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PECHE 251

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting illegal, unreported and unregulated fishing, as regards Saint Vincent and the Grenadines

COUNCIL IMPLEMENTING DECISION (EU) 2017/...

of ...

**amending Implementing Decision 2014/170/EU
establishing a list of non-cooperating third countries
in fighting illegal, unreported and unregulated fishing,
as regards Saint Vincent and the Grenadines**

THE COUNCIL OF THE EUROPEAN UNION,

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 1447/1999¹, and in particular Article 33(1) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 286, 29.10.2008, p. 1.

Whereas:

1. INTRODUCTION AND PROCEDURE

- (1) Regulation (EC) No 1005/2008 ('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, establishment of a list of non-cooperating third countries, removal from the list of non-cooperating third countries, publicity of the list of non-cooperating third countries and any emergency measures.
- (3) On 24 March 2014, the Council adopted Implementing Decision 2014/170/EU¹ which established a list of non-cooperating third countries in fighting IUU fishing pursuant to IUU Regulation.

¹ Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 91, 27.3.2014, p. 43).

- (4) In accordance with Article 32 of the IUU Regulation, by Decision of 12 December 2014 ('Decision of 12 December 2014')¹, the Commission notified Saint Vincent and the Grenadines of the possibility of being identified as a country which the Commission considers as a non-cooperating third country.
- (5) In the Decision of 12 December 2014, the Commission included the information concerning the essential facts and considerations underlying such possible identification.
- (6) The Decision of 12 December 2014 was notified to Saint Vincent and the Grenadines together with a letter of the same date suggesting that Saint Vincent and the Grenadines implement, in close cooperation with the Commission, a plan of action to rectify the identified shortcomings.
- (7) The Commission invited Saint Vincent and the Grenadines in particular to: (i) take all necessary measures to implement the actions contained in the plan of action suggested by the Commission; (ii) assess the implementation of those actions; and (iii) send every six months a detailed report to the Commission assessing the implementation of each of those actions as regards, inter alia, its individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.

¹ 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).

- (8) Saint Vincent and the Grenadines was given the opportunity to respond in writing and orally 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.
- (9) By its Decision of 12 December 2014 and its letter, the Commission opened a process of dialogue with Saint Vincent and the Grenadines and highlighted that it considered a period of six months as being sufficient in principle for reaching an agreement.
- (10) 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 deliberations.
- (11) The Commission however took the view that the areas of concern and shortcomings as described in the Decision of 12 December 2014 had not been addressed sufficiently by Saint Vincent and the Grenadines. Moreover, the Commission concluded that the measures of the plan of action had not been fully implemented. As a consequence, the Commission adopted Implementing Decision (EU) 2017/918¹, identifying Saint Vincent and the Grenadines as a non-cooperating third country in fighting IUU fishing.

¹ 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 (OJ L 139, 30.5.2017, p. 70).

- (12) Based on the investigation and dialogue procedures carried out by the Commission, including the correspondence exchanged and the meetings held, and the reasons underlying the Decision of 12 December 2014 and Implementing Decision (EU) 2017/918, it is appropriate to place Saint Vincent and the Grenadines on the list of non-cooperating third countries in fighting IUU fishing.
- (13) Pursuant to Article 34(1) of the IUU Regulation, the Council, acting by qualified majority on a proposal from the Commission, is to remove a third country from the list of non-cooperating third countries if that country demonstrates that the situation that warranted its listing has been rectified. A removal decision is also to take into consideration whether the identified third country concerned has taken concrete measures capable of achieving a lasting improvement of the situation.
2. IDENTIFICATION OF SAINT VINCENT AND THE GRENADINES AS A NON-COOPERATING THIRD COUNTRY
- (14) In the Decision of 12 December 2014, the Commission analysed the duties of Saint Vincent and the Grenadines and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.

- (15) The Commission reviewed the compliance of Saint Vincent and the Grenadines in line with the findings of the Decision of 12 December 2014, and having regard to relevant information provided thereon by Saint Vincent and the Grenadines, the suggested plan of action, and the measures taken to rectify the situation.
- (16) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement obligations under international law, linked in particular to: the failure to adopt an adequate legal framework; the lack of an adequate and efficient monitoring, control and surveillance system; the lack of an observer scheme; and the lack of a deterrent sanctioning system. Other identified shortcomings relate, more generally, to compliance with international obligations, including Regional Fisheries Management Organisations recommendations and resolutions, and the conditions for registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated Fishing and the Voluntary Guidelines for Flag State Performance, both of the Food and Agriculture Organization of the United Nations, were also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.
- (17) In Implementing Decision (EU) 2017/918, the Commission identified Saint Vincent and the Grenadines as a non-cooperating third country pursuant to the IUU Regulation.

- (18) With respect to the possible constraints upon Saint Vincent and the Grenadines as a developing country, it is noted that the development status and overall performance of Saint Vincent and the Grenadines with respect to fisheries are not impaired by its general level of development.
- (19) Having regard to the Decision of 12 December 2014 and Implementing Decision (EU) 2017/918, and to the dialogue process with Saint Vincent and the Grenadines held with the Commission and the outcome of that process, it can be concluded that the actions undertaken by Saint Vincent and the Grenadines in light of its duties as flag State are insufficient to comply with Articles 63, 64, 91, 94 and 117 of the United Nations Convention on the Law of the Sea, Articles 7, 18, 19, 20 and 23 of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Article III(8) of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas of the United Nations.
- (20) Thus, Saint Vincent and the Grenadines has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing.

3. ESTABLISHMENT OF A LIST OF NON-COOPERATING THIRD COUNTRIES

- (21) In view of the conclusions reached with regard to Saint Vincent and the Grenadines, that country should be added, in accordance with Article 33 of the IUU Regulation, to the list of non-cooperating third countries established by the Implementing Decision 2014/170/EU. That Decision should therefore be amended accordingly.
- (22) The inclusion of Saint Vincent and the Grenadines in the list of non-cooperating third countries in the fight against IUU fishing entails the application of the measures laid down in Article 38 of the IUU Regulation. Article 38(1) of the IUU Regulation provides for the prohibition of importation of fisheries products caught by vessels flying the flag of non-cooperating third countries. In the case of Saint Vincent and the Grenadines that prohibition should cover all stocks and species, namely all fishery products as defined in Article 2(8) of the IUU Regulation, since the lack of appropriate measures adopted in relation to IUU fishing leading to the identification of Saint Vincent and the Grenadines as a non-cooperating third country is not limited to a given stock or species.

- (23) It is noted that IUU fishing, inter alia, depletes fish stocks, destroys marine habitats, undermines the conservation and sustainable use of marine resources, distorts competition, endangers food security, puts honest fishermen at an unfair disadvantage, and weakens coastal communities. In view of the magnitude of the problems related to IUU fishing, it is considered necessary for the Union to expeditiously implement the actions in respect of Saint Vincent and the Grenadines as a non-cooperating third country. As a consequence, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (24) If Saint Vincent and the Grenadines demonstrates that the situation that warranted its listing has been rectified, the Council, acting by qualified majority on a proposal from the Commission, is to remove Saint Vincent and the Grenadines from the list of non-cooperating third countries in line with Article 34(1) of the IUU Regulation. Any such removal decision should also take into consideration whether Saint Vincent and the Grenadines has taken concrete measures capable of achieving a lasting improvement of the situation,

HAS ADOPTED THIS DECISION:

Article 1

'Saint Vincent and the Grenadines' is hereby added to the Annex to Implementing Decision 2014/170/EU.

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 ...,

For the Council

The President
