12th in 186 countries). On the other hand, Korea is listed in Annex V to Regulation (EC) No 1905/2006 as a country falling within the category of non-developing countries and territories.
- (66) Account taken of that ranking, Korea cannot be considered as a country having specific constraints directly derived from its level of development.
- (67) It should be noted that the notification of Korea as flag State was accepted by the Commission in accordance with Article 20 of the IUU Regulation as of 1 January 2010. Korea consequently confirmed, as Article 20(1) of IUU Regulation states, that it has national arrangements in place for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels.
- (68) The Commission informed Korea of the various shortcomings it detected during the missions it conducted and the meetings held. The Commission sought to achieve cooperation of the Korean authorities and progress in corrective actions in respect of the detected shortcomings. Korea has failed to take sufficient corrective actions and to achieve positive developments in correcting established shortcomings. The Commission analysed the recent revision of its Ocean Industry Development Act which aims at laying down sanctions, establishing a Fisheries Monitoring Centre, extending the equipment of VMS to all distant water fishing vessels and establishing new training programmes for seamen. However, this new domestic legal text is not yet in conformity with the requirements of Articles 62, 94, 117 and 118 of UNCLOS, Articles 18, 19 and 20 of the UNFSA as well as various RFMOs' (to which Korea is a Contracting Party) recommendations for the reasons already explained in Section 3 of the Decision. In relation to the other highlighted elements, the Commission confirmed from a set of meetings conducted with the Korean authorities in the period of April-July 2013 that Korea has not introduced any concrete and tangible plan to implement these actions and is still not in a position to implement its national legislation and to control its fleet beyond its areas under national sovereignty or jurisdiction.
- (69) The situation described above in this Section confirms that Korea is a highly developed country with sufficient means to face and correct the shortcomings identified but the Korean authorities are still failing to introduce and implement measures to fight IUU activities.
- (70) In view of the situation explained in this Section of the Decision and on the basis of all the factual elements gathered by the Commission as well as all 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 Korea with respect to fisheries are not impaired by its level of development.
- #### 4. PROCEDURE WITH RESPECT TO THE REPUBLIC OF GHANA
- (71) The notification of the Republic of Ghana (Ghana) as flag State was accepted by the Commission in accordance with Article 20 of the IUU Regulation as of 1 January 2010.
- (72) From 28 to 31 May 2013, the Commission, with the support of the EFCA, carried out a mission to Ghana in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation.
- (73) The mission sought to verify information concerning Ghana's arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels, measures taken by Ghana in order to implement its obligations in the fight against IUU fishing and to fulfil its requirements and points pertaining to the implementation of the catch certification scheme of the Union.
- (74) The final report of the mission was sent to Ghana on 14 June 2013.
- (75) A subsequent mission of the Commission to Ghana to follow up the actions taken in the first mission was conducted from 16 to 18 July 2013. On 17 July 2013, the Commission provided to Ghana written observations on the established situation in the country. A technical video conference meeting between Ghana authorities and the Commission took place on 23 July. The Commission provided to Ghana the relevant meeting report on 1 August 2013.
- (76) A subsequent submission of Ghana was received on 23 September 2013.
- (77) Ghana is a Contracting Party to ICCAT, the International Whaling Commission (IWC), the Committee on Inland Fisheries and Aquaculture of Africa (CIFA), the Fishery Committee of the West Central Gulf Guinea (FCWC) and the Fishery Committee for the Eastern Central Atlantic (CECAF), which are both subregional fisheries advisory body.

⁽¹⁷⁾ See footnote 8.

- (78) Ghana has ratified the UNCLOS. It signed the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ('FAO Port State Measures Agreement').
- (79) In order to evaluate the compliance of Ghana with its international obligations as flag, port, coastal or market State⁽¹⁸⁾ set out in the international agreements mentioned in recital 76 and established by the RFMOs mentioned in recitals 76 and 79, the Commission sought and analysed all relevant information for the purpose of such an exercise.
- (80) The Commission used information derived from available data published by ICCAT, the North East Atlantic Fisheries Commission (NEAFC) and the South East Atlantic Fisheries Organisation (SEAFO) and Northwest Atlantic Fisheries Organisation (NAFO) either in the form of compliance reports or in the form of IUU vessel lists as well as publicly available information retrieved from the United States Department of Commerce NMFS report⁽¹⁹⁾. In addition, the Commission used the results of the missions carried out in 2013 in Ghana.

5. POSSIBILITY OF GHANA OF BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

- (81) Pursuant to Article 31(3) of the IUU Regulation, the Commission analysed the duties of Ghana 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.

5.1. Recurrence of IUU vessels and IUU trade flows (Article 31(4)(a) and (b) of the IUU Regulation)

- (82) The Commission established on the basis of information retrieved from RFMO IUU vessel lists and collected during the on-the-spot missions carried out in Ghana in May and July 2013 that the IUU fishing vessel 'Yucatan Basin' listed under NAFO, SEAFO and NEAFC RFMOs has been renamed as 'Trinity' and is currently registered under the flag of Ghana⁽²⁰⁾.
- (83) In this respect, it is recalled that, pursuant to Article 94(1) and (2) of UNCLOS, related to the duties of the flag

State, every flag State shall effectively exercise its jurisdiction and control over each ship flying its flag and its master, officers and crew. This Article establishes also the obligation to maintain a register of ships flying its flag. In this respect, in light of this concrete case and procedures in place, the Commission considers that Ghana is not in a position to prevent the registration of IUU vessels under its flag, which is an indication that Ghana fails to comply with its flag State responsibilities under international law.

- (84) In addition, in the framework of the implementation of the EU IUU Regulation by the EU Member States, the Commission has collected evidence of repetitive infringements committed by Ghanaian flagged vessels in contravention to ICCAT conservation and management measures that led to the official notification of Ghana by the EU to the ICCAT Secretariat on 23 April 2013. The EU provided the ICCAT Secretariat with all supporting information corroborating the facts. The infringements referred to repeated transshipments at sea carried out by tuna purse-seiners flagged to Ghana within the ICCAT area in violation of the ban to tranship at sea under ICCAT rules (ICCAT Recommendation 12-06). In addition, this official notification to the ICCAT Secretariat highlighted presumed non-compliance of Ghana with ICCAT Recommendation 03-14 concerning minimum standards for the establishment of the VMS in the ICCAT Convention Area. Upon receipt of this information, the ICCAT Secretariat informed the Ghanaian authorities on 30 April 2013 on these possible non-compliances with ICCAT rules and invited Ghana to provide the results of their investigations on these matters before 18 October 2013.
- (85) In this respect, several purse-seiners flagged to Ghana conducted repeated illegal transshipments at sea, from 2009 to 2012, within the ICCAT area to two carrier vessels also flagged to Ghana. In accordance with the Recommendation 06-11⁽²¹⁾, purse-seiners are not allowed to tranship at sea tuna species within the ICCAT area. The Commission found that recurrent transshipments at sea took place in breach of this ICCAT Recommendation and observed that these irregular operations were validated by the Ghanaian authorities on Ghanaian catch certificates accompanying fishery products exported to the EU.
- (86) In parallel, the Commission has collected evidence proving that Ghana, before 1 October 2012, has never imposed to its tuna fishing vessels operating in ICCAT area the obligation to report geographical positions in contradiction with paragraphs 3, 4 and 5 of the ICCAT Recommendation 03-14.

⁽¹⁸⁾ For market State and corresponding measures, see FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing, paragraphs 65 to 76, and FAO 1995 Code of Conduct for Responsible Fisheries, paragraph 11(2).

⁽¹⁹⁾ Information retrieved from: http://www.nmfs.noaa.gov/ia/iuu/msr_page/2013_biennial_report_to_congress_jan_11_2013_final.pdf

⁽²⁰⁾ Information retrieved from: <http://www.neafc.org/mcs/iuu/blist> and <http://iuu-vessels.org/iuu/iuu/search>

⁽²¹⁾ ICCAT Recommendation 06-11 establishing a programme for transhipment, pursuant to which all transhipment operations of tuna and tuna-like species in the ICCAT Convention Area must take place in port.

- (87) In the same manner, in the framework of the implementation of the IUU Regulation by the EU Member States, the Commission has collected evidence on repetitive IUU infringements committed by Ghanaian-flagged vessels operating without fishing authorisations in waters under jurisdiction of neighbouring countries (e.g. Togo, Benin, Ivory Coast and Nigeria's EEZs). The Commission observed that infringements were detected by the Member States in the framework of their verifications of information mentioned in the catch certificates that were validated by the Ghanaian authorities.
- (88) The Commission also observed that Ghana as coastal State has not taken appropriate measures in respect of the recurrent IUU fishing activities by fishing vessels operating in its maritime waters or using its ports. These IUU activities are suitably documented in the last three monitoring, control and surveillance annual reports communicated by the Ghanaian authorities to the Commission in the course of the mission of May 2013.
- (89) Pursuant to Article 31(4)(b), the Commission also examined the measures taken by Ghana in respect of access of fisheries products stemming from IUU fishing to its market.
- (90) In this respect, the Commission observed that Ghana has not taken appropriate measures in respect of the recurrent access of fisheries products stemming from IUU fishing to its market and industry. In the framework of the implementation of the IUU Regulation by the Member States, the Commission has collected evidence that fishery products (mainly tuna species) illegally caught or transhipped in the ICCAT area or in the EEZs of neighbouring countries by Ghanaian and foreign vessels have been landed in the Ghanaian port of Tema, they have further been sold by Ghanaian fishing operators to Ghanaian companies, processed by Ghanaian plants without being detected or prevented from entering the Ghanaian supply chain by the competent Ghanaian authorities.
- (91) In view of the situation explained in this Section of the Decision, the Commission considers that the recurrence of IUU fishing carried out by Ghanaian vessels and by vessels operating the maritime waters of Ghana is demonstrated.
- (92) In view of the situation explained in this Section of the Decision and on the basis of all the 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 (4) of the IUU Regulation, that Ghana has failed to discharge the duties incumbent upon it under international law as a flag State in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or by its nationals and has not taken sufficient action to counter documented and recurring IUU fishing by vessels previously flying its flag, and it has failed to discharge the duties incumbent upon it under international law as market State to prevent access of fisheries products stemming from IUU fishing to its market.
- 5.2. Failure to cooperate and to enforce (Article 31(5) of the IUU Regulation)**
- (93) With respect to whether Ghana cooperates effectively with the Commission and the EU Member States on investigations of IUU fishing and associated activities, evidences gathered by the Commission indicate that Ghana failed to fulfil its flag State obligations as set out under international law.
- (94) In particular, the Commission analysed how Ghana has cooperated in the framework of the procedures provided for in the IUU Regulation, whether Ghana has taken effective enforcement measures in respect of operators responsible for the detected IUU fishing activities as referred in recitals 83 to 85 and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied.
- (95) In respect of both its cooperation and enforcement duties, the situation of several Ghanaian-flagged tuna vessels operating in contravention to ICCAT conservation and management measures or in breach of national laws and regulations of neighbouring countries (in particular, Togo, Benin, Ivory Coast and Nigeria) is recalled. In relation with these concrete cases, the Commission has collected evidence proving that Ghana repeatedly failed to provide any response or adequate responses to requests of assistance transmitted by Union's Member States under the IUU Regulation. The Commission considers that the unauthorised fishing activities of these Ghanaian vessels fishing in the exclusive economic zone of neighbouring coastal States constitute a violation of Article 62(4) of UNCLOS, as these activities have been performed without complying with terms and conditions established in the laws and regulations of those coastal States. In addition, the Commission established in the course of the mission in May 2013 that Ghana has not communicated the detected infringements to the neighbouring coastal States directly concerned by these unlicensed fishing activities targeting highly migratory species in their waters, which constitutes a breach of its cooperation obligations under Article 64 of the UNCLOS.
- (96) In view of this situation, the Commission observed that Ghana failed to effectively control these fishing activities and failed to detect recurrent violations of international and national rules committed by its vessels. The Commission established that Ghana had no information on where and in which foreign waters its fishing vessels actually operate. These elements further demonstrate the lack of ability of Ghana as flag State to monitor and control the fishing activities of its fleet, and to assume jurisdiction over each ship flying its flag as provided for in Article 94 of the UNCLOS.

- (97) It is also foreseen that for vessels reported to have engaged in activities undermining the effectiveness of RFMO conservation and management measures, ICCAT Contracting States have recourse to RFMO procedures to deter such vessels until such time as appropriate action is taken by the flag State.
- (98) The performance of Ghana with respect to fishing vessel registration is also not in accordance with the recommendations in points 34 and 44 of the IPOA IUU which advise flag States to ensure that fishing vessels entitled to flag their flag do not engage in or support IUU fishing, and invite flag States to adopt measures to ensure that no vessel be allowed to fish unless so authorised in conformity with national legislation within areas of national jurisdiction.
- (99) In particular, in the course of the mission carried out in May 2013, the Commission has collected evidence that Ghana, before April 2013, had no procedure in place to verify and check information provided by the Ghanaian economic operators on the fishing operations covered by the catch certificates validated by Ghana. Based on this element and on the corroborating information provided by Member States' competent authorities, the Commission established that Ghana is not in a position to exercise an effective control on the fishing activities of its fishing fleet and that Ghana encounters significant difficulties in ensuring reliable certification of the fishery products caught by its fishing vessels. In the course of the on-the-spot mission carried out in May 2013, the Commission observed that some corrective actions have been taken, as from April 2013, in order to improve the reliability of the catch certification system. Nevertheless, the Commission considers that, due to the absence of real control and monitoring of the fishing activities of the Ghanaian fleet, the new procedures set up in April 2013 have not yet sufficiently addressed the enforcement problems detected.
- (100) In this respect, verifications and inspections carried out by Member States on fishery products covered by Ghanaian catch certificates allowed the detection of recurrent IUU fishing activities conducted by Ghanaian tuna vessels and highlighted that Ghana validated catch certificates without real verifications and checks of information submitted by the economic operators. Consequently, several importations of fishery products caught under illegal conditions by Ghanaian vessels were rejected at the Union border by several Member States of the Union.
- (101) In addition, the Commission has collected evidence confirming that Ghana is not in a position to cooperate with the Union to provide feedback on presumed IUU fishing activities carried out by its vessels operating within the ICCAT area. In this respect, the Commission has established that Ghana was not in a position to provide EU Member States with geographical positions of its fishing vessels operating in the ICCAT area for the period before 1 October 2012, in violation of ICCAT Recommendation 03-14 ⁽²²⁾. The Commission observed that during the abovementioned period Ghana did not install VMS devices on board tuna fishing vessels operating in the ICCAT area and that Ghana did not impose any kind of reporting obligation of information to its fishing vessels in contradiction with the paragraphs 3, 4 and 5 of ICCAT Recommendation 03-14. This situation explains that Ghana was not in a position to appropriately investigate, provide feedback or follow up to presumed IUU fishing and associated activities detected by the EU Member States.
- (102) The abovementioned facts described in recitals 92 to 100 indicate that Ghana as flag State failed to comply with the conditions of Article 94(2)(b) of UNCLOS which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.
- (103) The performance of Ghana with respect to cooperation with other States is also not in accordance with the recommendations in point 28 of the IPOA IUU which advises States to coordinate their activities and cooperate directly in preventing, deterring and eliminating IUU fishing, in particular, by developing cooperative mechanisms that allow, inter alia, rapid responses to IUU fishing.
- (104) The performance of Ghana with respect to its monitoring, control and surveillance is also not in accordance with the recommendations in point 24 of the IPOA IUU which advises flag States to ensure comprehensive and effective monitoring, control and surveillance of fishing activities. The Commission observed that the described situation has prevented Ghana to effectively cooperate with the EU Member States. Ghana was neither in a position to provide responses to their requests, nor in a position to investigate, provide feedback or follow up to presumed IUU fishing detected.
- (105) In addition to this lack of capacity to investigate, provide feedback or follow up to presumed IUU fishing, the Commission observed that Ghana also failed to take effective enforcement measures and sanctions against vessels and economic operators involved in the violations
- (22) ICCAT Recommendation 03-14 concerning to minimum standards for the establishment of a vessel monitoring system (VMS) in the ICCAT Convention Area.

and infringements as described in recitals 83 to 85. In this respect, the Commission observed in the course of the on-the-spot mission of May 2013 that Ghana has set up an interministerial committee to investigate and take enforcement actions in relation to the abovementioned alleged breaches, but no concrete progress has been observed so far.

- (106) On the basis of fisheries regulations and the annual reports on monitoring, control and surveillance communicated by Ghana for the last three years, the Commission observed that Ghana has a legal framework which foresees dissuasive system of sanctions, but up until very recently almost no sanctions were concretely applied, while procedures of enforcement and prosecution do not deliver results.
- (107) Furthermore, the Commission established in the course of the mission of May 2013 that the Ghanaian Ministry of Fisheries and Aquaculture Development has no legal service in charge of suing individuals or companies liable for IUU fishing activities. In this respect, the Commission established that the legal procedures in place under Articles 115 and 116 of the Ghanaian Fisheries Act 2002 provide for the competence of Justice Courts to deal with contraventions of fisheries law and regulations, except where under consent of the public prosecutor administrative penalties can be applied to offenders. The Commission observed also that Ghanaian enforcement and sanctioning legal procedures present significant implementation issues (e.g. excessive duration of the procedures; poor results in terms of infringements detected and sanctions applied). In this context, the Commission considers that the current legal enforcement and prosecution procedures in place do not allow the competent Ghanaian authorities to take effective enforcement measures, in particular they do not allow to impose effectively sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing.
- (108) The abovementioned facts described in recitals 103 to 106 constitute evidence of the inability of Ghana as flag State to exercise its full jurisdiction over its fishing vessels and indicate that Ghana failed to comply with the conditions of Article 94(2)(b) of the UNCLOS, which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.
- (109) Furthermore, on the basis of information retrieved by the Commission missions, it can be concluded that Ghana does not have an updated registry. Ghanaian authorities reported that the country's register has 327 fishing vessels placed under the Ghanaian flag. Nevertheless, this number is not in line with the data obtained by the Commission mission, according to which the number of Ghanaian vessels with a valid fishing licence amounts to 117. In this respect, given the apparent inconsistency between the number of fishing vessels flagged to Ghana and the number of vessels holding a Ghanaian fishing licence, in the course of the mission carried out in May 2013, the Ghana Maritime Authority (GMA) acknowledged the necessity to verify and update the Ghanaian register of fishing vessels. In view of this situation, the Commission considered that Ghana has failed to comply with its duties as flag State under international law, in particular in view of the Article 94(2) of the UNCLOS related to the obligation of every flag State to maintain a reliable register of ships flying its flag.
- (110) The performance of Ghana with respect to fishing vessel registration is also not in accordance with the recommendations in points 36 and 38 of the IPOA IUU which advise flag States to avoid the flagging of vessels with a history of non-compliance, and invite flag States to deter vessels from reflagging for the purpose of non-compliance with conservation and management measures or provisions adopted at a national, regional or global level.
- (111) The performance of Ghana with respect to effective enforcement measures is also not in accordance with the recommendations in point 21 of the IPOA IUU which advises States to ensure that sanctions for IUU fishing by vessels are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. Furthermore, Ghana has not implemented a national plan of action to fight against IUU, thus not complying with the recommendations in points 25, 26 and 27 of the IPOA IUU.
- (112) In the course of the mission of May 2013, the Commission established that Ghanaian laws and regulations do not foresee the obligation for third-country fishing vessels operating in Ghana under Ghanaian fishing licences to report their VMS positions to the competent Ghanaian authorities. Furthermore, Ghana does not require foreign vessels operating in its EEZ to receive a Ghanaian fishing licence. The Commission considered that under such circumstances Ghana as coastal State cannot ensure an effective control and monitoring on the activities of third-country fishing vessels operating in its waters, as VMS is universally considered as a reliable tool to monitor fishing activities. The recurrent IUU fishing activities reported in the monitoring, control and surveillance reports communicated by Ghana for the last three years confirm this analysis. In

- particular, these official reports highlight that industrial or semi-industrial Ghanaian vessels are often arrested or punished by the Ghanaian authorities for illegal fishing activities in area reserved for artisanal fishermen (area below 30 m depth). In this context, the Commission considers that this absence of control and monitoring by Ghana on these vessels operating in its maritime waters creates favourable conditions for IUU fishing activities in the Ghanaian EEZ.
- (113) In the same manner, in the course of the mission of May 2013, the Commission observed that the competent Ghanaian authority in charge of monitoring, control and surveillance of fishing activities in the Ghanaian EEZ does not have the means to conduct operations and inspections at sea. The Fisheries Commission exclusively depends on the logistical means and patrol vessels of the Ghanaian Navy. In addition, the Commission observed that coordination and cooperation between the Fisheries Commission and the Ghanaian Navy is insufficient to ensure an efficient monitoring, control and surveillance system on fishing activities in the Ghanaian EEZ. The Commission considers that this lack of means to intervene at sea jeopardises any enforcement effort and creates favourable conditions for development of the verified IUU fishing activities in the Ghanaian EEZ.
- (114) The Commission observed a significant imbalance between the administrative capacities of Ghana to monitor and control fishing activities of industrial vessels operating in its waters, and the number of fishing licences delivered to industrial vessels authorised to operate in the Ghanaian EEZ (117 industrial fishing vessels are authorised to operate in the Ghanaian EEZ in addition to 12 000 artisanal vessels). This situation confirms that, compared to the size of the fishing activity taking place in waters under its jurisdiction, Ghana has an insufficient enforcement capacity. In addition, the Commission observed that Ghana has not adopted a national fisheries management plan, based on the best scientific information available in line with Articles 61(2) and 62(4) of the UNCLOS.
- (115) As a consequence of the facts described in recitals (111) to (113), the Commission considers that Ghana as coastal State failed to comply with its duties as foreseen in Articles 61(2) and 62(1) of the UNCLOS which stipulate that a coastal State, must promote the objective of optimum utilisation of the living resources in its EEZ, taking into account the best scientific evidence available to it in particular by ensuring through proper conservation and management measures the maintenance of these living resources and avoiding their overexploitation.
- (116) With respect to the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered, the Commission has taken into account the recurrent and repetitive IUU fishing activities of Ghanaian-flagged vessels until 2013.
- (117) In this respect, it should be noted that Ghana has been identified several times by ICCAT letters of concern, from 2011 to 2013, for its failure to fully and effectively comply with its obligations in accordance with Recommendations 09-01, 10-01 and 11-01 on a multi-year conservation and management programme for bigeye tuna. The Ghanaian fleet operating in the ICCAT area has not complied for several years with the catch limits of bigeye tuna imposed by ICCAT and Ghana has not taken effective action to correct the situation of systematic overfishing of bigeye tuna. Ghana is not complying with the quota limits on bigeye catches allocated under ICCAT Recommendations. Even though the Commission acknowledges that Ghana has made progress on the payback of past years overfishing of bigeye tuna, it observes that Ghana has only blocked the expansion of its industrial fishing capacity but has not taken measures to reduce it in order to comply with the ICCAT Recommendations mentioned above. In this context, the Commission considers that this continuous overcapacity of the Ghanaian tuna fishing fleet in ICCAT area and the subsequent over harvesting situation of bigeye tuna (in particular in 2008, 2009 and 2010) constitutes a structural manifestation of IUU fishing carried out by the Ghanaian tuna fishing fleet in the ICCAT area and are in breach of the general conditions set out under Article 62 of the UNCLOS on the utilization of the living resources.
- (118) With respect to the existing capacity of the Ghana authorities, it should be noted that, according to the United Nations Human Development Index⁽²³⁾, Ghana is considered as a medium human development country (135th in 186 countries). This is also confirmed by Annex II to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation⁽²⁴⁾ where Ghana is listed in the category of low income countries.
- (119) Notwithstanding the analysis under recital (117) it is noted that on the basis of information derived from the mission in May 2013 it can be considered that Ghana authorities are sufficiently empowered by its legal framework but the system lacks primarily the necessary administrative and organisational structures to facilitate performance of their statutory duties. This situation also constitutes a factor undermining the capacity of the competent authorities to cooperate with other countries and pursue enforcement actions.
- (120) In view of the situation explained in this Section of the Decision and on the basis of all the 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 31(5) of the IUU Regulation, that Ghana has failed to discharge the duties incumbent upon it under international law as flag and coastal State in respect of cooperation and enforcement efforts.

⁽²³⁾ See footnote 8.

⁽²⁴⁾ OJ L 378, 27.12.2006, p. 41.

5.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

- (121) Ghana has ratified the UNCLOS. It has signed in the FAO Port State Measures Agreement in 2010. Furthermore, Ghana is a Contracting Party to ICCAT. Ghana is also a member of FCWC, which is a subregional fisheries advisory body.
- (122) The Commission analysed all information on Ghana's compliance with the FCWC provisions. A regional plan of action on IUU fishing in the maritime zones of the FCWC member countries (FCWC RPOA) was adopted in December 2009. Following the FCWC IUU working group meeting in April 2010, certain actions, in particular on the methods to register vessels, cooperation between FCWC member countries to raise awareness, an agreement on measures of port States and the establishment of a list of industrial vessels authorised in each FCWC member country, to be taken at national level were adopted⁽²⁵⁾. In addition, during the first session of the Ministerial Conference of the FCWC held in December 2009, it was decided in the 'Accra Declaration to combat illegal, unreported and Unregulated fishing' that all the member countries of the FCWC fully adhere to the IPOA.
- (123) Ghana has not undertaken any steps towards the implementation of the FCWC RPOA or the recommendations of the first meeting of the IUU working group of FCWC.
- (124) The Commission analysed any information deemed relevant with respect to the compliance of Ghana with its obligation stemming from its status of ICCAT contracting party.
- (125) It is recalled that ICCAT issued a letter of identification to Ghana regarding its reporting deficiencies in 2010⁽²⁶⁾. In that letter, Ghana was identified under its Recommendation by ICCAT concerning trade measures (Recommendation 06-13) for its failure to fully and effectively comply with its obligations in accordance with the

ICCAT Recommendation 05-09 on compliance with statistical reporting obligations. In the same letter, ICCAT highlighted that Ghana did not provide all necessary data and reports by the established deadlines, such as: data on Task I and Task II, compliance tables, information related to the large-scale tuna longline vessels management standard. The ICCAT Secretariat expressed its concern about effective implementation of Recommendation 08-01, specifically about Ghana's significant overharvest of bigeye tuna for the third consecutive year. The ICCAT Secretariat also highlighted that although Recommendation 09-01 did adjust the 2010 bigeye tuna catch limit for Ghana, in part via a transfer from the European Union, Ghana was required under Recommendation 08-01 to adjust for 2008 overharvest in 2009 and/or 2010. Furthermore, Ghana was required to address this issue in the action plan required under Recommendation 09-01. It was requested also to review its data collection and reporting procedures with regard to ICCAT requirements.

- (126) In the ICCAT letter of identification of Ghana issued in 2011⁽²⁷⁾, ICCAT decided to maintain its identification under Recommendation 06-03 concerning trade measures. Indeed, Ghana was still failing to fully and effectively comply with its obligations in accordance with the ICCAT Recommendation 05-09 on compliance with statistical reporting obligations and the Recommendation amending the Recommendation on a multi-year conservation and management programme for bigeye tuna (Recommendation 09-01). In the same letter ICCAT highlighted that Ghana again did not provide all necessary data and reports by the established deadlines, such as: data on Task I (referring to the fleet characteristics), internal actions report for vessels over 20 m, large-scale tuna longline vessel management standard and ICCAT statistical document programme reports. The ICCAT Secretariat also expressed its concern on Ghana not taking effective action to control harvests of Atlantic bigeye tuna within the limits as specified by Recommendation 08-01 and 09-01 and on a possible violation of the capacity limits as described in the Recommendation 04-01. Ghana was again encouraged to review its data collection and reporting procedures with regards to ICCAT requirements. It was requested to provide to the ICCAT Secretariat a preliminary data improvement plan, including in particular information about monitoring programmes, observer programmes, port inspections, and sampling programmes for artisanal fisheries in order to ensure that Ghana meets all its ICCAT reporting requirements by the respective deadlines. It was also requested to submit to the ICCAT Secretariat a preliminary quota payback plan for Ghana's bigeye tuna fishery, taking into account the bigeye tuna measures adopted in 2010 and fleet capacity information.

⁽²⁵⁾ Relevant information retrieved from FCWC website <http://www.fcwc-fish.org/>

⁽²⁶⁾ ICCAT letter, 4 March 2010, ICCAT Circular No 592, 4 March 2010.

⁽²⁷⁾ ICCAT letter, 18 January 2011, ICCAT Circular No 174, 18 January 2011.

- (127) In the letter of concern of ICCAT issued in 2012 ⁽²⁸⁾, Ghana was identified as not fully and effectively complying with its obligations in accordance with the ICCAT Recommendation on Compliance with Statistical Reporting Obligations (Recommendation 05-09) and with the ICCAT Recommendation on a multi-year conservation and management programme for bigeye tuna (Recommendation 04-01). In the same letter ICCAT highlighted that Ghana again did not provide the Task I fleet characteristics (form ST01) and the report on internal actions on 20 m vessels. The compliance tables were submitted after the deadline. The issue of overharvesting of southern swordfish in breach of the Recommendation 09-03 was also put forward. In relation to Ghana's failure to implement the ICCAT's conservation and management measures for bigeye tuna, Ghana was requested to redress these failures, and namely: to implement effective measure to prohibit at-sea transshipments by Ghanaian purse seine vessels; to comply with the fleet capacity provisions of Recommendations 09-01 ⁽²⁹⁾, 10-01 ⁽³⁰⁾ and 11-01 ⁽³¹⁾; to implement the payback plan for overharvest of bigeye tuna established in Recommendation 11-01; to cooperate with Ivory Coast with its inspections of Ghanaian-flagged vessels in the Port of Abidjan.
- (128) In the letter of concern of ICCAT issued in 2013 ⁽³²⁾, the ICCAT Secretariat expressed its concern that Ghana did not deploy sufficient efforts to fully implement the ICCAT Recommendation 11-01 on a multi-annual conservation and management programme for bigeye and yellowfin tunas. ICCAT acknowledged the progress made by Ghana on the payback of past year overharvests of bigeye tuna but requested Ghana to continue efforts towards the full implementation of applicable vessel limits and its bluefin tuna catch management plan and also in the data reporting as required under Recommendation 11-01.
- (129) Furthermore, in relation to the factual elements identified by the inspection services of the Commission, the Commission informed with a letter of 23 April 2013 the ICCAT Secretariat on the factual elements that might lead to possible non-compliance of Ghana with the ICCAT Recommendation 08-09 on the process for the review and reporting of compliance information. The ICCAT Secretariat informed Ghana with a letter of 30 April 2013 ⁽³³⁾ on the possible non-compliance in relation to ICCAT Recommendation 12-06 relating to transshipment at sea; to ICCAT Recommendation 11-16 on access agreements and the ICCAT Recommendation 03-14 on VMS transmission. Ghana was invited to provide ICCAT with the findings of any investigation taken in relation to these observations on the non-compliance and any actions taken to address compliance concerns.
- (130) Furthermore, a number of elements were revealed during the missions the Commission conducted in Ghana in May and July 2013. While the VMS devices must be installed on board vessels operating within ICCAT area (in accordance with ICCAT Recommendation 03-14), problems of absence or interruption of VMS signal during fishing campaigns were detected concerning the period prior to October 2012. With respect to the operational abilities of the VMS, it was revealed that Ghana made some efforts to improve its MCS system by setting up a VMS Centre. These efforts, however, do not address sufficiently the shortcomings detected in relation with the VMS.
- (131) The VMS on board of Ghanaian vessels is not used appropriately to check if catch activities are or not in conformity with the scope of the fishing licences. This system lacks of the administrative and organisational procedures and resources for its operation: there are neither guidelines nor permanent instructions for its installation; the system cannot display in the same environment the VMS data and other sources of location data; it does not take into account any fishing protected area. There is only one access point to the VMS data which is only available to the MCS Division, thus other Ghanaian services including other administrative entities responsible for the issuance of the catch certificates (both in Accra and Tema) do not have access to these data.
- (132) In the same manner, the ICCAT Secretariat, in spite of recognising in 2011 Ghana's effort towards the transparency in its fishing activities, also expressed two major and specific concerns: the absence of an operational VMS and the persistence of illegal transshipments of tuna at sea by Ghanaian purse seiners.
- (133) Ghana received in 2012 some financial support from ICCAT Secretariat, under a memorandum of understanding (MoU), to install a new VMS system in order to comply with ICCAT rules in terms of VMS reporting. This system is operational as from 1 October 2012. However, during the progressive implementation phase of the MoU (from February to October 2012), the Ghanaian authorities did not impose any obligations on Ghana's fishing vessels operating in the ICCAT area in order to report daily positions, in contradiction with

⁽²⁸⁾ ICCAT letter, 21 February 2012, ICCAT Circular No 634 21 February 2012.

⁽²⁹⁾ The ICCAT Recommendation 09-01 on a multi-year conservation and management programme for bigeye tuna.

⁽³⁰⁾ The ICCAT Recommendation 10-01 on a multi-year conservation and management programme for bigeye tuna.

⁽³¹⁾ The ICCAT Recommendation 11-01 on a multi-annual conservation and management programme for bigeye and yellowfin tuna.

⁽³²⁾ ICCAT letter, 11 February 2013, ICCAT Circular No 609, 11 February 2013.

⁽³³⁾ ICCAT letter, 30 April 2013, ICCAT Circular No 2104, 30 April 2013.

provisions of VMS ICCAT Recommendation 03-14 and with Article 47 of Ghana national Fisheries Regulations 2010.

- (134) In addition, the MCS system and the VMS Centre set up by Ghana cover only Ghana's domestic fleet. The installation of a VMS device is not established as a precondition for third-country vessels to receive a Ghanaian fishing licence. Thus, Ghanaian authorities do not receive VMS data for third-country fishing vessels operating in its waters, which creates favourable conditions to conduct IUU fishing activities in Ghana's EEZ. Ghana has omitted to report to ICCAT Secretariat on the results of the implementation of the MoU related to the installation of the VMS.
- (135) With respect to the system of authorised observers, Ghana does not fully comply with the observer scheme under ICCAT Recommendation 10-10 on the establishment of minimum standards for fishing vessel scientific observer programmes.
- (136) With respect to the implementation of the ICCAT port inspection scheme under ICCAT Recommendation 97-10, if Ghana's legal framework provides for an adequate empowerment of its authorities to carry out their duties, due to lack of experience and training of the Ghanaian fisheries inspectors, the ICCAT port inspection scheme is not implemented or enforced in Ghana.
- (137) In addition, Ghana failed to detect repeated violations of ICCAT Recommendations by vessels flying its flag in relation to illegal transshipments at sea and unlicensed fishing activities in the neighbouring EEZs. Due to the lack of skills of staff, absence of port inspection scheme and absence of guidelines and manual for inspection, inspections at ports are very poor and not efficiently carried out. The observers are not aware of ICCAT rules. Fisheries inspectors are dependent upon information and logistics provided by the economic operators being inspected. Those shortcomings contribute to the failure of Ghana to fulfil its obligations under the ICCAT Recommendation 06-11 establishing a programme for transshipment.
- (138) In the same manner, it was revealed during the Commission missions that from 2009 to 2012, several Ghanaian carrier and tuna vessels were not complying with the ICCAT Recommendation 06-11. Ghana authorities validated catch certificates with operations of forbidden transshipment at sea, signed by masters of both vessels involved. As described in the recital 126, Ghana was explicitly reminded, through a letter of concern from ICCAT Secretariat of 21 February 2012 to implement effective measures to prohibit transshipments at sea for Ghana purse seiners. As described in recital 126 the ICCAT Secretariat also informed Ghana with a letter of 30 April 2013 on the possible non-compliance in relation to ICCAT Recommendation 12-06 relating to transshipments at sea.
- (139) Further to the letter of concern of ICCAT of 21 February 2012 requesting to address failures to comply with the fleet capacity provisions according to the Recommendation 09-01, Recommendation 10-01 and the Recommendation 11-01, during its mission in May 2013 the Commission enquired about the reduction of Ghana's fishing capacity. As recognised by the Ghanaian Maritime Authority, the expansion of the fishing capacity has only been blocked, but not reduced. The Authority accepts replacement of the capacity of vessels scrapped or deregistered from Ghana's flag, but refuses to register new tuna fishing vessels under the Ghanaian flag. In this respect, Ghana has not set up efficient measures to ensure an actual reduction of this capacity, so the risk of overfishing of bigeye tuna has not been mitigated.
- (140) The shortcoming revealed by the Commission missions of May and July 2013 and additional information referred to in recitals 129 to 138 provide evidence of the failure of Ghana to fulfil its obligation as flag and coastal State laid down in Articles 62, 94 and 118 of the UNCLOS.
- (141) As described in recital 133, Ghana does not comply with its responsibilities as a coastal State as established in Article 62(4)(e) of the UNCLOS with regard to requirement to request from fishing vessels operating in its maritime waters VMS position reports. Such deficiencies in the domestic legal framework are furthermore not in line with point 24(3) of the IPOA which stipulates that States should undertake comprehensive and effective monitoring, control and surveillance of fishing from its commencement, through the point of landing, to final destination, including by implementing a VMS, in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS on board.
- (142) Furthermore, the actions referred to in the recitals 129 to 138 undermine the ability of Ghana to fulfil its obligations of Article 94(2)(b) of the UNCLOS which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.
- (143) Furthermore, the elements identified during the Commission missions reveal that Ghanaian procedures for vessel registration do not take into account the history of the involvement of the vessels and their owners in the IUU activities. Such approach is not in line with Article 94 of the UNCLOS.

- (144) In addition, the failure to provide information on conservation and management measures, statistics, lists of vessels and compliance tables undermines the ability of Ghana to fulfil its obligations under Article 118 of the UNCLOS which establishes the duty of cooperation among States in the conservation and management of living resources of the areas of the high seas.
- (145) The Commission analysed all information deemed relevant with respect to possible acts or omissions by Ghana that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.
- (146) In this respect, it should be noted that the Ghanaian legal framework foresees control measures, as for instance the fisheries regulations of 2010 that provide the obligation for Ghanaian fishing vessels to receive prior authorisation before conducting fishing operations in foreign countries. In this respect, in contradiction with this national legal framework, the Commission observed that the Ghanaian authorities have omitted to implement those obligations with the subsequent result to diminish the effectiveness of applicable laws and regulations to fight against IUU fishing in 2010, 2011 and 2012.
- (147) In the same manner, the Commission observed in the course of the mission of May 2013 that Ghana has not implemented the Article 94 of Fisheries Act 2002 which provides for the establishment of a fisheries monitoring, control, surveillance and enforcement unit with participation of all State agencies concerned. In this context, pursuant to Article 95 of Fisheries Act 2002, personnel of the Ghana Navy, Ghana Air Force and of the Water research Institute can be appointed as authorised officers to enforce fisheries law and regulations. In this respect, the Commission observed that Ghana has omitted to implement these provisions with the subsequent result to diminish the effectiveness of applicable laws and regulations to fight against IUU fishing.
- (148) The Commission observed in the course of the mission in May 2013 that before 1 October 2012 Ghana had never imposed an obligation to its tuna fishing vessels operating in ICCAT area to report geographical positions in contradiction with its obligations as Contracting Party to ICCAT as provided for in paragraphs 3, 4 and 5 of the ICCAT Recommendation 03-14. In doing so, Ghana also omitted to implement the provisions of Articles 42, 47, 48 and 49 of the Fisheries Regulations 2010. In this respect, in contradiction with this national legal framework, the Commission observed that Ghana has omitted to implement these provisions with the subsequent result to diminish the effectiveness of applicable laws, regulations and international conservation and management measures to fight against IUU fishing.
- (149) The Commission also observed in the course of the mission of May 2013 that Ghana has not implemented the Article 42 of Fisheries Act 2002 and Article 1 of Fisheries Regulations 2010 which provide for the obligation to adopt a national fisheries management and development plan. In accordance with Ghanaian law and regulations, this plan, that shall be based on the best scientific information available, shall ensure the optimum utilisation of the fishery resources thus avoiding over-exploitation, and shall be consistent with good management principles. In this respect, the Commission observed that Ghana has, in contradiction with this national legal framework, omitted to implement these provisions with the subsequent result to diminish the effectiveness of applicable laws and regulations to fight against IUU fishing.
- (150) Finally, it is pertinent to note that Ghana was also mentioned in the NMFS report⁽³⁴⁾. Ghana has been identified for failing to manage its fishing vessels consistent with conservation and management measures adopted by ICCAT and in particular Recommendation 05-09, Recommendation 11-01, Recommendation 04-01, Recommendation 11-01 and Recommendation 06-11. Furthermore, the NMFS is concerned with the capacity of Ghana to meet ICCAT capacity limitation requirements and to implement and effectively enforce prohibitions of at-sea transshipments. The NMFS also believes that Ghana needs to show progress in compliance with ICCAT recommendations by implementing the agreed payback plan for the overharvest of bigeye tuna and improving data collection. In addition, NMFS calls for improvement in the accuracy of Ghana's catch estimates to improve the ICCAT assessment of bigeye tuna stocks.
- (151) The performance of Ghana in implementing international instruments is not in accordance with the recommendations in point 10 of the IPOA IUU which advises States, as a matter of priority, to ratify, accept or accede to the UNFSA. The Commission considers that, in the case of Ghana, which has a significant fleet of fishing vessels engaged in fishing operations concerning highly migratory species (mainly tuna in the ICCAT area), this recommendation is of particular relevance.
- (152) In view of the situation explained in this Section of the Decision and on the basis of all the 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 Ghana has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

⁽³⁴⁾ NMFS report, p. 23.

5.4. Specific constraints of developing countries

- (153) It is recalled that, according to the United Nations Human Development Index⁽³⁵⁾, Ghana is considered as a medium human development country (135th in 186 countries). It is also recalled that, according to Regulation (EC) No 1905/2006, Ghana is listed in the category of low-income countries. Account taken of the ranking of Ghana, the Commission analysed if the information gathered by the Commission could be linked with its specific constraints as a developing country.
- (154) Although specific capacity constraints may exist in general with respect to control and monitoring, the specific constraints of Ghana derived from its level of development cannot justify an absence of specific provisions in its national legal framework referring to international instrument to combat, deter and eliminate IUU fishing activities. Furthermore, those constraints cannot justify Ghana's failure to effectively enforce the domestic legislation to sanction infringements related to IUU fishing. In addition, there are indications that the failure to comply with international rules depends more on the lack of cooperation between the national authorities as well as of the effective implementation of its national rules and international law. Finally, it is noted that Ghana's level of development is higher than the level of the countries in this region of the world entailing as logical consequence that Ghana is better placed compared to many other African countries to fulfil its responsibilities under international law as flag, coastal, port or market State.
- (155) It is also pertinent to note that the Union has already funded a specific technical assistance action in Ghana with respect to the fight against IUU fishing⁽³⁶⁾. No evidence exists that Ghana has taken into consideration the advice provided in order to rectify the shortcomings concerned.
- (156) In view of the situation explained in this Section of the Decision and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the country, it could be established, pursuant to Article 31(7) of the IUU Regulation, that there are no relevant development constraints in this case. Account taken of the nature of the established shortcomings of Ghana, the development level of that country cannot excuse or otherwise justify the overall performance of Ghana as flag or coastal State with respect to fisheries and the insufficiency of its action to prevent, deter and eliminate IUU fishing.

- (157) In view of the situation explained in this Section of the Decision and on the basis of all the factual elements gathered by the Commission as well as all 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 Ghana with respect to fisheries are not impaired by its level of development.

6. PROCEDURE WITH RESPECT TO CURAÇAO

- (158) Curaçao was part of the Netherlands Antilles (Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba) prior to 10 October 2010. Netherlands Antilles ceased to exist as of 10 October 2010. The notification of the Netherlands Antilles as flag State was accepted by the Commission on 12 February 2010. Curaçao notified their competent authorities for the purposes of the IUU Regulation on 28 March 2011.
- (159) From 4 to 8 March 2013, the Commission, with the support of EFCA, carried out a mission to Curaçao in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation.
- (160) The mission sought to verify information concerning Curaçao's arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels, measures taken by Curaçao in order to implement its obligations in the fight against IUU fishing and to fulfil its requirements and points pertaining to the implementation of the catch certification scheme of the Union.
- (161) The report of the mission was handed over to Curaçao's representatives on 8 March 2013.
- (162) A subsequent mission of the Commission to Curaçao was conducted from 3 to 6 June 2013.
- (163) The Commission submitted, on 5 June 2013, written observations on the established situation in the country.
- (164) Curaçao provided comments with letter received on 31 July 2013.
- (165) Curaçao is a Cooperating Non-Contracting Member of ICCAT. Curaçao has ratified the UNCLOS.
- (166) In order to evaluate the compliance of Curaçao with its international obligations as flag, port, coastal or market State set out by the UNCLOS and ICCAT, the Commission sought and analysed all relevant information for the purpose of this exercise.

⁽³⁵⁾ See footnote 8.

⁽³⁶⁾ Accompanying developing countries in complying with the implementation of Regulation (EC) No 1005/2008 on illegal, unreported and unregulated (IUU) fishing, EuropeAid/129609/C/SER/Multi.

(167) To this vein, the Commission used information derived from available data published by RFMOs, in this case ICCAT. Furthermore, in evaluating the compliance of Curaçao with its international obligations as flag, port, coastal or market State as well as the performance of Curaçao regarding rules laid down by RFMOs, the Commission has also noted the intention of Curaçao, expressed during the Commission mission in June 2013, to develop its international fisheries and to become a full member of ICCAT.

7. POSSIBILITY OF CURAÇAO OF BEING IDENTIFIED AS NON-COOPERATING THIRD COUNTRY

(168) The Commission, pursuant to Article 31(3) of the IUU Regulation, analysed the responsibilities of Curaçao as flag, port or coastal State. For the purpose of this review, the Commission took into account the parameters listed under Article 31(4) to (7) of the IUU Regulation.

7.1. Recurrence of IUU vessels and IUU trade flows (Article 31(4)(a) of the IUU Regulation)

(169) With respect to Curaçao-flagged IUU vessels, it is noted that, on the basis of information retrieved from RFMOs vessel lists, there are no such vessels in provisional or final IUU lists and no evidence of past cases of Curaçao-flagged IUU vessels that would enable the Commission to analyse the performance of Curaçao with respect to recurring IUU fishing activities. Nevertheless, it is pertinent to note that, on the basis of information received by the Commission, several incidents of alleged IUU activities of two vessels flying Curaçao's flag occurred. Namely, in 2011, the Ministry of Economic Development (MED) was notified by the governments of Japan and New Zealand that a vessel flying the flag of Curaçao was catching demersal shark species using deep-water gillnets within the area covered by the Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean (SPRFMO). The use of deep water gillnets was prohibited in that area under the measures agreed in the Final Act of the International Consultations on the Establishment of the Proposed South Pacific Regional Fisheries Management Organisation ('the Final Act') of 2009⁽³⁷⁾. Moreover, catch certificates were validated for this vessel by Curaçao for the period in question. Curaçao has opened an investigatory procedure as regards the vessel and took precautionary measures to stop its fishing activity in the SPRFMO convention fishing area. However, no sanctions were imposed on the vessel. In conclusion, acting in abovementioned way, Curaçao was in breach of Articles 117 and 118 of the UNCLOS.

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

(170) The Commission analysed whether Curaçao has taken effective enforcement measures in respect of operators responsible for IUU fishing and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied.

(171) The Commission missions held in March and June 2013 in Curaçao established a number of elements that revealed non-compliance of Curaçao's performance in the execution of its role of flag State. In particular, the flag State's duty includes an obligation to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, as foreseen by Article 94 of the UNCLOS and the IPOA IUU rules. The abovementioned Commission missions identified significant problems regarding Curaçao's abilities in the field of fisheries and fleet management system, regarding the quality of implementation of monitoring, control and surveillance measures and procedures.

(172) Firstly, based on the information retrieved during the March and June 2013 Commission missions it was also established that there is an insufficient system of sanctions against IUU activities which are not effective in securing compliance and do not discourage violations wherever they occur and do not deprive offenders of the benefits accruing from their illegal activities.

(173) Secondly, the missions disclosed significant deficiencies in the traceability scheme of Curaçao. Indeed as it was established by the various documentary checks conducted on-the-spot, Curaçao's authorities are not in a position to ensure the traceability at all stages of fishing activities: catch, transshipments, landing, transport, export and trading.

(174) Thirdly, Curaçao's control over its long-distance fleet contains substantial deficiencies. Control over this fleet and its catches is the responsibility of the Ministry of Economic Development (MED) that is also responsible for issuing, suspending and withdrawing fishing licences. Curaçao has no FMC. Given the technical characteristics of Curaçao's long-distance fleet, the capacities of Curaçao's control over its long-distance fleet behaviour

⁽³⁷⁾ Information retrieved from: <http://www.southpacificrfmo.org/assets/Convention-and-Final-Act/2272942-v1-SPRFMOSignedFinalAct.pdf>

and fulfilment of obligations and rules show substantial weaknesses, in administrative, organisational and technical terms. Although Curaçao's purse seiners are equipped with modern means of transmission, the limited functionalities of the VMS software installed in MED premises coupled with a paper-based system of data collection do not allow the necessary level of checks and balances of the submitted data.

- (175) Fourthly, the Curaçao authorities do not ensure a continuous monitoring of VMS data received. As for the technical and operational weaknesses, the software that is used to read and collect VMS data has limited functionalities. Support vessels are equipped with VMS and should systematically transmit data, while carrier vessels are equipped with VMS, but are obliged to transmit data only whenever they carry fish.
- (176) Fifthly, in course of its missions of March and June 2013, the Commission observed that coordination and cooperation regarding data reporting between Curaçao flagged long-distance vessels and the competent authorities of Curaçao are insufficient to ensure an efficient monitoring, control and surveillance system on fishing activities. This element demonstrates the lack of ability of Curaçao as flag State to monitor and control the fishing activities of its fleet and to assume jurisdiction over each ship flying its flag as provided for in Article 94 of the UNCLOS. Such a performance of Curaçao with respect to its monitoring, control and surveillance is also not in accordance with the recommendations in point 24 of the IPOA IUU which advises flag States to ensure comprehensive and effective monitoring, control and surveillance of fishing activities.
- (177) Sixthly, the insufficient human resources, the lack of verification of the accuracy of data transmitted by vessels on a daily basis, as well as the non-existence of specified verification procedures and dedicated verification in guidelines or manuals of procedures for MED officials, constitute a breach of Curaçao's international obligations as a flag State, especially having regard to Article 94 of the UNCLOS. In the same manner, Curaçao failed to implement the IPOA IUU recommendations, in particular point 34.
- (178) In view of the situation described in recitals 173 to 176, Curaçao failed to demonstrate that it fulfils the conditions of Article 94(2)(b) of the UNCLOS stipulating that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.
- (179) Curaçao failed also to comply with its international legal obligations stemming from Article 118 of the UNCLOS, which regulates the cooperation of States in the conservation and management of living resources. Namely, the absence of a formally established Fishing Monitoring Centre, operating on a permanent basis and which would present a single contact point, represents a serious obstacle to efficient cooperation with third countries that are involved in transshipment and landing of tuna species operated by Curaçao vessels.
- (180) Therefore, Curaçao failed to demonstrate that it cooperates and coordinates activities with other States in preventing, deterring and eliminating IUU fishing in the way set out in point 28 of the IPOA IUU, in particular point 28(6), stipulating that States should develop cooperative mechanisms that allow, inter alia, rapid responses to IUU fishing.
- (181) With respect to the catch certification scheme, in the course of the Commission missions of March and June 2013, it was noted that the management system for validation of catch certificates in Curaçao present some loopholes. Curaçao validated catch certificates without real verifications and checks of information being performed by Curaçao authorities on the spot, which is contrary to requirements set by ICCAT Recommendation 09-11⁽³⁸⁾. Also, it has been identified a complete lack of cooperation of Curaçao authorities with the landing States (i.e. Ivory Coast, Senegal, Ghana). The catch certification scheme is solely based on documentary checks. Vessel movements at sea can be monitored via VMS but the basic system of vessel movements does not allow for gathering of historical data and it does not issue alerts. These facts demonstrate failure of Curaçao to comply with rules set by Articles 118 and 119 of the UNCLOS.
- (182) With respect to the validation of catch certificates, other means of controls than VMS are not available. Consequently, for the vessels fishing permanently outside Curaçao waters and landing or transshipping most of the catches in Ivory Coast and Angola, Curaçao authorities solely rely on reporting of the operators. No controls are carried out in the landing or transshipment ports. Moreover, no cooperation is established with the countries of landing or transshipment.

⁽³⁸⁾ ICCAT Recommendation 09-11: Recommendation by ICCAT amending Recommendation 08-12 on an ICCAT bluefin tuna catch documentation programme.

- (183) Curaçao has not developed a catch reporting system which insures the registering of all catches in real time, nor has it developed an electronic logbook scheme. Therefore, it has failed to enable full control and traceability, efficient cross checks of VMS positions, landings, information on landings and transshipments. Thus, Curaçao's performance in this matter is not aligned with the recommendations set out in point 28 of the IPOA IUU.
- (184) The National Decree on Fisheries on the High Seas (*Landsbesluit visserij op volle zee* — PB No 109) from 7 October 2010 is the basic fisheries law in Curaçao governing the international fishery sector. The 2010 National Decree lays down the international licence scheme. The legal text includes provisions on the operation of transshipment, the reporting obligations and the VMS.
- (185) The 1991 National Fisheries Decree (*Visserijlandsverordening*) is the basic national fisheries law providing fishing rules and regulations in the territorial waters of Curaçao and its fishing zone.
- (186) With respect to the legal and administrative framework of Curaçao, the Commission missions in March and June 2013 have revealed that there are deficiencies in Curaçao established structures and systems. Namely, there is no register of infringements and sanctions established by Curaçao that would facilitate the process of verifying previous IUU activities of the vessels' owners. The overall level of administrative sanctions and fines is not sufficient and thus does not constitute a coherent and deterrent sanction scheme. According to Curaçao's submission, its legislation does not contain measures for administrative enforcement. Therefore, it is not possible to issue an administrative fine to individuals liable of IUU infringements or for Curaçao's Government to take pre-emptive and enforcement measures. Acting in above described way, Curaçao has failed to comply with Article 94 of the UNCLOS.
- (187) In the course of the Commission missions of March and June 2013 and following the submission of Curaçao, the Commission observed that, in spite of the recognised deficiency of Curaçao's legal and administrative framework, the competent Curaçao authorities failed to undertake actions to initiate necessary procedures regarding the adaptation of an IUU Code of Conduct and the revision of Curaçao fisheries law.
- (188) Therefore, the evidence that the Commission has gathered reveals that the performance of Curaçao with respect to effective enforcement measures is also not in line with the recommendations set out in point 21 of the IPOA IUU, advising States to ensure that sanctions for IUU fishing by vessels are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and deprive the benefits accruing from such fishing.
- (189) With respect to the existing capacity of the Curaçao's authorities, there is no information on Curaçao's level of development in the United Nations Human Development Index. However, according to the World Bank's World Development Indicator ⁽³⁹⁾, Curaçao is considered as high income level country. Account taken of its position, it is not considered necessary to analyse the existing capacity of Curaçao's competent authorities.
- (190) On the basis of information derived from the Commission missions in March and June 2013, it cannot be upheld that Curaçao's authorities are lacking financial resources. They rather lack the necessary legal and administrative environment and empowerments to perform their duties. Furthermore, it should also be highlighted that the Commission, in line with the recommendations of the IPOA IUU in points 85 and 86 advising on special requirements of developing countries, has assisted Curaçao in the application of the EU IUU Regulation through a specific technical assistance programme financed by the Commission ⁽⁴⁰⁾.
- (191) In view of all the above it is concluded, that pursuant to Article 31(3) and Article 31(5)(b) and (d) of the IUU Regulation, Curaçao has failed to discharge its duties incumbent upon it under international law as flag State in respect of cooperation and enforcement efforts.

7.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

- (192) Curaçao has ratified the UNCLOS. Furthermore, Curaçao is a cooperating non-contracting party of ICCAT since 17 November 2010.
- (193) With a view to further explain the implementation of international rules by Curaçao, it is pertinent to note that the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, ratified the UNCLOS in 2007 and that all the legislative instruments adopted by the Netherlands Antilles before 10 October 2010 are enforced in Curaçao.
- (194) The Commission analysed all information deemed relevant with respect to the status of Curaçao as cooperating non-contracting party of ICCAT. The Commission also analysed all information deemed relevant with respect to the agreement of Curaçao to apply conservation and management measures adopted by ICCAT.
- (195) The Commission analysed available information from ICCAT on compliance performance. For this, the Commission used the ICCAT Compliance Summary Tables ⁽⁴¹⁾.

⁽³⁹⁾ Information retrieved from: <http://data.worldbank.org/country/CW>
This information was used instead of the United Nations Human Development Index and Regulation (EC) No 1905/2006 where Curaçao is not mentioned.

⁽⁴⁰⁾ Accompanying developing countries in complying with the implementation of Regulation (EC) No 1005/2008 on illegal, unreported and unregulated (IUU) fishing, EuropeAid/129609/C/SER/Multi, 13 to 27 June 2011.

⁽⁴¹⁾ Appendix 3 to Annex 10 to Proceedings of 18th Special Meeting of ICCAT from January 2013, Report for Biennial Period 2012-2013, Part I (2012), Vol. 1.

- (196) With respect to 2012, the ICCAT Conservation and Management Measures Compliance Committee (COC) identified Curaçao for its failure to comply with its obligation to timely communicate reports, statistics and data to ICCAT. In the compliance summary tables of the Report of COC meeting ⁽⁴²⁾, Curaçao was identified for late or incomplete submission of the following documents: Task I fleet characteristics regarding annual reports/statistics; internal actions (vessels 20 m +) regarding conservation and management measures; information on access agreements; transshipment report; compliance tables regarding quotas and catch limits. The abovementioned failures to comply with ICCAT rules and recommendations (mainly ICCAT Recommendation 11-12), in combination with the other elements highlighted in Sections 7.1 and 7.2 of this Decision, demonstrate the existence of deficiencies in Curaçao's fulfilment of its flag State obligations relating to management and conservation measures, as established in Articles 117 and 118 of the UNCLOS.
- (197) With respect to the fleet policy, the Commission established that all of Curaçao's industrial vessels are owned by foreign shipowners and for Curaçao it is only possible to identify the beneficial owner of the vessel. The Commission believes that the existence of information on the beneficial owners' coordinates does not represent a sufficient proof of the existence of a genuine link between the flag State and the vessels, and considers this situation as not compliant with the provisions set out for the nationality of ships in Article 91 of the UNCLOS.
- (198) Furthermore, on the basis of information retrieved in the course of the missions of March and June 2013, it is established that the registration of fishing vessels operating on the high seas is done by one authority (Maritime Authority of Curaçao — MAC), while, at the same time, all management and monitoring is being done by another authority (Ministry of Economic Development — MED). The existence of such division of functions would require close coordination and cooperation between competent authorities. The Commission noticed during its missions in March and June 2013 that no such cooperation exists between MAC and MED. The elements identified during the abovementioned Commission missions also reveal that Curaçao procedures for vessel registration do not take into account the history of the involvement of the vessels and their owners in the IUU activities. It was revealed that Curaçao's competent authorities, at the moment of registration of the vessel, do not perform any checks of the vessel's history or on any potential vessel's involvement in IUU activities. This constitutes a failure by Curaçao to fulfil requirements regarding the registration or flagging of vessels set by ICCAT Resolution 05-07, and is not in line with Article 94 of the UNCLOS. The performance of Curaçao with respect to fishing vessel registration is also not in accordance with the recommendation in points 36 and 38 of the IPOA IUU which advise flag States to avoid flagging vessels with a history of non-compliance, and invite flag States to deter vessels from reflagging for the purpose of non-compliance with conservation and management measures or provisions adopted at a national, regional or global level. In addition, the Curaçao's performance described above regarding the fishing vessels registration is not in line with the recommendations of point 39 of the IPOA IUU that advises States to take all practicable steps, including denial to a vessel of an authorisation to fish and the entitlement to fly that State's flag, to prevent 'flag hopping'; that is the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions.
- (199) In addition to the above, along the national register, Curaçao also operates bareboat register allowing vessels under another flag to temporarily fly Curaçao's flag. It is pertinent to note that Curaçao's authorities, in case of registration of a non-Curaçao vessel in the Curaçao bareboat register, simply inform the other flag State. In these cases, Curaçao's authorities do not carry out further verifications on operators and/or beneficial owners of the vessels. It should also be noted that there have been cases where Curaçao-flagged carrier vessels were registered with ICCAT by another country (Philippines), without notification to the Curaçao's authorities. In conclusion, such a practice of Curaçao is not in compliance with Article 94 of the UNCLOS stipulating the responsibilities of flag States with respect to vessels carrying their flags. It is to be noted in this respect that the International Transport Workers' Federation (ITF) considers Curaçao as a flag of convenience ⁽⁴³⁾.
- (200) Finally, it should be also noted that Curaçao has not developed a national plan of action against IUU fishing contrary to the recommendations in points 25 to 27 of the IPOA IUU.
- (201) In view of all the above, it is concluded that Curaçao, pursuant to Article 31(3) and (6) of the IUU Regulation, has failed to discharge its duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

⁽⁴²⁾ See footnote 41.

⁽⁴³⁾ Information retrieved from: <http://www.itfglobal.org/flags-convenience/flags-convenien-183.cfm>

7.4. Specific constrains of developing countries

- (202) It is recalled that Curaçao is not listed under Annex II to Regulation (EC) No 1905/2006, that classifies the States according to their level of development, nor is there any information on Curaçao's level of development in the United Nations Human Development Index. To the contrary, according to the World Bank's World Development Indicator from 2013 ⁽⁴⁴⁾, Curaçao is considered as a high-income country.
- (203) Account taken of findings of missions and the World Bank's World Development Indicator of Curaçao, its position could not be considered as a country having specific constraints directly deriving from its level of development. No corroborated evidence was established to suggest that failure of Curaçao to discharge the duties incumbent upon it under international law is the result of lacking development. In the same manner, no concrete evidence exists to correlate the established shortcomings to monitoring, control and surveillance of fishing activities with the lack of capacities and infrastructure abilities.
- (204) It is also pertinent to note that the Commission has already funded, in 2011, a specific technical assistance action in Curaçao with respect to the fight against IUU fishing ⁽⁴⁵⁾. No evidence exists that Curaçao has taken into consideration the advice provided in order to rectify the shortcomings concerned.
- (205) In view of all the above, it is concluded, in line with the provisions of Article 31(7) of the IUU Regulation, that the development status and overall performance of Curaçao with respect to fisheries are not impaired by its level of development.

8. CONCLUSION ON THE POSSIBILITY OF IDENTIFICATION OF NON-COOPERATING THIRD COUNTRIES

- (206) In view of the conclusions reached above with regard to the failure of Curaçao, Ghana and Korea to discharge the duties incumbent upon them under international law as flag, port, coastal or market State and to take action to prevent, deter and eliminate IUU fishing, those countries

should be notified, in accordance with Article 32 of the IUU Regulation, of the possibility of being identified as countries the Commission considers to be non-cooperating third countries in fighting IUU fishing.

- (207) In accordance with Article 32(1) of the IUU Regulation, the Commission should notify Curaçao, Ghana and Korea of the possibility of their being identified as non-cooperating third countries. The Commission should also take all the *démarches* set out in Article 32 of the IUU Regulation with respect to Curaçao, Ghana and Korea. In the interest of sound administration, a period should be fixed within which those countries may respond in writing to the notification and rectify the situation.
- (208) Furthermore, the notification to Curaçao, Ghana and Korea of the possibility of being identified as countries the Commission considers to be non-cooperating 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 countries,

HAS DECIDED AS FOLLOWS:

Sole Article

Curaçao, the Republic of Ghana and the Republic of Korea are hereby notified of the possibility of being identified as third countries that the Commission considers as non-cooperating third countries in fighting illegal, unreported and unregulated fishing.

Done at Brussels, 26 November 2013.

For the Commission
 Maria DAMANAKI
 Member of the Commission

⁽⁴⁴⁾ Information retrieved from: <http://data.worldbank.org/country/CW>

⁽⁴⁵⁾ See footnote 40.