

MAC ADVICE

EU marketing standards for fishery and aquaculture products: Regulations 2406/96 and 1379/2013

28.03.2019

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 and trade descriptions for preserved sardines and sardine-type products;
- 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; hereafter referred to as CMO ;

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.



Market Advisory Council

This MAC opinion refers solely to Regulation 2406/96 and 1379/2013. The MAC continues working on produce opinions concerning common marketing standards for preserved sardines and preserved tuna and bonito.

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 necessarily recognised as EU regulation, but reflect best practice guidelines from national bodies.

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; in some cases national provisions¹ are even stricter in order to respond to market demands.

Relevance and usefulness of marketing standards

- A. The MAC notes that these standards are almost 30 years old and as such they fall under the remit of the revision carried out by the European Commission. This revision takes place for the sake of simplification, legal certainty and level playing field of these standards and to assess whether they allow achieving the objectives of the revised Common Market Regulation.

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 mandatory by decree and applied by the French members of the inter-branch organisation (defined as such only under French law and not under EU 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.



Market Advisory Council

- B. Marketing standards for certain fresh or chilled fishery products provided in the Council Regulation (EC) No 2406/96 **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.
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 Union legislation in place on Food Safety.³ More detailed categories of this criterion should be a part of a Guideline document developed by stakeholders in the value chain and via a standardization organisation, rather than be part of legislation.
- **size categories** (1, 2, 3, ..., depending on the species) – **are considered relevant and useful**.
Defining size/weight 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). It should be noted that Article 47(2) of the CMO, as amended by the Omnibus, should be interpreted as indicating that in case of a conflict, size is the criterion that prevails. Harmonised enforcement of regulation as well as regular controls are necessary to keep these characteristics uniform and enable the level playing field.

Where MCRS are not defined, Producer Organizations and/or Inter-branch Organisations, recognised under EU law, should define minimum marketing sizes (MMS). MMS should be the same everywhere in the EU so to enable a level playing field.⁴ Council Regulations laying down common marketing standards should not provide measures additional to the already existing minimum conservation reference sizes defined in the Council Regulation 850/98 of 30 March 1998.

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

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.

³ <https://ec.europa.eu/food/safety>

⁴ 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 MCRS rule, the sale of it for human consumption should not be obstructed by an additional weight restriction.



Market Advisory Council

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 and the Commission with advice if necessary. A provision should be envisaged in the regulation that allows a rapid revision of 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

- Regulations 2406/96 and 1379/2013 should be subject to revision and should be consolidated/updated in accordance with the requirements of today's regulations and objectives, namely harmonisation, simplification and level playing field.
- The MAC insists on the importance of ensuring a level playing field with regards to traceability information provided on a business-to-business level⁵ by both imports and EU products. At the same time, this level playing field should also be ensured with regards to social standards⁶.

It is worth mentioning here some remarks made by two members of the Executive Committee, ANFACO and AIPCE. Marketing standards are meant to introduce standards for the market to secure a fair competition on the market by enabling buyers to evaluate characteristics of the products put up for first sale. These standards are not consumer facing, and they are restricted to intrinsic values of the products.

It is reasonable to mention that fair competition should be guaranteed by the marketing standards. But social elements are by nature not part of the marketing standards, so referring to those does not belong to the scope of the advice of the MAC on the marketing standards. That belongs to the work of the Focus Group on Level Playing Field (LPF) and should be dealt with in that context. It is clear that LPF has a much broader scope than the elements covered by the marketing standards.

- Minimum marketing sizes should be coherent with minimum conservation 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 procedures⁷.
- 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.

⁵ As stated in the [MAC Opinion on EU Fisheries Control System](#), Page 4, Article 58, Traceability, 2, November 2018.

⁶ 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

⁷ <https://www.cen.eu/Pages/default.aspx>



Market Advisory Council

- 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, conservation rules) as well as with other relevant 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.