

DRAFT JOINT OPINION

IMPROVING IMPLEMENTATION OF THE EU REGULATION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING (EU IUU REGULATION)

(For consideration by LDAC and MAC members)

BACKGROUND

The IUU regulation has been in force since 2010. It is unique in its kind and has made the EU the worldwide front-runner in the fight against IUU fishing. After seven years of implementation its positive contributions to improving fisheries management and governance in third countries have become visible and the LDAC/MAC welcome the Commission's efforts to prevent IUU catches from entering the EU market.

While the EU IUU Regulation is having a positive impact, there is still room for improvement in certain areas of its implementation, which would further strengthen the regulation's effectiveness.

In an Opinion dated 24 November 2016, the Long Distance Advisory Council (LDAC) requested the European Commission to implement four specific measures in order to guarantee the harmonised, uniform and effective application of the EU IUU Regulation (from here on "LDAC Opinion").¹

In a response dated 21 December 2016, the European Commission (EC) addressed some of the LDAC's concerns and recommendations (from here on "EC's response").²

In the interim, a new Market Advisory Council (MAC) has been established, which aims to provide a voice to stakeholders engaged in the EU's seafood market sector.

The LDAC and MAC have therefore agreed to produce this Opinion to provide a joint view on the EC's response and to suggest ways in which we believe further improvement could be made to the implementation of the EU IUU Regulation, including in relation to points already raised.

KEY POINTS & RECOMMENDATIONS

- The EC states in its response that it has "set up a concrete project to develop an IT system and a database to support Member States in their implementation of the catch documentation scheme" and that it is "currently visiting Member States in order to prepare the future implementation of this IT project in view of the finalisation of the business requirements for the planned system". The LDAC and MAC welcome this progress, but would highlight the following:
 - The EC made a commitment to deliver the IT system in 2015/2016 in its communication published in October 2015³. Delivery of the system is therefore significantly delayed. We would reiterate that the establishment of this IT system should be an priority for the EC, and we would urge that additional human resources be secured to ensure a more rapid and effective delivery of the system.

¹ <http://ldac.chil.me/download-doc/125741>

² <http://ldac.chil.me/download-doc/127494>

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0480&from=EN>

- With regards to the finalisation of business requirements for the planned system, we would bring to the EC's attention that many LDAC and MAC members not only have specific expertise in this regard, but in many cases, will be eventually directly, operationally impacted by this system. Accordingly, we would like to formally request the inclusion of a balanced representation of the LDAC and MAC members, as well as national fisheries stakeholders of concerned MS,, in the discussions around the business requirements of the system, and any discussions leading up to the establishment of the system, so it can be effective and properly implemented from an operational point of view.
- In the EC's response, it is stated that Mutual Assistance under the IUU Regulation "is already well-established and functioning". This is not consistent with the information obtained by some members of the LDAC/MAC, which suggest that Member States are not effectively sharing information, and are failing to respond to alerts, which could potentially allow non-compliant consignments to pass through imports controls.⁴
 - The EC needs to ensure that Member States reply to Mutual Assistance requests in a timely and appropriate manner. The EC should also encourage Member States to make proactive use of the system of Mutual Assistance to share intelligence and information on IUU fishing risks and verified cases of IUU fishing, and to incorporate this information into their national risk assessments. In this regard, we recommend that the EC establishes a mechanism within the new IT system for the proactive sharing of intelligence and results of verifications and inspections, to ensure a steady flow of relevant information between Member States.
- The EC also states in its response that it has "started discussions with Member States on the implementation issues" and that "Member States biennial compliance reports foreseen under the Regulation, will be addressed and further used to assess the state of play of implementation and improvements towards uniform and harmonised application of the IUU Regulation and its catch certification scheme".
 - The LDAC and MAC welcome this approach and would recommend that such assessments carried out by the EC take the form of a routine audit programme of Member State control procedures⁵.
 - We would furthermore recommend improving the biennial reporting format to ensure detailed and standardised responses by Member States, which are of sufficient quality to allow for the comprehensive assessment of IUU Regulation implementation and to serve as benchmark in terms of compliance between EU MS.
 - Additionally, and in order to increase transparency, we would recommend that the Member State biennial compliance reports are made publicly available, as well as the results of the EC's audits of Member State implementation of the IUU

⁴ <http://www.iuuwatch.eu/wp-content/uploads/2017/01/MOD-CASE-STUDY-Revised-7.pdf>

⁵ The full analysis of Member State implementation of the IUU Regulation carried out by some members of the LDAC/MAC, and presented to the LDAC in October 2016 and the MAC in January 2017, has since been published at: http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf

Regulation, as is currently standard practice in the context of the EU hygiene legislative package⁶.

- We take note of the fact outlined in the EC response that “the European Fisheries Control Agency (EFCA) has developed guidance for Member States such as the Common Methodology for IUU catch certificates verification and cross-checks” and welcome the cooperation between DG MARE and EFCA on a “Common Methodology to Facilitate the Implementation of an IUU Risk Management Approach by Member State Authorities”.
 - However, we note that certain Articles of the IUU Regulation relating to core elements of the catch certificate scheme are subject to crucial differences in interpretation between Member States. This includes the application of the risk criteria set out in Article 31 of Regulation (EC) 1010/2009, as referenced in the EC’s response.
 - We therefore urge the EC to provide further precision to Member States, by way of guidelines, particularly with regard to the content and scope of obligations to check and verify catch certificates on the basis of risk management⁷, including in relation to consignments in transit. Clarification of these core obligations is a precondition to the harmonised and effective implementation of the IUU Regulation catch certification scheme.
 - We furthermore recommend that the EC and EFCA continue their collaboration to encourage implementation of the guidelines on application of a risk management approach across the Member States.

- We acknowledge and agree with the need to conduct dialogues on implementation of the IUU Regulation with third countries “in the spirit of trust and confidentiality”. However, in order to address uncertainties faced by the industry (namely fleet operators, processors, traders and importers) during the IUU dialogue and to improve transparency, we would recommend disclosure of the action plans provided to third countries during the carding process, following publication of the pre-identification decision in the EU’s Official Journal. Additionally, we would recommend periodic publication of the specific steps taken by third countries that have resulted in the maintenance/withdrawal of the card. These would greatly facilitate the monitoring of said procedures by the industry when assessing the potential risks to their businesses.

- In the context of the IUU dialogues with third countries, we feel that more efforts need to be focused to ensure the data provided by third countries on catch certificates are accurate, reliable and verifiable. Indeed, traceability starts on board fishing vessels. Any system or database set up to improve the implementation of the IUU Regulation will only be as good as the quality of the primary data provided. We would therefore recommend that the EC requires the submission of up-to-date lists of licensed vessels by third countries as this is an obligation stated under the IUU Regulation, and endeavours to ensure these lists remain up-

⁶ [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET\(2013\)513968_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET(2013)513968_EN.pdf)

⁷ Articles 16 and 17 of the IUU Regulation.

to-date, and in the interest of transparency and in view of ongoing legislative processes such as the new Fishing Authorisation Regulation (FAR), are made publicly available⁸. These lists would enhance control efficiency, including through the Mutual Assistance system and, eventually, via the planned IT system.

- Finally, the Commission will be invited to provide regular updates on the state of play of the developments and improvements made regarding the implementation of the IUU Regulation at relevant LDAC/MAC meetings.

In short, the LDAC and MAC request from the European Commission the following:

- 1. To secure additional human resources in order to ensure a more rapid and effective delivery of the aforementioned IT system.**
- 2. To include a balanced representation of the LDAC and MAC members, as well as national fisheries stakeholders of concerned MS, in the discussions around the business requirements of the IT system, and any discussions leading up to the establishment of the system, so it can be effective and properly implemented from an operational point of view.**
- 3. To establish a mechanism within the new IT system for the proactive sharing of intelligence and results of verifications and inspections, to ensure a steady flow of relevant information between Member States.**
- 4. To ensure that the assessments carried out by the EC with Member States on implementation issues take the form of a routine audit programme of Member State control procedures.**
- 5. To improve the biennial reporting format to ensure detailed and standardised responses by Member States.**
- 6. To make these biennial compliance reports publicly available, as well as the results of the EC's audits of Member State implementation of the IUU Regulation, as is currently standard practice in the context of the EU hygiene legislative package.**
- 7. To provide further precision to Member States, by way of guidelines, particularly with regard to the content and scope of obligations to check and verify catch certificates on the basis of risk management, including in relation to consignments in transit.**

⁸ Also to be noted current initiatives such as the Fisheries Industry Transparency Initiative, or the website Whofishesfar.org, calling for such transparency

- 8. To continue collaboration with EFCA to encourage implementation of the guidelines on application of a risk management approach across the Member States.**
- 9. To disclose the action plans provided to third countries during the carding process, following publication of the pre-identification decision in the EU's Official Journal. Additionally, we would recommend periodic publication on the specific steps taken by third countries that have resulted in the maintenance/withdrawal of the card.**
- 10. To require the submission of up-to-date lists of licensed vessels by third countries as this is an obligation stated under the IUU Regulation, and endeavours to ensure these lists remain up-to-date, and in the interest of transparency and in view of ongoing legislative processes such as the new Fishing Authorisation Regulation (FAR), are made publicly available.**