

COMMISSION DECISION**of 1 October 2015****on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing**

(2015/C 324/07)

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 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 to identify non-cooperating third countries, the *démarches* in respect of such countries, the establishment of a list of such countries, the removal from that list, the publicity of that list and any emergency measures.
- (3) In accordance with Article 32 of the IUU Regulation, the Commission is to notify third countries of the possibility of their being identified as non-cooperating countries. Such notification is of a preliminary nature. The notification is to be based on the criteria laid down in Article 31 of the IUU Regulation. The Commission is also to take all the *démarches* set out in Article 32 of that Regulation with respect to the notified third countries. In particular, the Commission is to include in the notification information concerning the essential facts and considerations underlying such identification, provide those countries with the opportunity to respond and provide evidence refuting the identification or, where appropriate, a plan of action to improve and measures taken to rectify the situation. The Commission is to give to the notified third countries adequate time to answer the notification and reasonable time to remedy the situation.
- (4) Pursuant to Article 31 of the IUU Regulation, the Commission is to identify third countries that it considers as non-cooperating countries in fighting IUU fishing. A third country is to be identified as non-cooperating if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.
- (5) The identification of non-cooperating third countries is to 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 is to establish a list of non-cooperating third countries. The measures set out, inter alia, in Article 38 of the IUU Regulation apply to those countries.
- (7) The concept of flag state responsibility and coastal state responsibility has been steadily strengthened in international fisheries law and is today envisaged as an obligation of 'due diligence', which is an obligation to exercise best possible efforts and to do the utmost to prevent IUU fishing, including the obligation to adopt the necessary administrative and enforcement measures to ensure that fishing vessels flying its flag, its nationals, or fishing vessels engaged in its waters are not involved in activities which infringe the applicable conservation and management measures of marine biological resources, and in case of infringement to cooperate and consult with other states in order to investigate and, if necessary, impose sanctions which are sufficient to deter violations and deprive offenders of the benefits from their illegal activities.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

- (8) Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third flag States is subject to a notification to the Commission of the arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by the fishing vessels of the concerned third countries.
- (9) In accordance with Article 20(4) of the IUU Regulation, the Commission is to cooperate administratively with third countries in areas pertaining to the implementation of that Regulation.

2. PROCEDURE WITH RESPECT TO THE UNION OF COMOROS

- (10) The Union of the Comoros (hereinafter 'the Comoros') has not submitted to the Commission its notification as a flag State pursuant to Article 20 of the IUU Regulation.
- (11) From 4 to 8 May 2014, the Commission, with the support of the Delegation of the European Union to the Republic of Mauritius, to the Union of the Comoros and to the Republic of Seychelles, carried out a visit to the Comoros in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation.
- (12) The visit sought to verify information concerning the Comoros' 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 the Comoros in order to implement its obligations in the fight against IUU fishing.
- (13) The final report of the visit was sent to the Comoros on 3 June 2015. The Commission established during the visit that little or no progress had been achieved on the critical weaknesses the Comorian authorities committed to address in October 2011 ⁽²⁾.
- (14) The Comoros did not submit comments to the final report.
- (15) The Comoros is member of the Indian Ocean Tuna Commission (IOTC) and of the Southwest Indian Ocean Fisheries Commission (SWIOFC). The Comoros has ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
- (16) The European Union and the Union of the Comoros have signed a Fisheries Partnership Agreement which is currently in force ⁽³⁾.
- (17) In order to evaluate the compliance of the Comoros with its international obligations as flag, port, coastal or market State as set out in the international agreements referred to in recital 15 and established by the relevant Regional Fisheries Management Organisations (RFMOs) mentioned in that recital, the Commission sought collected and analysed all the information it deemed necessary for the purpose of that exercise. The current internal legal framework for the Comoros fisheries management is the Fisheries and Aquaculture Code established by Act No 07-011/AU of 29 August 2007 and a body of Ministerial agreements.
- (18) The Commission also used information derived from available data published by the relevant RFMOs as well as publicly available information.

3. POSSIBILITY OF THE UNION OF COMOROS BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

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

3.1. Recurrence of IUU Vessels and IUU trade flows and measures taken in respect thereof (Article 31(4) of the IUU Regulation)

- (20) On the basis of publically available information as well as information gathered by the Commission and from the Comorian authorities, the Commission has established that there is evidence of around 20 Comorian vessels have been involved in IUU fishing activities during the period 2010 to 2015.

⁽²⁾ Information retrieved from: http://ec.europa.eu/fisheries/news_and_events/press_releases/2011/20111031/index_en.htm

⁽³⁾ Council Regulation (EC) No 1563/2006 of 5 October 2006 concerning the conclusion of the Partnership Agreement in the fisheries sector between the European Community and the Union of the Comoros (OJ L 290, 20.10.2006, p. 6).

- (21) The Commission has established that there are around 20 Comorian vessels operating outside the Comorian Exclusive Economic Zone (EEZ) without an authorisation from the Comorian authorities. This goes against the recommendations as set out in point 45 of the International Plan of Action to prevent, deter and eliminate Illegal, Unreported and Unregulated fishing (IPOA IUU ⁽⁴⁾) and paragraph 8(2)(2) of the FAO Code of Conduct that provide that flag States should ensure that each of the vessels entitled to fly their flag operating outside their waters holds a valid authorisation. It also constitutes a failure to follow the recommendations of points 29 and 30 of the FAO Voluntary Guidelines for Flag State Performance ⁽⁵⁾.
- (22) From publically available information, two Comorian vessels are also reported to have conducted an at-sea transshipment off the West African coast in 2014 ⁽⁶⁾. These operations took place without authorisation from the Comorian authorities. The lack of control by the Comoros contravenes point 49 of IPOA IUU which provides that flag States should ensure that all of their vessels involved in transshipment have a prior authorisation issued by the flag State, and report to the national authorities.
- (23) Moreover, the Comorian authorities acknowledged that the Comorian vessels operating outside the Comorian EEZ are not subject to any measure of monitoring, control and surveillance. They do not report their geographic position to the Comorian fisheries monitoring centre or any other information to the Comorian authorities such as catch data or information on landings or transshipments. By these failures the Comoros contravene Article 94(1) and (2) of UNCLOS which provide that every State shall effectively ensure its jurisdiction and control over ships flying its flag. This also contravenes the recommendation of point 24 of IPOA IUU, that provides for the obligation to undertake comprehensive and effective control of fishing activities, and point 35 of IPOA IUU that provides that a flag State should ensure that, before it registers a vessel, it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing. This also contravenes points 31, 32 and 33 of the FAO Voluntary Guidelines for Flag State Performance that provide that flag States must implement control regimes over their vessels and must have in place enforcement regimes that include, inter alia, capacity to detect and take enforcement actions against violation of applicable laws, regulations and international conservation and management measures. Finally, because of these failures it is probable that these vessels may be operating illegally and that their catches remain unreported.
- (24) In view of the statements made by the Comorian authorities, the Commission established that the list of vessels flying the flag of the Comoros is not consolidated. While the authority in charge of fisheries does not have specific information on Comorian vessels operating outside the Comorian EEZ, the authority in charge of registration of vessels only has partial information on the status of the Comorian register. Contrary to the recommendations in point 40 of IPOA IUU and point 19 of the FAO Voluntary Guidelines for Flag State Performance, there is a lack of cooperation and information sharing between the authorities in charge of registration of vessels and those in charge of fisheries. Also by this failure the Comoros contravene Article 94(2)(b) of UNCLOS. They also fail to follow the recommendation of point 42 of IPOA IUU which provides that every State shall maintain a register of ships containing the names and particulars of ships flying its flag.
- (25) The lack of internal cooperation described in recital 24 contravenes the commitment made by the Comorian authorities to the European Union in October 2011, to establish closer cooperation between the authorities in charge of the registration of vessels and those in charge of fisheries ⁽⁷⁾.
- (26) The absence of cooperation between the authorities in charge of the registration of vessels and those in charge of fisheries diminishes the Comoros' ability to monitor the size and capacity of its fleet and allows illegal operators to operate under the Comoros flag without detection.
- (27) The Commission has established that the lack of cooperation between the authorities in charge of the registration of vessels and those in charge of fisheries is aggravated by the involvement of offshore private companies in the process of registration that are responsible for recruiting vessels to the registry and that can attribute temporary registration certificates.
- (28) Furthermore, the authority in charge of registration does not consult the IUU vessel lists established by RFMOs before registering a vessel which intends to operate outside the Comorian EEZ. This contravenes point 36 of

⁽⁴⁾ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Food and Agriculture Organization of the United Nations, 2001.

⁽⁵⁾ Voluntary Guidelines for Flag State Performance, March 2014, retrieved from: <http://www.fao.org/3/a-mk052e.pdf>

⁽⁶⁾ Information retrieved from Greenpeace, Esperanza West Africa Expedition 2014, May 2015, retrieved from: <http://www.greenpeace.org/eastasia/publications/reports/oceans/2015/Africas-fisheries-paradise-at-a-crossroads/>

⁽⁷⁾ See footnote 2.

IPOA IUU, that provides that flag States should avoid flagging vessels with a history of non-compliance. This also suggests that robust registration procedures remain to be developed and that the risk of IUU fishing activities occurring in the Comorian fleet is high.

- (29) Based on the information gathered during the visit to the Comoros conducted in May 2015, the Commission also established that three Comorian vessels were authorised to operate in the Comorian waters without being equipped with a Vessel Monitoring System (VMS) device or having an observer on-board. This situation is in contravention of Article 94(1) and (2) of UNCLOS. It also fails to follow point 24 of IPOA IUU. In addition, these vessels did not transmit the quantities of fish on board to the Comorian authorities within the prescribed time limit prior to landing in the Comoros. This contravenes point 55 of IPOA IUU which provides that, prior to allowing a vessel port access, States should require vessels to provide, inter alia, reasonable advance notice of their entry into port, details of their fishing trip and quantities of fish on board; in order to ascertain whether the vessel may have engaged in, or supported, IUU fishing. This situation implies that products stemming from these vessels cannot be guaranteed as not being sourced from IUU fishing activities.
- (30) Pursuant to Article 31(4)(b) of the IUU Regulation, the Commission also examined the measures taken by the Comoros in respect of access of fisheries products stemming from IUU fishing to its market.
- (31) In view of the situation described in recitals 22, 23 and 25, traceability of fish or fish products is hindered by the lack of monitoring, control and surveillance; the status of the Comorian register; and the lack of cooperation between the authorities in charge of the registration of vessels and those in charge of fisheries.
- (32) Based on the information gathered from the Comorian authorities, Comorian vessels authorised to operate in the EEZ of the Comoros have been using logbooks produced by economic operators in Sri Lankan languages. These languages are not understood by the Comorian fisheries inspectors. According to the information gathered during the visit to the Comoros in May 2015, the Comorian authorities had not finalised the development of their logbook model. Traceability cannot be guaranteed with the use of logbooks produced in a language not understood by the Comorian fisheries inspectors. This situation also hinders transparency and contravenes point 24 of IPOA IUU and point 33 of the FAO Voluntary Guidelines for Flag State Performance that provide for the obligation to undertake comprehensive and effective control of fishing activities from their commencement, through the point of landing, to final destination. This also contravenes point 71 of IPOA IUU that provides that States should take steps to improve the transparency of their markets to allow traceability of fish or fish products.
- (33) It is recalled that recital 23 demonstrates that the Comorian vessels operating outside the Comorian EEZ are not subject to any form of control by the Comorian authorities. These vessels do not have logbooks intended for the Comorian authorities and are not transmitting any information regarding their fishing activities, landings and transshipments to the Comorian authorities. This contravenes Article 94 of UNCLOS and fails to follow the recommendations of points 24 and 35 of IPOA IUU as well as point 33 of the FAO Voluntary Guidelines for Flag State Performance, as it implies that traceability of fish or fish products stemming from these vessels cannot be guaranteed.
- (34) Paragraphs 11(2) and 11(3) of the FAO Code of Conduct state that international trade in fish and fishery products should not compromise sustainable development of fisheries and should be based on transparent measures as well as on simple and comprehensive laws, regulations and administrative procedures. In addition paragraph 11(1)(11) of the FAO Code of Conduct provides that States should ensure that international and domestic trade in fish and fishery products complies with sound conservation and management practices by improving the identification of the origin of fish and fishery products traded. The IPOA IUU further provides guidance on internationally agreed market-related measures (points 65 to 76) which support reduction or elimination of trade in fish and fish products derived from IUU fishing.
- (35) Based on the information gathered by the Commission as well as statements made by the Comorian authorities, while processing facilities are being developed in the Comoros, robust traceability and certification schemes remain to be defined. This situation also increases the risk that products sourced from IUU fishing activities could be processed and traded through the Comoros.

- (36) In view of the situation explained in this Section of the Decision and on the basis of all factual elements gathered by the Commission as well as statements made by the country, it could be established, pursuant to Article 31(3), (4)(a) and (4)(b) of the IUU Regulation, that the Comoros have failed to discharge their duties under international law as a flag, port, coastal and market State in respect of IUU vessels and IUU fishing carried out or supported by vessels flying its flag or by its nationals and to prevent access of fisheries products stemming from IUU fishing to its market.

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

- (37) Under Article 31(5)(a), the Commission analysed its collaboration with the Comoros to see if they had effectively cooperated in responding to questions, providing feedback or investigating matters related to IUU fishing and associated activities.
- (38) While the Comorian fisheries authorities were generally cooperative during the mission, the Comorian fisheries authorities did not reply to follow-up requests for information. The Commission has established that this failure to cooperate is aggravated by the status of the Comorian register and the lack of cooperation between the authorities in charge of the registration of vessels and those in charge of fisheries, as established in Section 3.1.
- (39) In addition, as recital 25 recalls, the lack of cooperation between the authorities in charge of the registration of vessels and those in charge of fisheries should have been addressed in line with a commitment made by the Comoros in October 2011 to establish closer cooperation between these authorities⁽⁸⁾. As established in Section 3.1, little or no progress has been achieved on this critical weakness and the Comoros has not met its commitment.
- (40) During the Commission visit in May 2015, the Comorian authorities informed the Commission that they were not in a position to share the Maritime Code which was awaiting enactment. Since then, the Commission has neither been informed of the enactment of the text nor have they been provided with a copy.
- (41) Moreover, the Comorian authorities were invited to provide the Commission with the list of Comorian fishing and fishing-related vessels. The Commission has not been provided with a copy of this list.
- (42) In the context of the overall assessment of the fulfilment of the Comorian duties to discharge their obligations as flag State, the Commission also analysed whether the Comoros cooperates with other States in the fight against IUU fishing.
- (43) The Commission has established that, while the Comoros is cooperating with the countries of the Indian Ocean region, it does not cooperate with third countries outside the region where Comorian vessels operate. As explained in recital 24, this absence of cooperation may result from the fact the Comorian authorities have little or no information about the vessels concerned. This situation, which highlights the findings of Section 3.1, fails to follow the recommendation of point 28 of IPOA IUU that provides that States should coordinate their activities and cooperate in fighting IUU fishing. This also fails to follow point 31 of IPOA IUU that provides that flag States should consider entering into agreements or arrangements with other States and otherwise cooperate for the enforcement of applicable laws and conservation and management measures or provisions adopted at a national, regional or global level.
- (44) In accordance with Article 31(5)(b), the Commission analysed existing enforcement measures to prevent, deter and eliminate IUU fishing in the Comoros.
- (45) The Commission established that the Comorian authorities had not reported taking any actions with respect to the vessels stated in recital 23 that have conducted operations that include an at-sea transshipment off the West African coast in 2014.

⁽⁸⁾ See footnote 2.

- (46) With regard to information laid down in recitals 21 and 23, and in view of the statements made by the Comoros, the Commission established that the Comorian authorities were aware that vessels flying the flag of the Comoros were, in breach of the Comorian law and requirements, operating outside the Comorian EEZ and landing in West Africa and Asia. However, the Commission established that the Comorian authorities had not taken enforcement measures in respect of these vessels.
- (47) Furthermore, the Commission established during its visit in May 2015 that most of the Comorian fleet is not transmitting VMS information to the Comorian authorities. This situation highlights the authorities' inability to monitor the operations of Comorian vessels and undermines the authorities' ability to effectively enforce rules applicable to the different areas concerned. This, combined with the lack of internal cooperation and cooperation with third countries, creates an ideal environment for the development of IUU fishing activities.
- (48) The situation referred to in recitals 45 to 47 contravenes Article 94 of UNCLOS. It also contravenes the recommendations to take enforcement measures in respect of IUU fishing activities and to sanction such activities with sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing, as set out in paragraph 8(2)(7) of the FAO Code of Conduct; point 21 of IPOA IUU and points 31 to 33, 35 and 38 of the FAO Voluntary Guidelines for Flag State Performance.
- (49) With regards to the Comorian fisheries legal framework, the Comorian authorities acknowledged during the Commission's visit in May 2015, that further implementing texts of the Fisheries and Aquaculture Code need to be elaborated to ensure consistency between national law and international and regional applicable rules.
- (50) In addition, the Comorian Fisheries and Aquaculture Code does not include vessels conducting fishing related activities in the definition of fishing vessels. Furthermore, while the Comorian legal framework covers serious violations as defined under international law, the Comorian legal framework does not explicitly define IUU fishing and does not expressly foresee enforcement measures and sanctions for nationals supporting or engaged in IUU fishing as outlined in point 18 of IPOA IUU. As regards the sanctioning scheme, it should be noted that the fines foreseen in the context of industrial fishing activities are based on the value of the licences fees. Nevertheless, the categories of fishing licences defined in the Comorian law are limited only to tuna species. Consequently, in cases of infringements of industrial fleet targeting demersal or pelagic species there are no corresponding fines, account taken of the lack of corresponding licencing fees. This situation reduces the level of deterrence of the Comorian sanctioning scheme.
- (51) Furthermore, the Comoros does not have a national inspection plan to ensure a coherent policy on control of the Comorian fleet operations. Considering the size of the Comorian fleet and its development prospects⁽⁹⁾, the Comoros does not have enough observers.
- (52) The Comoros has a low human development index and was ranked 159 out of 187 countries in 2013⁽¹⁰⁾ according to the United Nations Human Development Index (UNHDI). In the Annex II to Regulation (EC) No 1905/2006 of the European Parliament and of the Council⁽¹¹⁾ the Comoros is listed in the category of least developed countries, in line with the Organisation for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC) list of official development assistance (ODA) recipients of 1 January 2015⁽¹²⁾.
- (53) Despite the analysis in recital 52 it is also noted that on the basis of information derived from the Commission's visit in May 2015, it cannot be considered that the Comoros lacks financial resources. Rather it lacks the necessary administrative environment to ensure the efficient and effective performance of its duties as flag, coastal, port and market State.
- (54) In view of the situation explained in this Section and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the Comoros, it could be established, pursuant to Article 31(3) and (5) of the IUU Regulation, that the Comoros failed to discharge its duties under international law with respect to cooperation and enforcement efforts.

⁽⁹⁾ Information retrieved from: http://www.iotc.org/sites/default/files/documents/2015/03/IOTC-2015-CoC12-05_Add_1E_Collection_of_fleet_development_plans.pdf

⁽¹⁰⁾ Information retrieved from: <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components>

⁽¹¹⁾ Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ L 378, 27.12.2006, p. 41).

⁽¹²⁾ Information retrieved from: <http://www.oecd.org/dac/stats/documentupload/DAC%20List%20of%20ODA%20Recipients%202014%20final.pdf>

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

- (55) The Comoros has ratified UNCLOS in 1994 and is a contracting party to IOTC and SWIOFC.
- (56) Under Article 31(6)(b) the Commission analysed all information regarding the status of the Comoros as contracting party to IOTC and SWIOFC.
- (57) According to information derived from the IOTC Compliance Report for the Comoros produced on 23 March 2015 ⁽¹³⁾, several repeated compliance issues were identified in 2014. In particular, the Comoros have not reported nominal catch on sharks, as required by IOTC Resolution 05/05, have not reported catch and effort on sharks, as required by IOTC Resolution 05/05, have not reported size frequency on sharks, as required by IOTC Resolution 05/05, have not reported catch and effort on purse seine foreign vessels operating in its EEZ, as required by IOTC Resolution 10/02 and have not implemented the observer scheme for artisanal sampling, as required by IOTC Resolution 11/04.
- (58) Non-repeated compliance issues were also identified. The Comoros have not reported nominal catch for coastal fisheries, as required by IOTC Resolution 10/02, have not reported catch and effort for coastal fisheries, as required by IOTC Resolution 10/02 and have not reported size frequency for coastal fisheries, as required by IOTC Resolution 10/02.
- (59) The compliance issues of the Comoros with IOTC demonstrates the failure of the Comoros to fulfil its obligations as flag State laid down in Article 94 of UNCLOS. They also show that the Comoros are not following the recommendations of points 31 to 33, 35 and 38 of FAO Voluntary Guidelines for Flag States Performance and of point 24 of IPOA IUU.
- (60) With the exception of IOTC and SWIOFC, the Comoros is not a contracting party to other RFMOs. Considering the structure of the Comorian fleet, which operates not only in the Indian Ocean region, this finding undermines the Comorian efforts to fulfil obligations under UNCLOS, in particular Articles 117 and 118.
- (61) Moreover, with the exception of UNCLOS, the Comoros has not ratified other international legal instruments related to fisheries management. Considering the importance of straddling and highly migratory fish stocks for the Comoros, this finding undermines the Comorian efforts to fulfil its duties as flag, coastal, port and market State under UNCLOS, in particular Articles 63 and 64.
- (62) In addition, while port infrastructures dedicated to fishing activities are being built in the Comoros, the country has not ratified the 2009 FAO Port State Measures Agreement.
- (63) The performance of the Comoros in implementing international instruments is not in accordance with the recommendations of point 11 of IPOA IUU which encourages States, as a matter of priority, to ratify, accept or accede to the United Nations Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) and the FAO Compliance Agreement. It also fails to follow point 14 that provides that States should fully and effectively implement the Code of Conduct and its associated International Plans of Action.
- (64) Contrary to the recommendations in points 25 to 27 of IPOA IUU, the Comoros has not developed a national plan of action against IUU fishing.
- (65) Furthermore, as it is mentioned in recital 27, it was established during the visit conducted by the Commission that the management of the Comorian register is partly delegated to a private company located outside the Comoros. Based on the information gathered by the Commission as well as statements made by the Comoros, it could be established that the Comoros failed to ensure that the vessels flying its flag have a genuine link with the country. This contravenes Article 91 of UNCLOS which provides that a genuine link must exist between the flag State and its ships.
- (66) 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 the Comoros has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

⁽¹³⁾ Information retrieved from: <http://www.iotc.org/sites/default/files/documents/2015/04/IOTC-2015-CoC12-CR04E-Comoros.pdf>

3.4. Specific constraints of developing countries (Article 31(7) of the IUU Regulation)

- (67) It is recalled that according to the UNHDI, the Comoros has a low human development index and was ranked 159 out of 187 countries in 2013 ⁽¹⁴⁾. It is also recalled that, according to Regulation (EC) No 1905/2006 the Comoros is listed in the category of least developed countries, in line with the OECD DAC list of ODA recipients of 1 January 2015 ⁽¹⁵⁾.
- (68) Although specific capacity constraints may exist in general with respect to monitoring, control and surveillance, the specific constraints of the Comoros derived from its level of development cannot justify the deficiencies identified in the previous sections. This concerns especially the status of the Comorian register and the absence of control, in particular through VMS of a part of the Comorian fleet while the Comoros has an operational fisheries monitoring centre and is able to monitor the activities undertaken in its EEZ.
- (69) It appears that the shortcomings identified result primarily from the inadequate administrative environment to ensure the efficient and effective performance of the Comorian duties as flag, coastal, port and market State. This situation is aggravated by the imbalanced size of the Comorian fleet and its area of operation.
- (70) It is also pertinent to note that the European Union and the Union of the Comoros have signed a Fisheries Partnership Agreement ⁽¹⁶⁾. The current protocol ⁽¹⁷⁾ of this agreement includes sectoral financial support in the financial contribution paid to the Comoros. The sectoral financial support aims to promote sustainable fisheries development by strengthening administrative and scientific capacity through a focus on sustainable fisheries management, monitoring, control and surveillance. This should contribute to helping the Comoros to meet its duties under international law as flag, port, coastal and market State and to fight IUU fishing.
- (71) In addition, the Comoros also gets support from regional initiatives such as the project SmartFish which is funded by the European Union and which is implemented by the Indian Ocean Commission (IOC) and aims, inter alia, to fight IUU fishing through shared resources; information exchange; training and the development of operational schemes for monitoring, control and surveillance.
- (72) In view of the situation explained in this Section 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 the Comoros with respect to fisheries management may be impaired by its level of development. However, account taken of the nature of the established shortcomings of the Comoros, the Comorian development level cannot fully excuse or otherwise justify its overall performance as flag, port, coastal or market State with respect to fisheries and the insufficiency of its actions to prevent, deter and eliminate IUU fishing.

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

- (73) In view of the conclusions reached with regard to the failure of the Comoros to discharge its duties under international law as flag, port, coastal or market State and to take action to prevent, deter and eliminate IUU fishing, that country should be notified, in accordance with Article 32 of the IUU Regulation, of the possibility of being identified by the Commission as a non-cooperating third country in fighting IUU fishing.
- (74) In accordance with Article 32(1) of the IUU Regulation, the Commission should notify the Comoros of the possibility of being identified as a non-cooperating third country. The Commission should also take all the *démarches* set out in Article 32 of the IUU Regulation with respect to the Comoros. In the interest of sound administration, a period should be fixed within which that country may respond in writing to the notification and rectify the situation.

⁽¹⁴⁾ See footnote 10.

⁽¹⁵⁾ See footnote 12.

⁽¹⁶⁾ See footnote 3.

⁽¹⁷⁾ Council Decision 2013/786/EU of 16 December 2013 on the signing, on behalf of the European Union, and the provisional application of the Protocol between the European Union and the Union of the Comoros setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement currently in force between the two parties (OJ L 349, 21.12.2013, p. 4) and Protocol between the European Union and the Union of the Comoros setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force (OJ L 349, 21.12.2013, p. 5).

- (75) Furthermore, the notification to the Comoros of the possibility of being identified as a non-cooperating country 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

The Union of Comoros shall be notified of the possibility of being identified by the Commission as a non-cooperating third country in fighting illegal, unreported and unregulated fishing.

Done at Brussels, 1 October 2015.

For the Commission

Karmenu VELLA

Member of the Commission
