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

(2014/C 447/10)

THE EUROPEAN COMMISSION,

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


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 its duties 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) Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third country 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.

(8) Pursuant to 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 SAINT KITTS AND NEVIS

(9) From 21 to 23 May 2014, the Commission visited Saint Kitts and Nevis in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation.

The visit sought to verify information concerning Saint Kitts and Nevis' arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures to be complied with by its fishing vessels and the measures taken by Saint Kitts and Nevis to implement its obligations in the fight against IUU fishing. An additional visit took place on 23 and 24 July 2014 at the premises of Saint Kitts and Nevis International Ship Registry in London, United Kingdom.

The final report of the visit was sent to Saint Kitts and Nevis on 20 June 2014.

The comments of Saint Kitts and Nevis on that final report were received on 14 July 2014.

Saint Kitts and Nevis is a cooperating non-contracting party to North East Atlantic Fisheries Commission (NEAFC) and, until 2013, to Western and Central Pacific Fisheries Commission (WCPFC). Saint Kitts and Nevis ratified the 1982 United Nations Convention on the Law of the Sea (Unclos) and accepted the 1993 Food and Agriculture Organisation of the United Nations Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement).

In order to evaluate the compliance of Saint Kitts and Nevis with its international obligations as flag, port, coastal or market State set out in the international agreements referred to in recital (13) and established by the relevant Regional Fisheries Management Organisations (RFMOs), in this case NEAFC and WCPFC, the Commission sought and analysed all the information it deemed necessary for the purpose of such an exercise.

In that regard, the Commission used information derived from available data published by RFMOs, in this case the Commission for the Conservation of the Antarctic Marine Living Resources (CCAMLR) and WCPFC as well as publicly available information.

POSSIBILITY OF SAINT KITTS AND NEVIS BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

Pursuant to Article 31(3) of the IUU Regulation, the Commission analysed the duties of Saint Kitts and Nevis 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.

Recurrence of IUU Vessels and IUU trade flows (Article 31(4) of the IUU Regulation)

From information provided by economic operators and by relevant coastal States, the Commission has evidence of the recent registration under Saint Kitts and Nevis Registry of a supporting fishing vessel previously involved in illegal transhipments under the flag of Panama. The illegal transhipments took place in violation of coastal States laws along the West African coast during five years up to 2012. The supporting vessel was operating in that period under the flag of Panama without a valid licence issued by Panama for transport, transhipment and support to fishing activities. The vessel conducted non-authorised transhipment in the economic exclusive zone (EEZ) waters of the Republic of Guinea Bissau and received fish caught by vessels in waters for which the Republic of Liberia had imposed specific conservation and management measures in contravention of those measures. The IUU activities of the supporting vessel were investigated by the flag State concerned (Panama) and by one of the coastal States (Liberia). In response to the IUU activities, the flag State (Panama) and the coastal State (Liberia) imposed fines on that supporting vessel in 2012 and 2013 respectively. Consequently, the supporting vessel was deregistered from Panama flag and it changed its name. Subsequently it registered with Saint Kitts and Nevis flag in 2014. The past recurrent IUU operations of that vessel should have been taken into account by Saint Kitts and Nevis in exercising its responsibility to ensure that vessels do not engage in IUU fishing and flagging to its flag would not result in IUU fishing.

By authorising the registration of a supporting fishing vessel previously involved in IUU fishing activities that undermined the effectiveness of international conservation and management measures without a previous check on the past IUU practices of this vessel, Saint Kitts and Nevis failed to discharge its duties under Article 94 of Unclos; Article III (1)(a) and (5)(a) of the FAO Compliance Agreement; points 36 and 38 of the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA IUU) and point 18 of the FAO Voluntary guidelines on flag State performance.

In view of the situation explained in recitals (17) and (18) and on the basis of all factual elements gathered by the Commission as well as the statements made by Saint Kitts and Nevis, it could be established that, pursuant to
Article 31(3) and 31(4)(a) of the IUU Regulation, that Saint Kitts and Nevis failed to discharge its duties under international law as flag State in respect of IUU fishing carried out or supported by vessels currently flying its flag and previously being involved in IUU activities. That failure was observed in particular by insufficient actions to carry out checks on the documented and recurring past IUU activities of the supporting vessel. This action has particular gravity account taken of the fact that the reflagging refers to a notorious IUU offender. Pursuant to Article 31(4)(b) of the IUU Regulation, the Commission also examined the measures taken by Saint Kitts and Nevis in respect of access of fisheries products stemming from IUU fishing to its market.

(20) The IPOA IUU provides guidance on internationally agreed market-related measures which supports 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 (FAO Code of Conduct) outlines, in particular in Article 11, good practices for post-harvest 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.

(21) In that respect it is noted that the traceability of products is hindered by a lack of transparency in Saint Kitts and Nevis’ national laws, registration and licensing systems.

(22) The FAO Code of Conduct recommends transparency in fisheries laws and their preparation as well as for respective policy- and decision-making and management processes (Articles 6(13) and 7(1)(9) respectively). It provides principles and standards applicable to the conservation, management and development of all fisheries and covers also, amongst others, capture, processing and trade of fish and fishery products, fishing operations and fisheries research. The FAO Code of Conduct, in Articles 11(2) and 11(3), specifies further that international trade in fish and fishery products should not compromise sustainable development of fisheries, should be based on transparent measures as well as on transparent, simple and comprehensive laws, regulations and administrative procedures.

(23) The Commission established during its visit that Saint Kitts and Nevis is not in a position to provide information on what species were caught by Saint Kitts and Nevis high seas fishing fleet and what were the trade flows of the products caught. The Commission considered on the basis of the information retrieved from its visit that Saint Kitts and Nevis was 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.

(24) In addition, the requirements to grant a fishing authorisation settled in the 2002 St Christopher and Nevis Fisheries Act (applicable only in Saint Kitts and Nevis jurisdictional waters, the ‘2002 Fisheries Act’) and the 2002 Saint Christopher and Nevis Merchant Shipping Act (applicable only for Saint Kitts and Nevis high seas fleet, the ‘2002 Shipping Act’) do not include reporting obligations as provided in point 47(2) of the IPOA IUU and point 29(c)(iv) and Annex 1 of the FAO Guidelines for Flag State Performance. The authorities submitted that they had also introduced specific legal provisions concerning Saint Kitts and Nevis International Ship Registry in order to regulate operations of vessels (Maritime Circular No. MC/58/13 December 2013). Nevertheless, that Circular does not contain wording empowering the Saint Kitts and Nevis International Ship Registry to adopt binding acts with respect to reporting obligations of vessels. That lack of data by Saint Kitts and Nevis 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 Saint Kitts and Nevis authorities about the fish landed or transhipped by its flagged vessels, Saint Kitts and Nevis cannot ensure that trade of fishery products conducted in this country do not stem from IUU fishing. In that regard, Saint Kitts and Nevis failed to take into consideration the recommendations in point 24 of the IPOA IUU which advises flag States to ensure comprehensive and effective monitoring, control and surveillance of fishing, through the point of landing to final destination.

(25) In view of the situation explained in this section and on the basis of all factual elements gathered by the Commission as well as the statements made by Saint Kitts and Nevis, it could be established that, pursuant to Article 31(3) and 31(4)(a) and (b) of the IUU Regulation, that Saint Kitts and Nevis has failed to discharge its duties under international law as a flag and market State 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)

(26) The Commission analysed whether Saint Kitts and Nevis authorities effectively cooperated with the Commission, by providing a response to requests made by the Commission to investigate, provide feedback or follow-up on IUU fishing and associated activities.

(27) While Saint Kitts and Nevis fisheries authorities were generally cooperative to respond and provide feedback to requests for information, the reliability and correctness of their replies were compromised and undermined by the lack of legal framework and transparency of its fisheries management system as established in Section 3(1).

(28) In addition, in the context of the overall assessment of the fulfillment of Saint Kitts and Nevis's duties to discharge its obligations as flag State, the Commission also analysed whether Saint Kitts and Nevis cooperates with other States in the fight against IUU fishing.

(29) From the information retrieved during the visits and from third coastal countries authorities, the Commission established that Saint Kitts and Nevis flagged vessels are operating in West African waters. Saint Kitts and Nevis authorities acknowledged that their government did not formally cooperate with the third countries where Saint Kitts and Nevis vessels operated.

(30) The situation described in recital (29) indicates that Saint Kitts and Nevis failed to cooperate and coordinate activities with coastal States in West Africa waters in preventing, deterring and eliminating IUU fishing as set out in point 28 of the IPOA IUU. In particular, as established in point 31 of the IPOA IUU, Saint Kitts and Nevis 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 global level.

(31) Moreover, the Commission also analysed whether Saint Kitts and Nevis 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.

(32) Available evidence confirms that Saint Kitts and Nevis has not fulfilled its obligations under international law with respect to effective enforcement measures. In that respect, the legal framework is based on 2002 Fishing Act (as regards fisheries inside Saint Kitts and Nevis’ jurisdictional waters) and on 2002 Shipping Act (as regards Saint Kitts and Nevis’ flagged vessels targeting high seas fisheries). It is relevant to highlight that in a letter submitted to the FAO in June 2013, Saint Kitts and Nevis acknowledged that its current fishing legal system was ‘not totally compatible’ with international law.

(33) The legal framework for Saint Kitts and Nevis’ jurisdictional waters does not comply with the basic requirements in Articles 61, 62 and 117 to 119 of Unclos. There is no national strategy on monitoring, control and surveillance of the fishing fleet and no inspections nor observer scheme. Moreover, Saint Kitts and Nevis’ legal framework does not address IUU fishing activities. In that respect, the current legal framework lacks a definition of serious infringements and a comprehensive list of serious offences addressed with proportionate severe sanctions. Hence, the sanction system in its current form is not comprehensive and severe enough to achieve its deterrent function. Indeed, 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 FAO IPOA and 38 of the FAO Guidelines for Flag State Performance.

(34) It is noted that as flag State, Saint Kitts and Nevis does not have any management, conservation and monitoring, control and surveillance legal framework to rule fishing activities in high seas or third country waters. Only the fishing fleet in NEAFC area operates under those RFMOs rules and fulfils the requirements in the area despite the fact that there is no Saint Kitts and Nevis specific legal framework in force. Saint Kitts and Nevis has acknowledged that this absence of a legal framework contravenes the Unclos and the IPOA IUU as regards the flag State responsibilities and the FAO Guidelines for Flag State Performance.

(35) Furthermore, with respect to compliance to and enforcement of existing rules for fishing activities conducted in high seas and third country waters, as described in recital (33), Saint Kitts and Nevis does not have any specific legislation to address IUU fishing activities. There is no explicit definition of IUU activities and the accompanying administrative measures are not provided for. The only measure taken is de-registration of fishing vessels. Nevertheless, such action does not entail the conduct of investigations of illegal fishing activities carried out by vessels or the imposition of sanctions for established infringements. Indeed de-registration of a fishing vessel does not ensure that offenders of infringement are sanctioned for their actions and deprived from the benefits of their actions. This is even more important for the case of Saint Kitts and Nevis which, as explained in recital (45), keeps an International Ship Registry responsible for vessel registration which is located outside Saint Kitts
and Nevis and which does not ensure that vessels flying the flag of Saint Kitts and Nevis have a genuine link with the country as required by Article 91 of the Unclos. The Commission established during its visits that the various Saint Kitts and Nevis agencies do not coordinate themselves during the process of registration of vessels while at the same time they do not cooperate with prior flag States on the status of the vessels to register in order to avoid ‘flag hopping’ as recommended in point 16(e) of the FAO Guidelines for Flag State Performance. 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. Such an action also does not ensure flag State control over the fishing vessels as required under Article 94 of the Unclos. In addition, Saint Kitts and Nevis’ performance with respect to compliance and enforcement is not in accordance with point 18 of the IPOA IUU which stipulates that in the light of the Unclos provisions each State should take measures or cooperate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing. Saint Kitts and Nevis’ performance in that respect is also not in accordance with the recommendations in point 21 of the IPOA IUU which advises States to ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under their jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU Fishing and to deprive offenders of the benefits accruing from their illegal activities. Furthermore, that administrative practice, that could attract IUU operators for registration of IUU vessels, does not comply with Article 94 of the Unclos.

With respect to the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered, the possibility of assessing those aspects is equally compromised by the described absence of legal framework and the lack of clarity and transparency. As a consequence of such shortcomings, it is not possible to establish, in a reliable way, the potential dimension of IUU fishing related activities. It is however an acknowledged fact that lack of transparency combined with the impossibility of effective controls encourages illegal behaviour.

With respect to the existing capacity of Saint Kitts and Nevis, it should be noted that, according to the United Nations Human Development Index (7), Saint Kitts and Nevis is considered as a high human development country (72nd in 187 countries). In the Annex II to Regulation (EC) No 1905/2006 of the European Parliament and of the Council (8) Saint Kitts and Nevis is listed in the category of Upper Middle Income Countries and Territories, in line with the Organisation for Economic Cooperation and Development’s (OECD) Development Assistance Committee (DAC) recipients of 1 January 2013 (9). Account taken of its position it is not considered necessary to analyse Saint Kitts and Nevis’ existing financial and administrative capacity. That is because the level of development of Saint Kitts and Nevis, as demonstrated in this recital, cannot be considered as a factor undermining its capacity to cooperate with other countries and to pursue enforcement actions.

Despite the analysis under recital (37), it is also noted that, on the basis of information derived from the Commission’s visits in May and July 2014, it cannot be considered that Saint Kitts and Nevis lacks financial resources. Rather it lacks the necessary legal and administrative environment and empowerments to ensure the efficient and effective performance of its duties.

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(3) and 31(5) of the IUU Regulation, that Saint Kitts and Nevis has failed to discharge its duties under international law as flag State in respect of cooperation and enforcement efforts.

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

Saint Kitts and Nevis has ratified the Unclos and the FAO Compliance Agreement. Saint Kitts and Nevis is a cooperating non-contracting party to NEAFC and, until 2013, to WCPFC.

The Commission analysed all information deemed relevant with respect to the status of Saint Kitts and Nevis as cooperating non-contracting party to NEAFC.

As a cooperating non-contracting Party to NEAFC, Saint Kitts and Nevis should comply with the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (the NEAFC Convention). The NEAFC Convention and the 2013 Declaration on the Interpretation and Implementation of the Convention on the Future Multilateral Cooperation in North-East Atlantic Fisheries expresses the recognition, amongst other international texts, of the relevant provisions of the United Nations Fish Stock Agreement (UNFSA) (10). In that regard, Saint Kitts

---

(3) DAC List of ODA Recipients (http://www.oecd.org/dac/stats/daclistofodarecipients.htm).
and Nevis should comply with the UNFSA. However, the facts described in recitals (17)(18)(23)(24), (29) to (36) and (43)-(44) show that Saint Kitts and Nevis has not fulfilled its obligations as flag State regarding this agreement. The Commission considers that these considerations constitute supporting evidence to proceed with the current Decision.

(43) The Commission also established on the basis of the information retrieved during the visits in 2014 and from coastal States involved that Saint Kitts and Nevis’ fleet is targeting tuna and tuna-alike species in Western Africa coastal States’ jurisdictional waters. In doing so, the flag State, Saint Kitts and Nevis should cooperate with the RFMO competent in that area and for that species, the International Commission for the Conservation of Atlantic Tunas (ICCAT). However, Saint Kitts and Nevis is neither a contracting party nor a cooperating non-contracting party to ICCAT. As flag State Saint Kitts and Nevis is not fulfilling its obligations as required by Article 64 of the UNCLOS for other States whose nationals fish in areas under the jurisdiction of coastal States.

(44) Saint Kitts and Nevis is neither a contracting party nor a cooperating non-contracting party of CCAMLR. In the ‘Implementation of Conservation Measure 10-05’ (6), CCAMLR Secretariat highlighted that, as of 24 September 2013, Saint Kitts and Nevis had been identified over the last five years as possibly involved in the harvest and/or trade of Dissostichus spp. while not cooperating with CCAMLR by participating in the Catch Documentation Scheme. In that regard, Saint Kitts and Nevis’s failure to cooperate with CCAMLR contravenes its flag State obligations as set out in Article 119(2) of the UNCLOS.

(45) Furthermore, as it was revealed during the visit conducted by the Commission in Saint Kitts and Nevis, this country keeps an International Ship Registry responsible for vessel registration which is located outside Saint Kitts and Nevis. The low level of control by the Saint Kitts and Nevis authorities to the registration process and the lack of relevant requirements such as those established in point 14 of the FAO Guidelines for Flag State Performance do not ensure that vessels flying the flag of Saint Kitts and Nevis have a genuine link with the country. The lack of such genuine link between the State and the vessels that are registered in its registry is in breach of the conditions set out for the nationality of ships under Article 91 of the UNCLOS.

(46) Finally, contrary to the recommendations in points 25, 26 and 27 of the IPOA IUU, Saint Kitts and Nevis has not developed a national plan of action against IUU fishing.

(47) 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(3) and (6) of the IUU Regulation, that Saint Kitts and Nevis failed to discharge its duties under international law with respect to international rules, regulations and conservation and management measures.

3.4. Specific constraints of developing countries

(48) It is recalled that according to the United Nations Human Development Index (7), Saint Kitts and Nevis is considered as a high human development country. (72nd in 187 countries). It is also recalled that, according to Regulation (EC) No 1905/2006, Saint Kitts and Nevis is listed in the category of Upper Middle Income Countries and Territories.

(49) Account taken of that ranking Saint Kitts and Nevis cannot be considered as a country having specific constraints directly derived from its level of development. No corroborating evidence could be established to suggest that the failure of Saint Kitts and Nevis to discharge its duties under international law is the result of lacking development. 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 Kitts and Nevis authorities have not revoked any argument on development constraints and argued that their administration has a good overall efficiency level.

(50) 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 Saint Kitts and Nevis with respect to fisheries are not impaired by its level of development.

(6) CCAMLR-XXII/BG/08.24 September 2013.
(7) See footnote 2.
4. CONCLUSION ON THE POSSIBILITY OF IDENTIFICATION AS A NON-COOPERATING THIRD COUNTRY

(51) In view of the conclusions reached with regard to the failure of Saint Kitts and Nevis 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.

(52) In accordance with Article 32(1) of the IUU Regulation, the Commission should notify Saint Kitts and Nevis 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 Saint Kitts and Nevis. 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.

(53) Furthermore, the notification to Saint Kitts and Nevis of the possibility of being identified as a country which the Commission considers to be non-cooperating for the purposes of this Decision does neither preclude nor automatically entail any subsequent step taken by the Commission or the Council for the purpose of the identification and the establishment of a list of non-cooperating countries.

HAS DECIDED AS FOLLOWS:

Sole Article

Saint Kitts and Nevis 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, 12 December 2014.

For the Commission

Karmenu VELLA

Member of the Commission