**DRAFT ADVICE**

**EU marketing standards for fishery**

**and aquaculture products**

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**Introduction and context**

In accordance with the Better Regulation Package Guidelines, the European Commission launched an evaluation of the EU marketing standards to assess the extent to which these are still fit for purpose.

The current marketing standards cover some fresh and chilled products, preserved tuna and bonito and preserved sardines and sardine-like products and are mandatory requirements along the supply chain (between producers, retailers and potential intermediaries).

In its public consultation, the Commission aims to examine the **relevance, effectiveness, efficiency, coherence and the EU added** value of the current marketing standards for fishery products.

The regulatory framework under evaluation is:

* Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines;
* Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito;
* Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products; and
* Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products – Chapter III – Common Marketing Standards;

In June 2018 MAC established a Focus Group to formulate advice on the basis of the following specific questions:

* awareness of current regulatory framework on marketing standards
* practical implementation of current regulatory framework on marketing standards
* relevance and usefulness of marketing standards
* standards the MAC would like to see implemented and reasons why
* standards the MAC would advise to eliminate and reasons why

A total of 15 responses were received from members, representing interests at national and EU association level.

**Report on the MAC questionnaire**

**Awareness of current regulation on marketing standards**

MAC members are aware of the main standards relating to freshness and size that exist within the current regulatory framework.

All of the respondents mentioned Council Regulation (EC) No 2406/96, while most mentioned all of the Regulations under this public consultation. Codex and voluntary standards were also mentioned.

Some respondents felt that the standards currently used are not always/necessarily recognised as EU regulation, but reflect best practice guidelines from national bodies. This is not the case of preserved tuna and sardines Regulations.

**Practical implementation of current regulation on marketing standards**

The regulatory framework under evaluation was found to be respected, although not in all cases exactly as outlined within the regulations[[1]](#footnote-1); in some cases national provisions are even stricter in order to respond to market demands.

**Relevance and usefulness of marketing standards**

1. The current marketing standards on preserved tuna and bonito and preserved sardines and sardine-like products, or Council Regulations (EEC) No 2136/89 and No 1536/92, **are considered relevant and are defined by MAC members as an important reference in the market.** However, the MAC notes that these standards are almost 30 years old and should be updated in accordance with the new requirements and objectives set in the Common Fisheries Policy. Particularly, in light of the need toensure a level-playing field of all the products marketed in the EU, in accordance with Art. 5(g) of the CFP, and for the sake of simplification and legal certainty,the MAC suggest addressing and integrating the marketing standards on preserved products in a consolidated new text comprising all fish species. As an example, canned mackerel is a highly traded species in European and international markets and does not have a specific Regulation. This situation has not, however, jeopardised the profitability of this industry.
2. Marketing standards for certain fresh or chilled fishery products provided in the Council Regulation (EC) No 2406/96 **do not seem to be/are not entirely in line with market demands or B2B requirements**. MAC is therefore in favour of revisiting Council Regulation (EC) No 2406/96 so that it better reflects new market developments and changes in trade practices.

More precisely:

* **freshness categories** (Extra, A and B) - **are no longer considered useful[[2]](#footnote-2)**.

Freshness is only considered a relevant criterion at first sale, hence the EU legislation should only indicate whether a product is *fit for human consumption* or *not fit for human consumption* as per Community legislation in place on Food Safety with reference to Veterinary border controls[[3]](#footnote-3). More detailed categories of this criterion should rather be a part of a Guideline document developed by stakeholders in the value chain and via a standardization organisation, than be part of legislation.

* **size categories** (1, 2, 3, ..., depending on the species) – **are considered relevant and useful.** Defining size/weight[[4]](#footnote-4) categories helps buyers to meet customers or consumers demands. This standard provides a good overview of size/weight of product groups and the minimum conservation reference sizes (MCRS). Harmonised enforcement of regulation as well as regular controls are necessary to keep these characteristics uniform and keep the level playing field.

Where MCRS are not defined, Producer Organizations and/or Inter-branch Organisations should define minimum marketing sizes (MMS) that should be the same everywhere in the EU so to enable a level playing field. [[5]](#footnote-5)

**Standards the MAC would like to see implemented and reasons why**

* **Council Regulation (EEC) No 2136/89 of 21 June 1989** laying down common marketing standards for preserved sardines;
* **Council Regulation (EEC) No 1536/92 of 9 June 1992** laying down common marketing standards for preserved tuna and bonito;

Common marketing standards, in particular tuna-bonito and sardine and sardine-type preserves, are a useful tool to establish a minimum and adequate criterion for marketing fisheries products such as tuna and sardines, whose supply chain is worldwide.

The regulations applicable to the commercialization of preserved tuna-bonito and sardines and sardines-type products are aligned with the corresponding CODEX standards which have been recently updated. However, certain species are being canned and traded as “bonito” or “bonito del norte”, even though they are not *Thunnus alalunga.* This is damaging the fishing fleet targeting this stock as well as the traditional canning industry. This practice is considered by several stakeholders as unfair competition and even a consumer fraud. Therefore, in the new refunded text, the Annex of the Regulation 1536/92 should be changed accordingly.

The existing standards and trade descriptions for preserved tuna and bonitos and sardines and sardine-type products were developed with the participation of EU processing industry stakeholders to ensure their adaptation to the past needs of the EU market and the EU processing industry.

These standards do not imply the application of stricter requirements than those established in B2B relationships, they ensure harmonized functioning of the common market, and a fair and sustainable market for these products.

* **Regulations should provide for a possibility to develop other marketing standards** in case this becomes a necessity in the market. Elaboration of such standards should involve the EU industry and pursue the level playing field among its main objectives[[6]](#footnote-6).

**Standards the MAC would advise to eliminate and reasons why**

In general MAC believes that current regulations should be retained. However changes in trade practices and market developments suggested a need for greater flexibility. More precisely MAC members mentioned:

* **Size/weight categories** have to allow for a degree of flexibility in order to reflect the changing market demands for different products and sizes. It should be possible to evaluate size/weight categories regularly based on market demands and/or any new and scientifically based biological information that may require adjustments.

The MAC proposes to monitor the market and evaluate developments in these standards on annual basis in order to provide the Commission with advice. A provision should be envisaged in the regulation that allows a rapid revision to a particular standard if this should be found necessary.

* **Freshness ratings/categories** are only used as criteria at first sale, they are not relevant throughout the value chain.

**Position of MAC**

* Council Regulation (EEC) No **2136/89** of 21 June 1989 laying down common marketing standards for preserved sardines and Council Regulation (EEC) No **1536/92** of 9 June 1992 laying down common marketing standards for preserved tuna and bonito **require revision, harmonisation and simplification.**
* Council Regulation (EC) No **2406/96** of 26 November 1996 laying down common marketing standards for certain fishery products **requires revision**.
* The MAC advice on the EU Fisheries Control System clearly stated that the MAC notes that *“the traceability information required to be provided for lots of wild-caught, imported products under article 58.6 differs in quality and granularity from the information required for EU-caught products under article 58.5. In the case of EU-caught products, the link to the unique fishing trip identification number allows access to the full logbook information, if required, which provides very high quality and accurate information with respect to the origin of the product, which in turn allows for effective verification of the legality of the product by competent authorities. However, for imported products, for which the traceability information comes from the catch certificate provided under the EU IUU Regulation, many of these details would be lacking, for example:*
	+ *a. the unique vessel identification number (IMO number) – which allows verification of a vessel’s fishing history*
	+ *b. fishing area – the current CMO Regulation requires a higher level of precision in relation to sub-areas and divisions than that provided for in the IUU Regulation, which refers only to the FAO catch area.”*
* The MAC urges the European Commission, where possible, to address these gaps in the marketing standards in order to ensure comparable traceability of imported fishery products, and a level playing field with those originating in the EU and with the EU fishing sector.
* As dictated by the EU Regulation 1379/2013, when trading in fishery products with third countries, the conditions for fair competition should be ensured, in particular through respect for sustainability and the application of social standards equivalent to those which apply to Union products. It is therefore necessary to ensure that imported products entering the Union market comply with similar requirements and standards that Union producers have to comply with, in particular Council Directive 2017/159 on the implementation of the social partners' agreement on the ILO Work in Fishing Convention, 2007. The new Regulation should include new requirements concerning social standards and due diligence requirements for these products.
* Minimum marketing sizes should be coherent with minimum (biological) sizes in order to prevent discarding of fish that is fit for human consumption.
* Freshness categories are considered relevant only at first sale in the chain hence the EU legislation should only indicate whether a product is *fit for human consumption* or *not fit for human consumption*. Further categorisation of freshness should be left to the business operator, be a part of a guidelines document developed by the stakeholders in the value chain and standardised in accordance with CEN procedures, as in footnote 6.
* Remote buying and selling may require a harmonised and standardized system, development of which should be left to the business operators. MAC recommends unification of standards, in line with similar best practices in other sectors in agribusiness. It should be the role of the MAC to research this further and provide advice.
* European Commission should identify an optimal degree of flexibility within this regulation so to allow business operators to meet the different market demands, while keeping the highest possible level of harmonised standards that would preserve the level playing field.
* MAC believes more efforts are needed when it comes to harmonised implementation of EU regulations and supports more controls in the market.
* MAC would like to stress the importance of coherence with other EU rules (food safety, hygiene, consumer information, control, IUU, conservation rules) as well as with other relevant norms and standards.
* MAC believes that clearly defended standards are necessary in the market in order to ensure that the EU market is supplied with sustainable products, that uniform and transparent criteria are applied throughout the single market, that fair competition is guaranteed and the profitability of the EU production is improved.
1. In **Belgium**, the government imposes a different length standard for sole (25 cm). In addition, the producer’s organisation can impose its own measures regarding size and weight.

**Scottish** demersal fish landings are predominantly graded on length rather than weight, although some species are sometimes graded by weight, with some purchasers requiring very specific sizes of fish.

Practice in the **Netherlands** is similar to that in Scotland. Sorting by means of *length* after the spawning period could lead to results which are not in line with the regulation. The measuring of the length of individual fish is considered best practice, while establishing the weight for each individual specimen is not workable in the catching phase.

In **France** categorization of hollow oysters is made obligatory by decree and applied by the French members of the inter-branch organisation under French law and any operator exporting CG hollow oysters to the French market for human consumption. Categorization of flat oysters is a set of voluntary standards in France applied only to French members of inter-branch organisation under French law. [↑](#footnote-ref-1)
2. Principal aim of the common marketing standards for fishery products is to improve the quality of products. For buyers, the quality of a product is defined by a combination of factors where freshness is one of many. Equally important are product colour, accurate weight, size of the product and gutting quality. Due to significant improvements in maintaining the cold chain since 1996, high freshness of fish products has become a standard and therefore less of a factor in determining quality. [↑](#footnote-ref-2)
3. <https://ec.europa.eu/food/animals/vet-border-control/legislation_en> [↑](#footnote-ref-3)
4. ~~It should be noted that Article~~ [~~47(2) of the CMO~~](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1540900107772&uri=CELEX:02013R1379-20150601)~~, as amended by the~~ [~~Omnibus~~](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R1379)~~, should be interpreted as indicating that in case of a conflict,~~ *~~size~~* ~~is the criterion that prevails.~~ [↑](#footnote-ref-4)
5. Extra restrictions on *the sale for human consumption* such as *minimum weight* in the Marketing Standards Regulation, in addition to the minimum conservation reference size (MCRS) defined within the fisheries technical measures, leads to duplication of this marketing standard. If fish is allowed to be landed as compliant with the MSRC rule, the sale of it *for human consumption* should not be obstructed by an additional weight restriction. [↑](#footnote-ref-5)
6. In accordance with CEN procedures - <https://www.cen.eu/Pages/default.aspx> [↑](#footnote-ref-6)