



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Brussels,  
MARE. D3/PCO/mb/Ares (2020)

Mr. Guus Pastoor,  
Chairman  
Market Advisory Council  
rue de la Science, 10  
B-1000 Brussels

Subject: MAC Advice on Level Playing Field (FPL)

Ref: your letter dated 30 September 2019

Dear Mr. Pastoor,

I would like to thank the MAC for its detailed advice sent on 30 September 2019 to the European Commission on the uneven playing field between EU and imported products, and/or between EU products in the field of fisheries and aquaculture with regard to the access to the markets. I would like to apologize for the delay in the Commission's reply but the quite substantial advice provided by the MAC required extensive consultation across different Commission services. Please find below some observations and replies to the detailed advice provided.

Regarding the need for ensuring a level playing field for economic operators within and outside the EU through **the common customs code & tariffs**, I can assure you that the Commission is very well aware of the sensitivity of the fishing and processing industries to the concession of customs and tariff benefits for certain fishery products.

The EU supply of certain fishery products relies on imports. In the last 25 years, the EU has become more and more dependent on imports to meet its consumption of fishery products: the EU production covers only 46% of the EU needs in fisheries and aquaculture products. In this respect, there are different ways in which the Commission is using various policy instruments to ensure that the products imported derive from sustainable fishery and aquaculture activities. For example, in every dialogue with third countries and during trade negotiations, the Commission discusses the need for effective implementation of sustainability criteria (socio-economic and environmental criteria) and cooperation to ensure that this is fostered.

With regards to the **autonomous trade measures for fishery and aquaculture products** (ATQs), these enable the EU fish processing industry to import third countries' raw materials under reduced or duty-free duties for further processing. When determining these reduced tariffs and related import quotas, the EU takes into account how sensitive a

specific fishery product is for the Union market, both for fishing and processing actors. The aim is to complement European fishing fleet supplies to the processing industry, and eventually guarantee a level playing field for Union producers. Given the increased number of Free Trade Agreements and unilateral measures benefitting preferential partners, the relevance of the ATQ Regulation could indeed be reassessed. At this point, there has been no decision taken on this.

It is also important to ensure a uniform implementation and enforcement of the Union customs legislation and other EU legislation on import and export from and to non-EU countries. It requires harmonised and standardised controls achieving equivalent results in all Member States so that illegal cross-border flows of goods, fraud and unfair and unlawful commercial practices are prevented.

With regards to the MAC's observations on the **EU's trade defence policy** instruments, I fully agree that they are very useful to address State interference by third countries that may negatively affect the European fishery industries. In this respect, it is important that complaints are filed as early as possible once non-compliances are detected, for the European Commission to start its investigation and put in place the appropriate trade defence measures.

Regarding the **Common Organisation of the Markets** Regulation, I take note with interest of your recommendation regarding common and binding rules to be established at national and transnational level. Producer organisations form the backbone of the sector in fisheries and, increasingly, of the aquaculture sector. They support the day-to-day management of the CFP and allow its collective implementation at producer level. The Commission attaches a great value to their role in the promotion of the viable and sustainable fishing activities of their members in full compliance with the EU conservation policy. In this sense, we fully support their capacity to take measures to ensure that their members' activities comply with the rules established by the producer organisation concerned. In addition, please note that Member States have the possibility to extend, under certain conditions, the rules agreed within a producer organisation to producers who are not members of the organisation and who market any of the products within the area in which this PO is representative<sup>1</sup>. This can contribute to improving the level playing field among producers even further.

As far as labelling tools (FIC and CMO) are concerned, as a general rule, the CMO regulation sets out rules on the mandatory and voluntary information to be provided for fishery and aquaculture products referred to in points (a), (b), (c) and (e) of its Annex I. As for the FIC regulation, it lays down general requirements on consumer information for all pre-packed foodstuffs including fishery and aquaculture products. In addition to complementing the CMO regulation in other respects, it also applies to some prepared and preserved products (processed) which are not covered by the CMO regulation such as prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs; crustaceans, molluscs and other aquatic invertebrates, prepared or preserved. Beyond the technical distinction of the applicable legal instruments (CMO, FIC or both), which depends on the type of product concerned, there is also a distinction in the way both Regulations treat some aspects of labelling. We take note of your views in this regard, and will take this into account when evaluating the CMO Regulation. **In the meantime, the advice on labelling that the FG on consumer information is currently drafting will be very welcome.**

---

<sup>1</sup> Art.22 of the CMO Regulation 1379/2013

With regards to the **SFPA and Direct authorisations**, the Commission considers that level playing field is needed in two areas:

- establishing **similar standards of sustainability** for Union vessels inside and outside Union waters, so that operators carrying out fishing activities inside Union waters are not disadvantaged compared to operators carrying out external fisheries. This is why both SFPAs and SMEFF require to have a sound scientific basis and to fish on surplus.
- establishing similar standards **for the EU fleet and other distant fleets in the same fishing ground**, through a non-discrimination clause in SFPA.

The EU uses SFPAs to establish a social, economic and environmental governance framework for EU fleet activities in partner countries. They should serve as a benchmark for other external fleets.

On the one hand, we consider establishing **similar standards of sustainability** for fisheries whatever the fishing grounds, so that operators carrying out fishing activities inside Union waters are not disadvantaged compared to operators carrying out external fisheries, and that fair conditions are created for marketing products resulting from their respective activities. In this respect, sustainable framework partnership agreements provide the right governance framework to include principles of sustainability.

On the other hand, we consider establishing **fair conditions in the external fishing grounds between EU fleets and other distant fishing nations**, through a non-discrimination clause agreed with the partner country offering access to its EEZ. We take note with interest of your perception of the reduced administrative burden for the fleet obtained through SFPAs. We consider that it would be useful to extend the SFPAs' network in order to ensure stable and predictable conditions over the largest possible areas for the EU fleet, while simultaneously supporting Coastal States' capacities in establishing a sustainable fishery policy, which in turn should reinforce the stability of these conditions.

Regarding the **Fisheries Control Regulation**, your advice is that outside EU water the "EU Fisheries Control Regulation only applies to EU flagged vessels, not to third countries vessels. A level playing field is not ensured in this case." Please note that many fisheries outside EU waters are governed by Regional Fisheries Management organisation (RFMOs). These RFMOs include strengthened control measures, which have to be implemented by all Contracting Parties (CPs) of the RFMOs. Therefore, in terms of applicable control measures there is a level playing field between all CPs of the RFMOs. Of course, in order to have a true level playing field, these rules need to be implemented by all members. To this end, the EU actively participates in the work of the Compliance Committees (CC) of the different RFMOs (eg STATIC-NAFO, PECCMAC-NEAFC, COC-ICCAT) where the level of compliance of all CPs with the setting of rules of those RFMOs is analysed on an annual basis.

In addition, the EU is currently negotiating bilateral agreements (SFPAs) which also set inspection and control provisions to be applied by the fleet of third countries signing bilateral agreements with the EU. Through these bilateral agreements, the EU is both pursuing the aim of sustainable fisheries and ensuring a level playing field between the EU and third country fleets.

As far as the **Catch Certification Scheme is concerned**, we take note of your suggestions to expand the data requirements in the catch certificate. Annex II of the IUU regulation related to the EU catch certificate and re-export certificate requires the IMO number, but only when such a certificate is issued. Article 29 and 48 of this Regulation also refer to the IMO number requirement, but only when it is applicable. This means that the IMO number is required in all cases foreseen by international law instruments (SOLAC or international law of the sea, including RFMO conservation and management measures). We have taken note of your suggestions and will continue reflecting on the possibilities aiming at strengthening the identification of vessels in the future. We will also continue to push for the use of IMO numbers in our dialogues and at regional and international level so that all vessels fishing outside and inside waters under national jurisdiction must have an IMO number.

For the other data requirements, please note that the Catch Certification Scheme established under Chapter III of the IUU Regulation prohibits importation into the EU of fishery products obtained from IUU fishing. Its provisions therefore do not aim at ensuring the implementation of consumer information provisions foreseen under Regulation (EC) 1379/2013 such as fishing methods.

Let me also provide you with some comments on the cases studies the MAC has carried out.

- On the **Sustainable Management of the External Fishing Fleet (SMEFF)**, please note that the implementation of the SMEFF regulation only began in January 2018 and that Member States are still in the building-up phase. The Commission intends to continue working with Member States to ensure continuous and not just sporadic verification of the sustainability of the fisheries authorised under direct authorisations, or in the high seas. Different tools will be used in that respect, including audits.

- The point on **melting ice** has also been discussed with Member States. In case there is a generalized request for harmonisation, and provided the legal basis would allow for this, the relevant EU procedure could be initiated. In addition, the Commission (DG SANTE) has already sent a mandate to EFSA on an advice on super-chilling and is awaiting the outcome.

- **On the Control Regulation and its enforcement**, the MAC states that “*The lack of harmonised sanctions and point systems jeopardises the creation of a level playing field in fisheries with comparable administrative penalties in all Member States.*” We concur with the MAC and consider that there is insufficient level playing field in the enforcement of the CFP rules and the sanctioning of infringements. This is the reason why the Commission in May 2018 adopted a proposal to revise the EU fisheries control system and in particular the provisions on serious infringements and sanctions<sup>2</sup>. In order to harmonise serious infringements, the proposal provides a list of infringements, as well as common criteria to determine if certain infringements should be considered as serious. We agree that the lack of common criteria to determine what constitutes a ‘*serious infringement*’ results in some Member States in different consequences for similar behaviours. Experience has shown that this leads to the absence of sanctions and penalty points in some Member States for actions that are regarded as serious infringements in other Member States. In addition, it may lead to Member States attributing funding to operators, which should not have access to such funding. Art 92 of the Control

---

<sup>2</sup> COM(2018)368

Regulation (EC) 1224/2009 requires points to be assigned to the holder of the licence in case of serious infringements, while Member States are required to put in place a points system for the holders of the fishing licence as well as for masters of fishing vessels. When the licence holder and the master are the same physical person, the points attributed to the licence holder and master are registered separately by national authorities, but not added. There is therefore no double penalty in this regard.

- **On catch certificates** and the disparity in the level of scrutiny across Member States, we fully agree with the need for continuous work and engagement for an effective and harmonised implementation of the Catch Certification Scheme. On this basis and on the basis of numerous requests from all stakeholders, the Commission has been working over the past years to develop an IT system (the “CATCH” system) to digitalise the EU catch certificate. Once this system is fully used by EU operators and authorities, it will help Member States in their verification and control tasks contributing to the harmonisation objective at the EU borders as well as facilitating cooperation and communication between competent authorities and thereby improving the level playing field for all operators.

- **Regarding minimum sizes for clams and the Italian derogation**, the MAC recommends the extension of the Minimum Conservation Reference Size (MCRS) derogation applicable to the Italian Venus clams to other MS, pending positive scientific evaluation. It is up to the Member States, through Joint Recommendations, to submit requests supporting a derogation to MCRS for certain stocks. Such request needs to comply with current regulations, including the new Technical Measures Regulation<sup>3</sup>.

MCRS is a measure, which is normally implemented on the basis of a species or stock biology. The objective is to ensure that individuals can reach sexual maturity and can reproduce before being fished. For the same species in different sea basins, owing to different biological adaptation to the local environment, maturity can be reached at different sizes. Therefore MCRS could differ between the Mediterranean and the Atlantic. Against that background, MCRS is established solely on a biological basis. If it is not based on the correct biological basis and it is set too low, this could lead to serious damage to the stock biomass and reproductive capacity. MCRS is consequently a tool for the sustainable management of fisheries.

The MAC has also issued a recommendation on ensuring that legislation of non EU-Mediterranean countries does not create an uneven level playing field *vis a vis* MCRS. At EU level, the MCRS is managed through the Technical Measures Regulation. At regional level however, it is the GCFM (General Fisheries Commission for the Mediterranean) that is competent to establish such minimum size in its area and on the basis of scientific advice.

- **Regarding the minimum size for red bream and the legal minimum size in Morocco**, the EU applies a minimum conservation reference size (MCRS) of 33 cm for blackspot (red) seabream, total fish length. At this stage, Morocco implements a MCRS of 25 cm, fork length, corresponding to around 28 cm total fish length.

During its annual meeting on 4-8 November 2019, the General Fisheries Commission for the Mediterranean adopted a multi-annual management plan for blackspot (red) seabream

---

<sup>3</sup> Regulation 2019/1241 of 20 June 2019 (OJ L 198, 25.7.2019, p. 105).

in the Alboran Sea. The implementation of GFCM Recommendations is compulsory for all contracting parties within 120 days after the GFCM has officially notified the Parties of the Recommendations adopted by the annual meeting. Among other management measures, the multiannual plan provides until 2021 for a transitional MCRS of 30 cm. In 2021, the GFCM's Scientific Advisory Committee (SAC) will advise on the appropriateness of this transitional MCRS. In the same year, the GFCM will adopt long-term management measures, including fishing effort limits, catch limits and, if appropriate, on seasonal closures to protect spawners and/or juveniles. The EU will continue advocating for a homogenised MCRS of 33 cm in the Alboran Sea to ensure a level playing field between the EU and third countries.

- Regarding the list of **Prohibited veterinary substances**, please note that your list of substances on item 5.8.1 mixes together VMPs feed materials, feed additives and hormones. There are some substances, as is the case of growth promoters for aquaculture products, which have different standards in the EU and in third countries. At this point, the EU does not yet have the means to block aquaculture products produced with feed additives or feed materials not authorised on EU production at EU borders. It would be clearer if the list would only contain substances where EU legislation establishes limits (e.g. for VMPs and pesticides: Residue limits (MRLs) and contaminants in food legislation).

- Regarding **EU-China**, the European Commission considers that working with China on IUU fishing issues is an essential part of its anti-IUU fishing policy and of its cooperation on ocean affairs with this country. As such, we cooperate with the Chinese administration on IUU fishing issues since 2011. In this context, an EU-China IUU working group was established in 2015 and later placed under the umbrella of the EU-China Blue Partnership for the Oceans. This working group allows the European Commission and China to exchange on their policies to counter IUU fishing, initiatives aiming at eliminating IUU fishing activities in international fora, the implementation of the EU Catch Certification Scheme and on alleged and confirmed IUU fishing activities. It is also an opportunity for the Commission to look at the systems China has put in place to fight IUU fishing and to encourage it to take an active stance on its commitment to curb IUU fishing activities. We are determined to continue encouraging China to strengthen its efforts and, of course, to accelerate cooperation with this country.

- Regarding **EU Trade Policy**, EU law requires it to promote sustainable development. EU aims that economic development goes hand in hand with progress in social rights, respect for human rights, high labour and environmental standards. All recent EU trade agreements contain such rules in the Trade and Sustainable Development chapter, where an article is dedicated to fisheries and aquaculture products. Both partners commit to manage their natural resources in a sustainable way and to adhere to the international laws and conventions regarding the fisheries and aquaculture sector. In the same chapter, provisions on working conditions are also included. The EU will further promote the ratification and implementation of ILO Convention 188 on Work in Fishing. The EU regularly discusses with its partners how to implement such commitments. The EU provides assistance in setting up the necessary legal framework, as well as control and monitoring systems. Dedicated civil society advisory groups in the EU and partner countries bring together environmental, labour, and business organisations to discuss this implementation.

- The GSP + scheme is a special incentive arrangement for sustainable development and good governance. It slashes most tariffs to 0% for vulnerable low and lower-middle income countries that implement 27 international conventions related to

human rights, labour rights, protection of the environment and good governance. The European Commission works closely with third countries benefitting from this scheme in order to address shortcomings and concerns in their legal frameworks and the implementation of rules and laws. The Philippines benefits from the GSP+ treatment, and the European Commission is aware of the concerns and shortcomings in the Philippine legal framework. In order to address the problems the EU is working closely with the Philippine authorities, under the guidance of the ILO, to ensure progress in the adoption and implementation of labour rights, including in the fisheries sector. A report on the latest developments should be published shortly.

- Concerning Vietnam, the FTA that was approved by the European Parliament on the 12<sup>th</sup> of February contains a Trade and Sustainable Development chapter, including IUU fishing. If the National Assembly of Vietnam supports the deal as well – the decision is expected in May - the FTA will most likely be adopted by the summer. The European Commission will then set up an expert group to follow-up the commitments agreed in the Trade and Sustainable Development group. These discussions will take place in parallel with the dialogue on IUU fishing, established between the EU and Vietnam in the framework of the yellow card. The Commission will continue promoting the political commitment to improve controls in the fight against IUU fishing and to take the necessary actions.
- As regards to a possible resumption of the trade negotiations between the EU and Thailand, I would like to highlight that when the free trade agreement was launched in 2013 the European Commission carried out an impact assessment, as well as an industry and public consultation on what the agreement should achieve. Should this negotiation be relaunched, the economic and social impact of the EU-Thailand FTAs on EU fishing, EU aquaculture and EU fish processors will be analysed in the impact assessment and that stakeholders will be consulted. IUU fishing will be covered by the Fisheries article of the Trade and Sustainable Development chapter.
- Regarding social and safety standards in SFPAs, please note that, when negotiating agreements with third countries, such as SFPAs, we are keen to reinforce the inclusion of social and labour policies in fisheries policies, and in particular at international level. This has been done in many areas, on the one hand in terms of setting conditions for the recruitment of local crew in line with ILO obligations, on the other through the sectoral support that we have been providing to partner countries. Much progress has been achieved recently to better integrate social issues in fisheries, including through taking into consideration the flag state responsibilities and requirements. In this regard, the implementation of ILO convention C188, in particular through the Directive 2017/159, is a major step forward.

With regards to training and certification of fishermen (STCWF-F 95), as an example, on safety matters for instance, the sectoral support programme has recently funded an action providing safety vests ('gilets de sauvetage') to local fishermen in Senegal. In the case of Mauritania for instance, the recruitment of seamen has been greatly improved and regulated. We continue working on further improvements when negotiating the new agreement and protocol with Mauritania.

- **On RFMOs**, we fully share the recommendation made by the MAC to support the work of RFMOs in order to enhance data collection, monitoring and control. In the last years, the EU has financially supported a number of projects and initiatives aimed



both at RFMOs and their developing members to improve their capacity to collect and analyse data and reinforce monitoring and surveillance tools.

On the issue of shark finning, the EU has been in the forefront to eradicate this practice as it represents one of the main threats for the conservation of shark species. The scientific community and control bodies of RFMOs all concur that enforcing a strict fins naturally-attached policy (FNAP) is the only robust way to implement and monitor shark finning prohibition.

The aim of the EU for promoting strict fins-naturally-attached policies internationally is threefold: to improve the conservation of sharks, to ensure the sustainable exploitation of commercial shark species and to create a level playing field for the EU fleet by ensuring that all other fleets operate under the same strict conditions.

Following the Commission's efforts to promote such a policy, in autumn 2014 the first RFMO to adopt a fins-attached policy to control shark finning was the North East Atlantic Fisheries Commission (NEAFC). The Northwest Atlantic Fisheries Organization (NAFO) adopted in 2016 the fins naturally attached policy based on an EU proposal. While it is true that not all RFMOs have adopted a FNAP, there has been considerable progress, with more and more countries implementing FNAP. Those fleets that continue to use alternative methods for implementing the finning ban are increasingly isolated.

For the above-mentioned reasons, the Commission considers that the EU should continue to lead efforts to adopt a strict FNAP in all RFMOs to which it is a member.

- With regard to the **implementation of the FAO Voluntary Guidelines for Catch Documentation Scheme (CDS)**, the EU strongly supports the FAO in its awareness raising campaigns as well as for the development of a practical guide and best practices to assist States, regional fisheries management organisations, and other stakeholders in developing, reviewing, harmonising and implementing Catch Documentation Schemes for wild capture fish, in accordance with international standards and requirements.

Moreover, the EU has always pleaded in favour of the recognition of the complementarity of the CDS with other instruments such as the Port States Measures Agreement and the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels, and is consistently and substantially contributing to building capacities of third countries in relation to deterring IUU fishing, taking into account the special requirements of developing States.

In this regard, the EU provides support through the FAO Global Capacity Development Programmes as well as in the framework of its cooperation dialogues on IUU fishing with third countries and its Sustainable Fisheries Partnership Agreements (sectoral support), through the implementation of port state measures in RFMOs and participation in FAO regional workshops. Moreover, under its development policy, a number of its regional and national programmes support cooperation between national agencies and among coastal countries and provide assistance to align frameworks with international obligations and practices. The EU will also host the third meeting of the Parties to the FAO Port State Measures Agreement in Brussels in November-December 2020. This will be the first review meeting for this agreement.

- **Regarding equivalent controls on traceability of the complete production process of fisheries products**, please note that the traceability of feeds does not stem from the CFP.



- **Regarding Health certificates**, please note that the following. Regulation 2017/1973 brought a new simplified certificate instead of the standard certificate for fishery products, but border checks in border inspection posts have been compulsory since 1997, even if some MS have not implemented this to the fullest extent necessary. Therefore, Regulation 2017/1973 is intended to bring about simplification rather than introducing additional requirements. Moreover, the implementation of the new Official Controls Regulation (Reg. 2017/625) provides for additional simplifications; since 14 December 2019, the EU fish transhipped in third countries benefits from a derogation in the EU border control posts, i.e. they will be subject to documentary checks only. In this respect, the Commission considers that the recommendation by the MAC has been taken on board.

Finally, I would like to thank the MAC for its commitment and interesting input. **We are looking forward to receiving the advice on labelling from the Focus Group on consumer information.** For the future, we highly recommend you to send us more specific recommendations which allow us to provide the MAC with more focused and individualized replies. We would indeed prefer receiving numerous and focused recommendations, than a very large and extensive one as the MAC prepared on the level playing field. Should you have any further question on this reply, I invite you to contact Ms. Pascale Colson ([pascale.colson@ec.europa.eu](mailto:pascale.colson@ec.europa.eu); +32 2 29 56273).

Yours sincerely,



Bernhard FRIESS  
Acting Director-General