

COMMISSION IMPLEMENTING DECISION (EU) 2017/889**of 23 May 2017****identifying the Union of the Comoros as a non-cooperating third country in fighting illegal, unreported and unregulated fishing**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1005/2008 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 31 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) 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 may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.
- (4) The identification of non-cooperating third countries shall be based on the review of all information as set out under Article 31(2) of the IUU Regulation.
- (5) In accordance with Article 33 of the IUU Regulation, the Council is to establish a list of non-cooperating countries. The measures set out in Article 38 of the IUU Regulation apply to those countries.
- (6) According to Article 12(2) of the IUU Regulation, fishery products may only be imported into the Union when accompanied by a catch certificate in conformity with that Regulation.
- (7) Pursuant to Article 20(1)(a) of the IUU Regulation, catch certificates validated by a given flag State may only be accepted if that State notifies the Commission of its arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels.
- (8) 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.
- (9) Pursuant to Article 20(4) of the IUU Regulation, the Commission cooperates administratively with third countries in areas pertaining to the implementation of the catch certification provisions of that Regulation.
- (10) Based on the information referred to in Article 31(2) of the IUU Regulation, the Commission considered that there were strong indications that the Union of the Comoros had failed to discharge the duties, incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter or eliminate IUU fishing.
- (11) In accordance with Article 32 of the IUU Regulation, the Commission therefore decided, by Decision of 1 October 2015 ⁽²⁾, to notify the Comoros of the possibility of being identified as a non-cooperating third country pursuant to the IUU Regulation.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

⁽²⁾ 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 (OJ C 324, 2.10.2015, p. 6).

- (12) The Decision of 1 October 2015 included information concerning the essential facts and considerations underlying such possible identification.
- (13) The Decision was notified to the Comoros together with a letter inviting the Comoros to implement, in close cooperation with the Commission, an action plan to rectify the identified shortcomings.
- (14) The Commission invited the Comoros in particular: (i) to take all necessary measures to implement the actions contained in the action plan suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plan suggested by the Commission; and (iii) to send every 6 months a detailed report to the Commission assessing the implementation of each action as regards, inter alia, its individual and/or overall effectiveness in ensuring a fisheries control system compliant with duties incumbent upon the country under international law as flag, port, coastal or market State to prevent, deter and eliminate IUU fishing.
- (15) The Comoros was given the opportunity to respond in writing and orally to issues explicitly indicated in the Decision of 1 October 2015 as well as to other relevant information communicated by the Commission, allowing it to submit evidence refuting or completing the facts stated in the Decision of 1 October 2015. The Comoros was assured of its right to ask for, or to provide, additional information.
- (16) By its Decision and its letter of 1 October 2015, the Commission opened a dialogue process with the Comoros and indicated that it considered a period of 6 months as being in principle sufficient for reaching expected results.
- (17) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the Comoros following the Decision of 1 October 2015 were considered and taken into account. The Comoros was kept informed, either orally or in writing, of the Commission's considerations.
- (18) In the light of the elements gathered, as shown in recitals 37 to 93, the Commission believes that the Comoros has not sufficiently addressed the areas of concern and shortcomings described in the Decision of 1 October 2015. Nor has the Comoros fully implemented the measures suggested in the accompanying action plan.

2. PROCEDURE WITH RESPECT TO THE COMOROS

- (19) On 1 October 2015, the Commission notified the Comoros pursuant to Article 32 of the IUU Regulation that it considered the possibility of identifying the Comoros as a non-cooperating third country ⁽¹⁾.
- (20) The Commission suggested the Comoros to implement, in close cooperation with its services, an action plan to rectify the shortcomings identified in its Decision of 1 October 2015.
- (21) The main shortcomings identified by the Commission were related to several failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework and registration and licensing procedures, management of the Comorian register, lack of cooperation and information sharing within the Comorian administration and with third countries where Comorian vessels operate, lack of adequate and efficient monitoring and lack of a deterrent sanctioning system. Other identified shortcomings relate, more generally, to the compliance with international obligations including recommendations and resolutions of Regional Fisheries Management Organisations (RFMOs). A lack of consistency with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA IUU) and the FAO Voluntary Guidelines for Flag State Performance were also identified. However, the lack of consistency with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.
- (22) On 5 January 2016, the Commission organised a conference call with the Comorian authorities to stress the importance for the Comoros to react to the Decision of 1 October 2015.
- (23) Through its letter dated 6 January 2016 transmitted to the Commission on 29 January 2016, the Comoros informed the Commission of institutional arrangements set up in order to address the shortcomings identified in the Decision of 1 October 2015. This letter was accompanied by supporting documentation.

⁽¹⁾ Letter to the Minister of Production, Environment, Energy, Industry and Handicrafts of the Comoros of 1 October 2015.

- (24) Consultations between the Commission and the Comoros took place on 16 March 2016 in Brussels. During that meeting, the Comoros notably expressed their commitment to resolve the issues related to the management of the Comorian register. In the course of this meeting, the Comoros provided a list of fishing and fishing-related vessels purported to be flying the flag of the Comoros.
- (25) The Comorian authorities provided on 31 March 2016 a ministerial order establishing a joint committee between the authorities in charge of registration of vessels and those in charge of fisheries. The Comoros provided a draft circular note on the management of the Comorian register on 2 April 2016 to which the Commission reacted by letter of 13 April 2016.
- (26) On 30 April 2016 and 2 May 2016, the Comoros submitted by electronic means the following documents: (i) a letter presenting the preliminary measures taken regarding the management of the Comorian register and the Comorian fishing and fishing-related fleet; (ii) an amended circular note signed 25 April 2016 notably suspending the registration of fishing and fishing-related vessels under the Comorian flag; (iii) a list of fishing and fishing-related vessels purported to be flying the flag of the Comoros, different from the one provided on 16 March 2016; (iv) copies of letters sent to three regional fishery bodies which cover areas where Comorian fishing and fishing-related vessels were operating; and (v) a copy of a letter of legal assistance sent to a third country. This transmission was followed by the reception on 18 May 2016 of paper versions of some of the documents. This latter transmission also included the following documents: (i) a cover and explanatory letter; (ii) a new list of fishing and fishing-related vessels purported to be flying the flag of the Comoros different from the ones mentioned above; and (iii) an unsigned provisional registration certificate. The Commission reacted to these submissions by electronic means on 31 May 2016 and by letter of 13 June 2016. In these communications, the Commission notably stressed the need for the Comoros to take appropriate additional measures with respect to the Comorian fishing and fishing-related fleet, in particular in terms of enforcement measures and cooperation with the Member States, coastal and port competent authorities of third countries as well as regional fishery bodies. The Commission also highlighted that a number of fishing and fishing-related vessels may have been entitled to fly the flag of the Comoros after the suspension of registration endorsed by the circular note signed 25 April 2016.
- (27) The Comoros provided the following documents on 31 May 2016: (i) an action plan based on the one suggested by the Commission; (ii) draft amendments to the legal framework governing fisheries including to the sanctioning system; and (iii) a summary of the duties of the Comoros under international law as a flag State.
- (28) The Commission explained to the Comoros the importance to obtain a reaction to its communications dated 31 May 2016 and 13 June 2016 on multiple occasions, notably on 8 June 2016, 21 June 2016, 28 June 2016 and 29 June 2016, both orally and in writing.
- (29) The Commission was also made aware by the Comoros of further exchanges between the Comorian authorities and a regional fishery body on the status of the Comorian fishing and fishing-related fleet on 7 July 2016 and 11 July 2016. On this occasion, the Comoros provided a new list of fishing and fishing-related vessels purported to be flying the flag of the Comoros which differed from the ones mentioned above.
- (30) By letter of 20 July 2016 the Commission proposed to the Comorian authorities to conduct a visit to the Comoros.
- (31) The Comorian authorities reacted to the communications of the Commission dated 31 May 2016 and 13 June 2016 by letter of 20 July 2016 recalling that, in accordance with the provisions of the Fisheries and Aquaculture Code established by Act No 07-011/AU of 29 August 2007 and of the Decree No 15-050/PR of 15 April 2015, no Comorian vessels should be operating outside the Comorian Exclusive Economic Zone (EEZ) without an authorisation from the Comorian authorities and no Comorian fishing or fishing-related vessels should be conducting fishing or fishing-related activities outside the area of competence of the Indian Ocean Tuna Commission (IOTC). The Comoros also requested the assistance of the Commission to, inter alia, inform the competent authorities of the Member States of the status of the Comorian fishing and fishing-related fleet and request them to convey to the Comorian authorities any relevant information on the activities of these vessels at their disposal. The Commission replied to the Comoros on 27 July 2016 and 28 July 2016 providing the information requested as well as requesting clarifications. The Commission also conveyed the information the Comoros provided to the competent authorities of the Member States in writing on 5 August 2016.

- (32) The Comoros submitted on 11 August 2016 the minutes of the first meeting of the joint committee between the authorities in charge of registration of vessels and those in charge of fisheries held on 2 August 2016. The main recommendation of this meeting was to grant a 6-month grace period to fishing and fishing-related vessels flying the Comorian flag operating outside the Comorian EEZ without an authorisation from the Comorian authorities as well as outside the area of competence of the IOTC. The objective of the grace period was to inform the operators of these vessels of their obligations under the Comorian legal framework governing fisheries.
- (33) The Commission was also informed by the competent authorities of a Member State on 18 August 2016 of the existence of a circular note signed on 8 August 2016 by the Comorian administration in charge of registration of vessels. This circular note, *inter alia*, repealed the suspension of the registration of fishing and fishing-related vessels under the Comorian flag.
- (34) Starting from May 2016, the Commission has also been fully informed of the requests for mutual assistance sent, in the framework of Article 51 of the IUU Regulation, from the competent authorities of Member States to the Comorian authorities and of other third countries regarding the status and activities of Comorian fishing and fishing-related vessels as well as of the replies from these authorities. The Commission also received information on the status and activities of this fleet from other sources including third countries. This information was considered as supporting evidence.
- (35) The Commission visited the Comorian authorities concerned from 23 to 26 August 2016. During the Commission's visit, the Comorian authorities had the opportunity to inform the Commission of the latest developments. On 30 August 2016 and 2 September 2016, the Commission sent to the Comoros follow-up information and additional requests for information and documents. The Comorian authorities acknowledged receipt of these communications respectively on 2 September 2016 and 4 September 2016.
- (36) By letter of 28 October 2016 the Commission conveyed to the Comorian authorities information on up to 21 at-sea transshipments involving Comorian fishing and fishing-related vessels that took place between April and June 2016 off the West African coast. In its communication, the Commission recalled its concerns with respect to the issues related to the management of the Comorian register.

3. IDENTIFICATION OF THE COMOROS AS A NON-COOPERATING THIRD COUNTRY

- (37) Pursuant to Article 31(3) of the IUU Regulation, the Commission has reviewed the compliance of the Comoros with its international obligations as flag, port, coastal or market State, in line with the findings of the Decision of 1 October 2015 and with relevant information provided by the Comoros, with the proposed plan of action as well as with the measures taken to rectify the situation. For the purpose of this review the Commission has taken into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.

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

- (38) As highlighted in recital 36 of the Decision of 1 October 2015, the Commission established that the Comoros has failed to discharge its duties under international law as a flag, port, coastal and market State in respect of IUU vessels and IUU fishing carried out or supported by vessels flying its flag or by its nationals and to prevent access of fisheries products stemming from IUU fishing to its market.
- (39) Recitals 20 to 23 of the Decision of 1 October 2015 established that around 20 Comorian fishing and fishing-related vessels have been involved in IUU fishing activities during the period 2010 to 2015. The Commission notably established that these vessels were operating outside the Comorian EEZ without an authorisation from and control by the Comorian authorities as well as outside the area of competence of the IOTC, in particular in the eastern Atlantic. This situation goes against the recommendations as set out in point 45 of the IPOA IUU and paragraph 8(2)(2) of the FAO Code of Conduct for Responsible Fisheries (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. As explained in recital 31, the Comorian authorities acknowledged that no Comorian vessels should be operating outside the Comorian EEZ without an authorisation from the Comorian authorities and no Comorian fishing or fishing-related vessels should be conducting fishing or fishing-related activities outside the area of competence of the IOTC.
- (40) Evidence gathered by the Commission since the Decision of 1 October 2015 indicates no change in the situation described in recital 39.

- (41) From the information gathered by the Commission, notably from the Member States as well as coastal and port competent authorities of third countries, the Commission found several occurrences of at-sea transshipments involving the vessels referred to in recital 39 while, as described in recital 60 the Comoros provided written statements certifying that at-sea transshipments are prohibited by the Comorian authorities. Therefore, these operations took place without authorisation from the Comorian authorities. This contravenes point 49 of IPOA IUU which provides that flag States should ensure that all of their vessels involved in transshipments have a prior authorisation issued by the flag State, and report to the national authorities.
- (42) Under 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. The IPOA IUU provides guidance on internationally agreed market-related measures which support reduction or elimination of trade in fish and fish products derived from IUU fishing. It also suggests at point 71 that States should take steps to improve the transparency of their markets in order to allow the traceability of fish or fish products. Equally, the FAO Code of Conduct outlines, in particular in its Article 11, good practices for post-harvest activities and responsible international trade. Article 11.1.11 of that Code of Conduct requests States to ensure that fish and fishery products are traded internationally and domestically in accordance with sound conservation and management practices through improving the identification of the origin of fish and fishery products.
- (43) As established in recital 23 of the Decision of 1 October 2015, the Comoros is not in a position to provide information on the species caught by the Comorian fishing fleet and the trade flows of the products caught. The Commission considered on the basis of the information gathered from the Comorian authorities that no progress has been made as regards the facts described in recitals 23 and 33 of the Decision of 1 October 2015, concerning the lack of control by the Comorian authorities on the Comorian vessels operating outside the Comorian EEZ regarding their fishing activities, landings and transshipments. The Comoros was therefore not in a position to guarantee the transparency of its markets to allow the traceability of fish or fish products as established in point 71 of the IPOA IUU.
- (44) In that respect it is noted that the traceability of products is also hindered by a lack of transparency in the Comoros' registration and licensing procedures and a lack of internal cooperation and information sharing as described in recital 24 of the Decision of 1 October 2015.
- (45) That lack of data by the Comoros does not allow it to properly follow the traceability of fish products and undermines its capability to prevent IUU fishing products being traded. Given the established lack of traceability and lack of information available to the Comorian authorities on the fish landed or transhipped by its flagged vessels, the Comoros failed to prevent fishery products stemming from IUU fishing from being landed in its ports, with the consequent risk that those products be granted access to the market. The Commission therefore cannot ensure that trade of fishery products conducted in this country do not stem from IUU fishing. In that regard, the Comoros 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 from its commencement, through the point of landing to final destination.
- (46) Since the Decision of 1 October 2015, the Comoros has not introduced any appropriate corrective measure to rectify the situation described above. The Comoros therefore is not in a position to guarantee the transparency of its markets in a way to allow the traceability of fish or fish products as required in Point 71 of the IPOA IUU and Article 11.1.11 of the FAO Code of Conduct.
- (47) In view of recitals 20 to 35 of the Decision of 1 October 2015 and the developments after 1 October 2015, the Commission considers, pursuant to Article 31(3) and Article 31(4)(a) and (b) of the IUU Regulation, that the Comoros has 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 has not taken sufficient action 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)

- (48) As described in recitals 37 to 41 of the Decision of 1 October 2015, the Commission analysed whether the Comoros cooperated effectively with the Commission on investigations and associated activities.

- (49) After the Decision of 1 October 2015, the Commission encountered difficulties in establishing cooperation with the Comorian authorities. The reliability of their replies was also compromised by the transmission of partial replies containing contradictory information and also demonstrating a low level of responsiveness.
- (50) In addition, the Commission took the opportunity of its visit to the Comoros in August 2016 to invite the Comorian authorities to provide a number of documents. Up till this Decision and despite a follow-up request for information sent to the Comorian authorities on 2 September 2016, the Commission did not receive these documents.
- (51) Furthermore, the documents submitted to the Commission in relation to the action plan following the Decision of 1 October 2015 did not translate into any concrete action.
- (52) In light of the situation described in recitals 33, 34 and 50, the Commission also established that crucial information had not been shared with the Commission.
- (53) This failure to cooperate is aggravated by the lack of internal coordination within the Comorian administration, between the authority in charge of registration of vessels and that in charge of fisheries, which has been acknowledged by the Comorian authorities during the visit of the Commission in August 2016. In that respect, the Commission established that little or no progress has been achieved on this critical weakness since the Decision of 1 October 2015 and that crucial information had not been shared within the Comorian administration.
- (54) In addition, in the context of the overall assessment of the fulfilment of the Comoros' duties to discharge its obligations as a flag port, coastal and market State, the Commission, as stated in recital 42 of the Decision of 1 October 2015, also analysed whether the Comoros cooperates with other States in the fight against IUU fishing.
- (55) As highlighted in recitals 39 to 41, the Commission established that Comorian flagged fishing and fishing-related vessels are operating outside the Comorian EEZ and the area of competence of the IOTC, in particular in the eastern Atlantic. The Commission acknowledges the attempts of the Comoros to establish channels of cooperation with eastern Atlantic countries through regional fishery bodies which cover areas where Comorian vessels are operating. The Comoros explained that initiatives have been taken to enter into direct contact with third countries where Comorian vessels are operating and the Commission has offered solutions to facilitate such contacts. The Commission has however not yet been provided with any information on possible exchanges.
- (56) It is recalled that recital 34 explains that requests for mutual assistance have been sent from the competent authorities of Member States to the Comorian authorities regarding the status and activities of Comorian fishing and fishing-related vessels. The Commission has also been informed that third countries also took similar initiatives. The Commission however found that the inadequate level of cooperation forthcoming from the Comorian authorities in its exchanges with the Commission also affected these requests for mutual assistance. This situation compromised the actions initiated by the competent authorities of the countries concerned towards a number of Comorian vessels on the basis of information provided by the Comorian authorities.
- (57) The situation described in recitals 54 to 56 indicates that the Comoros failed to effectively cooperate and coordinate activities with States where Comorian vessels are operating in preventing, deterring and eliminating IUU fishing in line with point 28 of the IPOA IUU. In particular, as established in point 31 of the IPOA IUU, the Comoros as flag State should enter 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 international level.
- (58) As highlighted in recital 44 of the Decision of 1 October 2015, the Commission also analysed whether the Comoros had 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 had been applied.
- (59) Available evidence confirms that the Comoros has not fulfilled its obligations under international law with respect to effective enforcement measures.
- (60) As explained in recital 31, the Comorian authorities acknowledged that no Comorian vessels should be operating outside the Comorian EEZ without an authorisation from the Comorian authorities and no Comorian fishing or

fishing-related vessels should be conducting fishing or fishing-related activities outside the area of competence of the IOTC. It is also noted that in the course of exchanges that took place in the context of requests for assistance that concerned up to 12 Comorian vessels active in at-sea transshipments and joint operations, the Comorian authorities provided the Commission and Member States written statements certifying that at-sea transshipments are prohibited by the Comorian authorities, and that consequently, these vessels are conducting IUU fishing activities.

- (61) The Commission however established that, after the Decision of 1 October 2015 the Comorian authorities did not report taking any enforcement measures against the vessels operating outside the Comorian EEZ, without an authorisation from the Comorian authorities, as well as outside the area of competence of the IOTC.
- (62) Moreover, as described in recital 32, it is noted that a 6-month grace period starting from August 2016 had been effectively granted to fishing and fishing-related vessels flying the Comorian flag operating in breach of Comorian law and requirements. This decision, along with the situation described in recital 56, has compromised the actions initiated by the competent authorities of Member States towards a number of Comorian vessels on the basis of information provided by the Comorian authorities. The Commission has been informed by the Comorian authorities about the possible deregistration of vessels which would not regularise their situation by the end of the 6-month grace period. It is however noted that deregistration of vessels does not ensure that offenders of infringement are adequately sanctioned in severity and deprived of the benefits accruing from their illegal activities.
- (63) Moreover, the Commission also found, during its visit in August 2016, that no concrete decision on deregistration was adopted by the authorities. In any case, such theoretical deregistration would not entail the conduct of investigations of IUU fishing activities carried out by vessels or the imposition of sanctions for established infringements.
- (64) On the basis of the information gathered during its visit in August 2016, the Commission found that the Comorian authorities in charge of fisheries had elaborated a check list enumerating the conditions for the granting of fishing authorisations in support of the regularisation during the 6-month grace period referred to under recital 62. This document has been transmitted to the Comorian authorities in charge of registration of vessels. The objective was to transmit the document to private legal persons located outside the Comoros to whom the management of the register of the Comorian fishing and fishing-related fleet has been partly delegated. These private legal persons were entrusted to transmit the said document to economic operators. The Commission established that this document is of a very theoretical nature and does not reflect the necessary technical elements allowing for the economic operators to comply with the Comorian law and the Comorian authorities to monitor the activities of the Comorian vessels concerned.
- (65) In light of the situation referred to in recitals 62 to 64 the Commission established that the Comorian authorities have not taken any appropriate precautionary measures in relation to the fishing and fishing-related vessels flying the Comorian flag operating in breach of the Comorian law and requirements.
- (66) Moreover, it is recalled that, as indicated in recital 46 of the Decision of 1 October 2015, the Comorian authorities were prior to this Decision already aware that vessels flying their flag were, in breach of the Comorian law and requirements, operating outside the Comorian EEZ and had not taken enforcement measures in respect of those vessels.
- (67) The situation referred to in recitals 58 to 66 contravenes Article 94 of UNCLOS concerning the obligations of the flag State to effectively exercise its jurisdiction and control over ships flying its flag and its masters, officers and crews. 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 the IPOA IUU and points 31 to 33, 35 and 38 of the FAO Voluntary Guidelines for Flag State Performance.
- (68) It is noted that the Comorian fisheries legal framework is still based on the Fisheries and Aquaculture Code established by Act No 07-011/AU of 29 August 2007 and the Decree No 15-050/PR of 15 April 2015 in force at the time of Decision of 1 October 2015. It is also recalled that recitals 49 and 50 of that Decision established that: (i) the Comorian authorities acknowledged that further implementing texts of the Fisheries and Aquaculture Code needed to be elaborated to ensure consistency between national law and international and regional

applicable rules; (ii) the Comorian Fisheries and Aquaculture Code does not include vessels conducting fishing related activities in the definition of fishing vessels; and (iii) while the Comorian legal framework covers serious violations as defined under international law, it 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 points 18 and 21 of the IPOA IUU.

- (69) It is also recalled that recital 50 of the Decision of 1 October 2015 established that, as regards the sanctioning system, 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 other species there are no corresponding fines, in view of the lack of corresponding licencing fees. This situation reduces the level of deterrence of the Comorian sanctioning system and does not allow the Comorian authorities to sanction IUU fishing activities with sufficient severity to effectively prevent, deter and eliminate these activities and to deprive offenders of the benefits accruing from their illegal activities.
- (70) It is noted that the Comorian authorities in charge of fisheries presented to the Commission draft amendments to the provisions of the Fisheries and Aquaculture Code established by Act No 07-011/AU of 29 August 2007 and of the Decree No 15-050/PR of 15 April 2015. During its visit in August 2016, the Commission however established the revision process is affected by the inadequate administrative environment. The Commission also found part of the Comorian administration considered the revision process as an opportunity to bolster the flag of convenience policy of the Comoros. Therefore, the Commission finds that the legal framework is still inadequate in terms of compliance with international and regional applicable rules.
- (71) On the basis of the information gathered from the Comorian authorities as well as during its visit in August 2016, the Commission found that many obligations foreseen under Comorian law are still not implemented and enforced by the Comoros (e.g. obligation to transmit vessel monitoring system information and report catch data, restrictions on the area of operation of Comorian vessels, etc.). As stated in recital 47 of the Decision of 1 October 2015, 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.
- (72) Furthermore, no progress has been made as regards the facts described in recital 51 of the Decision of 1 October 2015, concerning the lack of a national inspection plan to ensure a coherent policy on control of the Comorian fleet operations, and the insufficient number of observers.
- (73) During its visit in August 2016, the Commission found that, notwithstanding an admission from the Comorian authorities regarding their lack of capacity to monitor and control the fishing and fishing-related activities of the Comorian fleet wherever it operates and the foreign fleet operating within the Comorian EEZ, there was still an intention to pursue an expansion of the fleet strategy.
- (74) As highlighted in recitals 67 to 72 of the Decision of 1 October 2015, the level of development of Comoros cannot be considered as a factor undermining the capacity of the competent authorities to cooperate with other countries and pursue enforcement actions. The evaluation of the specific constraints emanating from the Comorian level of development is further described in recitals 88 to 93 of the present Decision.
- (75) In view of recitals 37 to 54 of the Decision of 1 October 2015 and the developments after 1 October 2015, the Commission takes the view, pursuant to Article 31(3) and Article 31(5)(a), (b), (c) and (d) of the IUU Regulation, that the Comoros has failed to discharge the duties incumbent upon it under international law as a flag, coastal, port and market State in respect of cooperation and enforcement efforts.

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

- (76) As described in the recitals 57 to 60 of the Decision of 1 October 2015, the Commission analysed information deemed relevant from available data published by Regional Fisheries Management Organizations (RFMOs), in particular the IOTC and the Southwest Indian Ocean Fisheries Commission (SWIOFC). In addition, the Commission carried out an analysis on the information deemed relevant with respect to the status of the Comoros as contracting party to the IOTC and the SWIOFC following the Decision of 1 October 2015.

- (77) It is recalled that recitals 57 and 58 of the Decision of 1 October 2015 described the repeated and non-repeated compliance issues of the Comoros with IOTC Resolutions identified for 2014 in the IOTC Compliance Report for the Comoros produced on 25 March 2015 ⁽¹⁾.
- (78) According to information derived from the IOTC Compliance Report for the Comoros produced on 16 April 2016 ⁽²⁾, several repeated compliance issues were identified in 2015. In particular, the Comoros only partially complied with the requirements to: (i) provide aggregated statistics on nominal catch for sharks, as required by Resolution 05/05; (ii) provide aggregated statistics on catch and effort for sharks, as required by Resolution 05/05; and (iii) provide aggregated statistics on size frequency for sharks, as required by Resolution 05/05. The Comoros has also not provided any information on coverage by gear for artisanal landings, as required by Resolution 11/04.
- (79) Non-repeated compliance issues were also identified in the same report. The Comoros has not provided any information on the ban on oceanic whitetip sharks, as required by Resolution 13/06 and has not provided any information on the implementation of FAO guidelines on marine turtles, as required by Resolution 12/04.
- (80) The compliance issues of the Comoros with IOTC Resolutions 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 is 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 the IPOA IUU.
- (81) 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 thereof.
- (82) 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 thereof.
- (83) The performance of the Comoros in implementing international instruments is also not in accordance with the recommendations of point 11 of the IPOA IUU which encourages States, as a matter of priority, to ratify, accept or accede 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.
- (84) The Comoros also has not ratified the 2009 FAO Port State Measures Agreement.
- (85) Contrary to the recommendations of points 25 to 27 of the IPOA IUU, the Comoros has, to date, not developed a national plan of action against IUU fishing.
- (86) From the information gathered from the Comorian authorities, the Commission found that the management of the register of the Comorian fishing and fishing-related fleet remains partly delegated to private legal persons located outside the Comoros. Based on the information gathered by the Commission as well as statements made by the Comoros, it was established that the Comoros failed to ensure that 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.
- (87) In view of the recitals 55 to 65 of the Decision of 1 October 2015 and the developments after 1 October 2015, the Commission takes the view, 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 as well as conservation and management measures.

⁽¹⁾ Information retrieved from: <http://www.iotc.org/sites/default/files/documents/2015/04/IOTC-2015-CoC12-CR04E-Comoros.pdf>

⁽²⁾ Information retrieved from: <http://www.iotc.org/compliance/monitoring>

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

- (88) It is recalled that the Comoros has a low human development index and was ranked 159 out of 188 countries in 2014 ⁽¹⁾ according to the United Nations Human Development Index (UNHDI). It is also recalled that Regulation (EC) No 1905/2006 of the European Parliament and of the Council ⁽²⁾ listed the Comoros in the category of least developed countries ⁽³⁾.
- (89) No corroborating evidence has been found to suggest that the failure of the Comoros to discharge its duties under international law is the result of development constraints. 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 total absence of control of a part of the Comorian fleet.
- (90) As stated in recital 69 of the Decision of 1 October 2015, it appears that the shortcomings identified result primarily from the inadequate administrative environment and lack of cooperation and information sharing within the Comorian administration 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 fishing and fishing-related fleet and its area of operation.
- (91) It is also recalled that the European Union and the Comoros have signed a Fisheries Partnership Agreement ⁽⁴⁾. The last protocol ⁽⁵⁾ of this agreement included sectoral financial support in the financial contribution paid to the Comoros. The sectoral financial support aimed to promote sustainable fisheries development by strengthening administrative and scientific capacity through a focus on sustainable fisheries management, monitoring, control and surveillance. This should have contributed to helping the Comoros to meet its duties under international law as flag, port, coastal and market State and to fight IUU fishing.
- (92) Moreover, 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; and the First South West Indian Ocean Fisheries Governance and Shared Growth Project of the World Bank which aims to improve the management effectiveness of selected priority fisheries at the regional, national and community level.
- (93) In view of the considerations presented in this Section made on the basis of all factual elements gathered by the Commission as well as the information submitted by the Comoros, the Commission has established that, pursuant to Article 31(7) of the IUU Regulation, it appears appropriate to take into account the specific constraints of the Comoros in view of its development status, which may impair the Comoros' overall performance in fisheries management. However, account taken of the nature of the established shortcomings of the Comoros, it has been established that the development level of Comoros 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 IDENTIFICATION OF A NON-COOPERATING THIRD COUNTRY

- (94) In view of the conclusions reached with regard to the Comoros' failure 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 identified, in accordance with Article 31 of the IUU Regulation, as non-cooperating in the fight against IUU fishing.

⁽¹⁾ Information retrieved from: <http://hdr.undp.org/en/composite/HDI>

⁽²⁾ 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).

⁽³⁾ Information retrieved from: <http://www.oecd.org/dac/stats/documentupload/DAC%20List%20of%20ODA%20Recipients%202014%20final.pdf>

⁽⁴⁾ 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).

⁽⁵⁾ 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).

- (95) Having regard to Article 18(1)(g) of the IUU Regulation, the competent authorities of the Member States are bound to refuse the importation into the Union of fishery products without having to request any additional evidence or send a request for assistance to the flag State where they become aware that the catch certificate has been validated by the authorities of a flag State identified as a non-cooperating State in accordance with Article 31 of that Regulation.
- (96) It should be stated that the identification of the Comoros as a country the Commission considers to be non-cooperating does not preclude any possible subsequent step that can be taken by the Commission or the Council for the purpose of establishing a list of non-cooperating countries.

5. COMMITTEE PROCEDURE

- (97) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS DECISION:

Article 1

The Comoros is identified as a third country that the Commission considers as a non-cooperating third country in fighting illegal, unreported and unregulated fishing.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 23 May 2017.

For the Commission
The President
Jean-Claude JUNCKER
