

COMMISSION IMPLEMENTING DECISION (EU) 2017/918**of 23 May 2017****identifying Saint Vincent and the Grenadines 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 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 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 are only to 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) Saint Vincent and the Grenadines 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 Saint Vincent and the Grenadines had failed to discharge the duties, incumbent upon them under international law as flag, port, coastal or market State, to take action to prevent, deter or eliminate IUU fishing.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

- (11) In accordance with Article 32 of the IUU Regulation, the Commission therefore decided, by Decision of 12 December 2014 ⁽²⁾, to notify Saint Vincent and the Grenadines of the possibility of being identified as a non-cooperating third country pursuant to the IUU Regulation.
- (12) The Decision of 12 December 2014 included information concerning the essential facts and considerations underlying such possible identification.
- (13) The Decision was notified to Saint Vincent and the Grenadines together with a letter inviting Saint Vincent and the Grenadines to implement, in close cooperation with the Commission, an action plan to rectify the identified shortcomings.
- (14) The Commission invited Saint Vincent and the Grenadines 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 fully compliant fisheries control system.
- (15) Saint Vincent and the Grenadines was given the opportunity to respond to the Decision of 12 December 2014 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 12 December 2014. Saint Vincent and the Grenadines was assured of its right to ask for, or to provide, additional information.
- (16) By its Decision and its letter of 12 December 2014, the Commission opened a dialogue process with Saint Vincent and the Grenadines and indicated that it considered a period of 6 months as being in principle sufficient for reaching an agreement.
- (17) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Saint Vincent and the Grenadines following the Decision of 12 December 2014 were considered and taken into account. Saint Vincent and the Grenadines was kept informed, either orally or in writing, of the Commission's considerations.
- (18) Saint Vincent and the Grenadines has not sufficiently addressed the areas of concern and shortcomings described in the Decision of 12 December 2014 and also failed to fully implement the measures suggested in the Action Plan that accompanied the Decision.

2. PROCEDURE WITH RESPECT TO SAINT VINCENT AND THE GRENADINES

- (19) On 12 December 2014, the Commission notified Saint Vincent and the Grenadines, pursuant to Article 32 of the IUU Regulation, that it considered the possibility of identifying Saint Vincent and the Grenadines as a non-cooperating third country.
- (20) The Commission suggested Saint Vincent and the Grenadines to implement, in close cooperation with its services, an action plan to rectify the shortcomings identified in its Decision of 12 December 2014.
- (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, lack of adequate and efficient monitoring, lack of an observer scheme and inspection programme, lack of clear and transparent registration and fishing licence procedures 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 consistence with recommendations and resolutions from relevant bodies such as the FAO International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-IUU) and FAO Guidelines for Flag State Performance were also identified. However, the lack of consistence with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.

⁽²⁾ Commission Decision of 12 December 2014 notifying a third country that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 453, 17.12.2014, p. 5).

- (22) Through its letter dated 2 February 2015, Saint Vincent and the Grenadines informed the Commission of the institutional arrangements set up in order to address the shortcomings identified in the Decision of 12 December 2014.
- (23) Technical consultations between the Commission and Saint Vincent and the Grenadines took place on 11 February 2015 in Panama.
- (24) The Commission and the authorities of Saint Vincent and the Grenadines held a conference call on 13 March 2015 to follow-up with regards to the level of implementation of the Action Plan.
- (25) The authorities of Saint Vincent and the Grenadines submitted a document on 7 August 2015 listing the actions carried out with regards to the prevention of IUU fishing. However, through that communication the authorities announced that the final approval of most of the documents enumerated in the Action Plan was being postponed.
- (26) On 2 October 2015 the Commission sent a letter to the Minister of Agriculture, Rural Transformation, Forestry and Fisheries of Saint Vincent and the Grenadines stating that there was no clear evidence that the Saint Vincent and the Grenadines authorities had addressed the deficiencies that led to the pre-identification as a non-cooperating country and suggesting to continue the dialogue through an on-spot dialogue visit.
- (27) The authorities of Saint Vincent and the Grenadines responded to that letter by submitting a progress report on 28 October 2015 with no further elements to the document mentioned in recital 25.
- (28) Through a letter sent on 16 December 2015 the Commission highlighted the lack of progress of Saint Vincent and the Grenadines in addressing the Action Plan following the Decision of 12 December 2014.
- (29) On 19 January 2016 the Commission sent a letter to the Saint Vincent and the Grenadines authorities sharing the information collected with regards to the activity of the IUU-listed fishing vessel Asian Warrior, also known as Kunlun and Taishan, and requesting additional intelligence in relation to the registration process of vessels under their flag.
- (30) On February 2016 the Commission carried out a dialogue visit with the objective to discuss the progress achieved since the Decision of 12 December 2014. The visit confirmed the remaining deficiencies in addressing the identified shortcomings identified in the Decision.
- (31) On March 2016 the authorities of Saint Vincent and the Grenadines submitted: (i) a draft National Plan of Action against IUU fishing (NPOA-IUU) and (ii) a draft Memorandum of Understanding between the two national authorities involved in the regulation of fishing vessels, the Fisheries Division and the Department of Maritime Administration. In a letter dated 3 June 2016, the Commission informed Saint Vincent and the Grenadines authorities that the content of those documents might not be in line with its responsibilities under international law as flag State to take action to prevent, deter and eliminate IUU fishing. Furthermore, the letter highlighted that there was a lack of a clear timeline to address the shortcomings identified in the Action Plan.
- (32) By letter of 3 June 2016 the Commission invited the Saint Vincent and the Grenadines authorities to provide information on the fishing vessel Gotland, flagged to the country, which is presumed to have conducted fishing activities without a valid licence in waters under national jurisdiction of Senegal and refused to comply with orders given by the Senegalese authorities ⁽³⁾.
- (33) On June 2016 Saint Vincent and the Grenadines acceded to the FAO Port State Measures Agreement.
- (34) On 15 July 2016 a reminder message was sent via email to the Saint Vincent and the Grenadines authorities encouraging them to take active steps in the fight against IUU fishing activities and correct the deficiencies in the fisheries legal and administrative frameworks.

⁽³⁾ <http://www.lesoleil.sn/2016-03-22-23-21-32/item/53178-peche-illicite-dans-les-eaux-senegalaise-en-fuite-le-navire-gotland-imo-arraisonne-en-espagne.html>

- (35) This latter communication was followed by a letter being sent to the Saint Vincent and the Grenadines authorities on 24 October 2016, to which the authorities acknowledged receipt the same day.

3. IDENTIFICATION OF SAINT VINCENT AND THE GRENADINES AS A NON-COOPERATING THIRD COUNTRY

- (36) Pursuant to Article 31(3) of the IUU Regulation, the Commission has reviewed the compliance of Saint Vincent and the Grenadines with its international obligations as flag, port, coastal or market State. 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)

- (37) On the basis of publicly available information the Commission established that at least two vessels flagged to Saint Vincent and the Grenadines have been involved in IUU fishing activities in 2015 and 2016 ⁽⁴⁾.
- (38) In August 2015, the fishing vessel Asian Warrior, also known as Kunlun and Taishan, was registered as reefer cargo vessel under the flag of Saint Vincent and the Grenadines. The vessel, which had been previously detained in Thailand as falsely claiming being flagged to Indonesia, steamed out the port of Phuket, Thailand without permission from the relevant authorities in September 2015. Prior to this, the vessel had refuelled with 80 000 litres of fuel and reloaded into the vessel holds the toothfish that had previously been offloaded in Thailand. In December 2015, Senegalese authorities detained the vessel.
- (39) On 8 February 2016, by order of the legal person located outside Saint Vincent and the Grenadines to which the management of the registry has been delegated, Saint Vincent and the Grenadines authorities deleted the vessel from the Saint Vincent and the Grenadines registry of ships for 'misuse of the registry certificates which were not valid for navigation'. Whereas the Asian Warrior was involved in several IUU activities when operating under the flag of Saint Vincent and the Grenadines, including the entry of illegal catches into the market, the authorities of Saint Vincent and the Grenadines did not take any administrative or penal measure in this respect other than removal of the vessel from the national registry. Furthermore, the vessel Asian Warrior has been included on the IUU vessel list of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) since 2003 and Interpol issued a Purple Notice on 13 January 2015 which had been last updated on 29 September 2015.
- (40) The simple administrative decision to remove a fishing vessel from the register without ensuring the possibility to impose other penalties is an act that does not ensure deterrent effects. De-registration of a fishing vessel does not ensure that offenders are sanctioned for their actions and deprived from the benefits of their actions. Moreover, the lack of proper reaction by Saint Vincent and the Grenadines and the lack of cooperation with the competent authorities of the port States concerned is not in line with its obligations laid down in Article 6 of the FAO Agreement on Port State Measures to prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
- (41) The Commission has not received any communication from the Saint Vincent and the Grenadines authorities providing information with regards the Asian Warrior.
- (42) From the information gathered by the Commission, a vessel flagged to Saint Vincent and the Grenadines, Gotland ⁽⁵⁾, was reported in February 2016 to be fishing without authorisation in the Economic Exclusive Zone of Senegal. In that respect, Senegalese authorities gave the order to pursue and detain the vessel which fled. Since those activities constitute an infringement of the Senegalese Maritime Fisheries Code ⁽⁶⁾, the Senegalese authorities sanctioned the fishing vessel Gotland with a fine of CFA 1 030 000 000 ⁽⁷⁾.

⁽⁴⁾ See Interpol Purple Notice No 248 of 13 January 2015, <https://www.ccamlr.org/en/compliance/non-contracting-party-iuu-vessel-list> and footnote 13.

⁽⁵⁾ See footnote 3.

⁽⁶⁾ Act No 2015-18 of 13 July 2015.

⁽⁷⁾ See footnote 3.

- (43) Following a request of assistance from the Senegalese authorities, the Commission entered in contact with the authorities of Saint Vincent and the Grenadines notably to underline the importance for Saint Vincent and the Grenadines to take appropriate measures with respect to that vessel. Up to date, the Commission has not received any reply from Saint Vincent and the Grenadines and has not been made aware of any reply to the requests for mutual assistance sent by Member States in the framework of Article 51 of the IUU Regulation. The Commission has also been informed that some third countries also took similar initiatives. The Commission has not been made aware from any other sources of any measures being taken by Saint Vincent and the Grenadines in relation to the vessel in question.
- (44) With regard to information laid down in recitals 37 to 43, the Commission considers that Saint Vincent and the Grenadines has failed to uphold its responsibilities as flag State to prevent its fleet from engaging in IUU activities. In this respect it is recalled that, pursuant to Article 94(2)(b) of Unclos, the flag State must assume jurisdiction under internal law over ships flying its flag, including the actions of master, officers and crew on-board. It is noted that according to Article 117 of Unclos, the flag State has the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of living resources of the high seas.
- (45) Under Article 31(4)(b) of the IUU Regulation, the Commission also examined the measures taken by Saint Vincent and the Grenadines 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 for Responsible Fisheries (Code of Conduct) outlines, in particular in 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.
- (46) During the two visits carried out in Saint Vincent and the Grenadines in May 2014, as mentioned in recital 9 of Decision of 12 December 2014, and February 2016, the Commission established that Saint Vincent and the Grenadines competent authorities were not in a position to ensure an adequate control of the activities of their fishing fleet. The competent authorities of Saint Vincent and the Grenadines submitted that all their fishing vessels operating in the ICCAT area land or tranship exclusively in Trinidad and Tobago Ports (Port of Spain and Chaguaramas). However, due to lack of cooperation with Trinidad and Tobago authorities, Saint Vincent and the Grenadines is not in a position to provide information on the characteristics of the species caught by vessels operating under its flag in high seas or on the fishing products landed or transhipped in Trinidad and Tobago ports and on the trade flows of those products. In this respect, the authorities of Saint Vincent and the Grenadines fail to cooperate with port States authorities in contravention of Article 20 of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
- (47) Furthermore, as described in recital 38, the authorities of Saint Vincent and the Grenadines failed to prevent fishery products stemming from IUU fishing from being landed in ports, with the consequent risk that those products be granted access to the market.
- (48) On the basis of the information retrieved from the on-spot visits, the Commission considers that Saint Vincent and the Grenadines 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. In that regard, it appears that Saint Vincent and the Grenadines fails to comply with the port State obligation, established in Article 23 of UNFSA, of taking action to promote the effectiveness of international conservation and management measures, including port inspections of documents, gears or catches and the prohibition to land or tranship where it has been established that the catch has been taken in a manner which undermines the effectiveness of international conservation and management measures.
- (49) In view of the developments occurring after 12 December 2014, the Commission considers, pursuant to Article 31(3) and (4) of the IUU Regulation, that Saint Vincent and the Grenadines has failed to discharge its duties under international law as a flag State in respect of IUU fishing carried out or supported by fishing 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)

- (50) As described in recital 20 of the Decision of 12 December 2014, the Commission analysed whether Saint Vincent and the Grenadines cooperated effectively with the Commission on investigations and associated activities and concluded that Saint Vincent and the Grenadines fisheries has not provided to the Commission any information or reply on how it will address the deficiencies in its fisheries management system identified during the Commission's visit. After the Decision of 12 December 2014, the Commission found that the Saint Vincent and the Grenadines authorities did not react to the Commission cooperation requests in relation to the illegal fishing activities of the vessels Asian Warrior and Gotland. Based on the information gathered by the Commission, it was established that this lack of cooperation also affected requests for assistance sent by Member States and third countries to the Saint Vincent and the Grenadines authorities in the context of investigations and associated activities.
- (51) Furthermore, the documents submitted to the Commission in relation to the Action Plan following the Decision of 12 December 2014 did not translate into any concrete action.
- (52) In addition, when assessing whether Saint Vincent and the Grenadines complied with its obligations as a flag State, the Commission also analysed whether it cooperated with other States in the fight against IUU fishing.
- (53) Based on the information retrieved during the on-spot visits on May 2014 and February 2016 and from the authorities of third coastal countries, the Commission established that Saint Vincent and the Grenadines flagged vessels operating in the ICCAT area land and tranship in Trinidad and Tobago ports. Saint Vincent and the Grenadines authorities acknowledged that their government did not formally cooperate with the authorities of Trinidad and Tobago. No progress has been made in this respect since the Commission Decision of 12 December 2014.
- (54) The situation described in recital 53 indicates that Saint Vincent and the Grenadines failed to cooperate and coordinate activities with third countries, where Saint Vincent and the Grenadines flagged vessels land or tranship, in order to prevent, deter and eliminate IUU fishing as required by point 28 of the IPOA IUU. Furthermore, Saint Vincent and the Grenadines has not entered 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, as established in point 31 of the IPOA IUU.
- (55) As explained in recital 25 of the Decision of 12 December 2014, the Commission also analysed whether Saint Vincent and the Grenadines 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 their IUU fishing activities had been applied. Available evidence confirms that Saint Vincent and the Grenadines has not fulfilled its obligations under international law with respect to effective enforcement measures.
- (56) Saint Vincent and the Grenadines has not developed any national strategy on monitoring, control and surveillance of its fishing fleet, inspections and observer schemes. As highlighted in recital 27 of the Decision of 12 December 2014, during the on-spot visit in May 2014 the Commission could observe that Saint Vincent and the Grenadines was not in a position to monitor its vessels operating in the high seas, in third countries' waters or calling in third countries ports. During the on-spot visit of February 2016, the Commission could verify that Saint Vincent and the Grenadines had not remedy the deficient monitoring of the fleet and therefore failed to fulfil Article 94 of UNCLOS which provides that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew. Saint Vincent and the Grenadines is also in breach with Article 18(3) UNFSA which stipulates measures to be taken by a State in respect of vessels flying its flag. Furthermore, Saint Vincent and the Grenadines 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.
- (57) The legal framework for the management of the fleet of Saint Vincent and the Grenadines, which is based on the 2001 High Seas Act and 2003 High Seas Fishing Regulation, does not include a definition of IUU fishing activities. Furthermore, the current legal framework lacks a definition of serious infringements and a comprehensive list of serious offences to be addressed with proportionate severe sanctions. Hence, the sanction system in its current form is not comprehensive and adequate in severity to achieve its deterrent function. The treatment of infringements and serious infringements is not adequate to secure compliance, to discourage violations wherever they occur, and to deprive offenders of the benefits accruing from their illegal activities, as required by point 21 of the IPOA IUU and point 38 of the FAO Guidelines for Flag State Performance.

- (58) As highlighted in recitals 30 and 31 of the Decision of 12 December 2014, the level of development of Saint Vincent and the Grenadines 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 on the development is further described in recitals 66 to 67 of the present Decision.
- (59) In view of recitals 19 to 31 of the Decision of 12 December 2014 and the developments after 12 December 2014, the Commission takes the view, pursuant to Article 31(3) and Article 31(5)(a), (b), (c) and (d) of the IUU Regulation, that Saint Vincent and the Grenadines has failed to discharge the duties incumbent upon it under international law as a flag State in respect of cooperation and enforcement efforts.

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

- (60) As described in the recitals 34 to 39 of the Decision of 12 December 2014, the Commission carried out an analysis on the information deemed relevant from available data published by Regional Fisheries Management Organizations (RFMOs) and in particular by the International Commission for the Conservation of Atlantic Tunas (ICCAT). In addition the Commission carried out an analysis on the information deemed relevant with respect to the status of Saint Vincent and the Grenadines as a contracting Party to ICCAT following the Decision of 12 December 2014.
- (61) It is to be noted that the fleet of Saint Vincent and the Grenadines targets tuna and other highly migratory species in the ICCAT area. In doing so, Saint Vincent and the Grenadines should cooperate with ICCAT, the RFMO competent in that area and for those species. However, despite the fact that Saint Vincent and the Grenadines is a contracting party to ICCAT, the country is not fulfilling the duty, incumbent upon it as a flag State in accordance with Article 117 of Unclos, to adopt, with respect to its nationals, measures for the conservation of the living resources of the high seas.
- (62) As indicated in recitals 35 to 38, between 2011 and 2013 ICCAT issued various letters addressed to the authorities of Saint Vincent and the Grenadines. After the Decision of 12 December 2014, ICCAT submitted again in 2016 a letter of concern to the authorities of Saint Vincent and the Grenadines stressing the deficiencies identified in the ICCAT meeting in 2015, namely the late submission of (i) the annual report, (ii) the North Atlantic swordfish management plan and (iii) the compliance tables. In that letter ICCAT also requested the authorities of Saint Vincent and the Grenadines to provide further information on the country's implementation of ICCAT Recommendation 12-05 on compliance with existing measures on shark conservation and management. Furthermore, ICCAT reported the lack of response to the letters of concern.
- (63) Finally, Saint Vincent and the Grenadines has not adopted a National Plan of Action to fight against IUU Fishing as recommended in point 25 of the IPOA IUU.
- (64) As indicated in recital 39 of the Decision of 12 December 2014, the Ministry for Agriculture, Forestry and Fisheries of Saint Vincent and the Grenadines is not in a position to ensure the genuine link between the State and the vessels flagged to the country as required by 91 of Unclos.
- (65) In view of the recitals 35 to 39 of the Decision of 12 December 2014 and the subsequent developments, the Commission considers, pursuant to Article 31(3) and (6) of the IUU Regulation, that Saint Vincent and the Grenadines 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.

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

- (66) It is recalled that according to the United Nations Human Development Index ⁽⁸⁾, Saint Vincent and the Grenadines is considered as a high human development country (97th in 188 countries). It is also recalled that, according to Regulation (EC) No 1905/2006 of the European Parliament and of the Council ⁽⁹⁾, Saint Vincent and the Grenadines is listed in the category of Upper Middle Income Countries and Territories.

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

⁽⁹⁾ 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).

- (67) As described in recital 42 of the Decision of 12 December 2014, no corroborating evidence has been found to suggest that the failure of Saint Vincent and the Grenadines to discharge its duties under international law is the result of development constraints. In the same manner, no concrete evidence exists to correlate the revealed shortcomings in respect of the monitoring, control and surveillance of fishing activities with the lack of capacities and infrastructure. In this respect it is noted that the Saint Vincent and the Grenadines authorities have not invoked any argument on development constraints and argued that its administration has a good overall efficiency level.
- (68) In view of recitals 41, 42 and 43 of the Decision of 12 December 2014 and the developments after 12 December 2014, the Commission takes the view, pursuant to Article 31(7) of the IUU Regulation, that the overall performance of Saint Vincent and the Grenadines with respect to fisheries are not impaired by its level of development.

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

- (69) In view of the conclusions reached with regard to Saint Vincent and the Grenadines' 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 a non-cooperating third country in fighting against IUU fishing.
- (70) 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.
- (71) It should be stated that the identification of Saint Vincent and the Grenadines as a country the Commission considers to be non-cooperating does not preclude any subsequent step taken by the Commission or the Council for the purpose of establishing a list of non-cooperating countries.

5. COMMITTEE PROCEDURE

- (72) 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

Saint Vincent and the Grenadines 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
