



European Commission
Attn Mr Jean-Claude Juncker
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Sectoral Social Dialogue Committee Sea-Fisheries

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Subject

**Social responsibilities in sea-fisheries;
the role of the European Union**

Dear Mr Juncker,

Sustainability in fishing is quite rightly high on Europe's agenda. By definition, the three pillars of sustainability, however, are People (social), Planet (environment), Profit (economic). All three pillars require equal, well-balanced efforts in order to realize true sustainability. The Union's recently reformed common fisheries policy focuses on planet and profit, but wrongs the fishers where their safety at sea is concerned. And this, whilst fishing is considered a hazardous occupation when compared to other occupations. All our efforts to bring the Union's social policies in line with international standards on training and certification of fishers and decent living and working conditions on board fishing vessels, which form part of the international safety at sea in fishing agenda, have been frustrated by reluctance from the side of the Union's responsible institutions. In doing so, the Union not only forsakes its responsibilities towards fishers, it also forsakes its statutory task to promote the role of its social partners and to facilitate social dialogue. In a European Union that attaches so much importance to safety and health of its workforce, such apparent political and bureaucratic disregard for safety at sea in fishing is unjustified and a disgrace. It is therefore that we now ask for the President of the Commission's intervention and to attach urgency to the policy area of safety at sea in fishing.

The international community has taken responsibility for 'sustainable management' of the fisher workforce by adopting standards and guidelines for safety at sea which cover

- a.* safe construction of fishing vessels and their equipment and seaworthiness,
- b.* safe manning of fishing vessels,
- c.* labour conditions of fishers, and
- d.* training and certification of fishers.

Under international law, parties to the <United Nations Convention on the Law of the Sea> are obliged to take measures ensuring safety at sea which conform to those international standards, whilst taking the guidelines into account. The EU and its Member States are party to the Law of the Sea.

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The SSDC-F is an institution established on basis of Article 152 of the Treaty on the Functioning of the European Union and it is maintained by the social partners in sea-fisheries ETF, Europêche and COGECA

The international community also insists that fisheries policies shall be aligned with policies on safety at sea and health and safety on board fishing vessels. Now that the Union has a common fisheries policy it should be obvious, if only for efficiency and effectiveness, that it also has common policies on safety at sea in fishing and aligns the former with the latter. It turns out that, contrary to the responsibilities taken for safety at sea in *shipping*, the Union and its institutions neglect safety at sea in *fishing*. As we show in the attached paper, the recently reformed common fisheries policy, for instance, has not been aligned with the international standards and guidelines on safety at sea in fishing and there is now no way of knowing whether or not its measures jeopardize, instead of respect, the physical or mental integrity of fishers.

The paper further focuses on

- a. the lack of an interdepartmental approach where the Union's institutions have overlapping responsibilities and which could be one of the underlying causes for Europe's embarrassing underachievement in the field of safety at sea in fishing,
- b. the necessity of having Union minimum standards on training, certification and watchkeeping for fishing vessel personnel which are vital from the viewpoint of safety at sea,
- c. the state of play regarding our social partners' agreement on decent living and working conditions on board fishing vessels,
- d. the consequences of not having finalized the process of implementation of the said social partners' agreement for the Union's maritime security strategy, and
- e. what the Commission needs to do in the short term to take away the Union's shortcomings.

The Union has the statutory task to promote the role of the social partners at Union level and to facilitate social dialogue. True promotion and true facilitation require sincere commitment of and responsible participation by the Union and its institutions. Over the years, in view of the obligations under international law, our committee has taken various initiatives concerning standardized training and certification of fishers and decent living and working conditions on board fishing vessels. Much to our frustration, to date the initiatives have not led to the necessary actions by the European Union, despite high-flown, idealistic and promising words from the side of the European Commission. In general, representatives of the various directorates-general either refuse to appear in our committee's meetings or their participation is so restraint that it prevents open and meaningful discussion. Where our initiative on decent living and working conditions on board fishing vessels is concerned, so far the Commission has unduly delayed the process which must result in a proposal for a Council decision implementing our agreement on the Work in Fishing Convention, 2007 of the International Labour Organization. Our initiatives on standardized training and certification of fishers have been frustrated so far by Directorate-General for Mobility and Transport – *nota bene* responsible for safety at sea – refusing to appear in our meetings.

As said, in a Union that attaches so much importance to safety and health of its workforce, the apparent political and bureaucratic disregard for safety at sea in fishing is unjustified and a disgrace. We cannot tolerate this any longer. The safety of human life is of such paramount importance that all bureaucratic impediments should be brushed aside to ensure its integrity. It is possible, with the appropriate commitment from those responsible for regulating the fishing sector, to make it safer. The means to do so are at their disposal and they must make good use of them. In view of this and the continued reluctance to comply with the Union's social tasks we experience from the individual directorates-general we have no choice but to now ask for the President of the Commission's intervention. This is what needs to be done in the short term to take away the Union's shortcomings:

1. Ensure effective coordination – if necessary by a specific structure to deal with this particular matter (Article 20, Rules of Procedure of the Commission C(2000) 3614 or by appointing a high-level expert coordinator – between its commissioners and its directorates-general which are involved in any policy touching the fishing sector with the aim to avoid policy inconsistencies and threats to safety at sea in fishing.
2. Ensure consistency between measures concerning the conservation of marine biological resources on the one hand and, whilst taking international standards and guidelines into account, safety at sea in a broad sense on the other hand through impact assessments and appropriate adjustments of envisaged measures; such assessments to cover at least: (i) employment, (ii) income, (iii) fishing vessels' construction, equipment, including fishing gears, and seaworthiness, (iv) safe manning of fishing vessels, (v) decent living and working conditions on board fishing vessels, and (vi) training and certification of fishers.
3. Speed up the process of transposition of the social partners' agreement on implementation of the Work in Fishing Convention, 2007 of the International Labour Organization into an appropriate EU legislative instrument.
4. Propose the transposition of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 of the International Maritime Organization into an EU directive.
5. Ensure meaningful and effective social dialogue through sincere commitment of and responsible participation by *all* directorates-general involved, including DG Empl, DG Mare, and DG Move.

Copies of this letter and its attachment will be made available to the EU institutions and various stakeholders with an interest in safety at sea in fishing and decent living and working conditions on board fishing vessels, such as the European Parliament and its fisheries, transport, environment and social affairs committees, European Commissioners, the European Ombudsman, the European Economic and Social Committee, the Committee of the Regions, the European Maritime Safety Agency, the specialized agencies of the United Nations, and the press.

We look forward to receiving your reply within the time frame of three weeks provided for by the Annex to the Rules of Procedure of the Commission (C(2000) 3614), which may, for compliance with the Charter of Fundamental Rights of the European Union, be considered a reasonable time for reply.

Yours sincerely,
SECTORAL SOCIAL DIALOGUE COMMITTEE – SEA-FISHERIES

Michel Claes
Chairman



Ment van der Zwan
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Safety at sea in fishing

Europe's underachievement



Safety at sea in fishing

Europe's underachievement

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The Sectoral Social Dialogue Committee - sea-Fisheries (SSDC-F)
is a European institution which is established on the basis of
Article 152 of the Treaty on the Functioning of the European Union
and which is maintained at Union level by the European social partners in sea-fisheries:

European Transport Workers' Federation (ETF)
General Confederation of Agricultural Co-Operatives in the European Union (COGECA)
Association of National Organisations of Fishing Enterprises in the European Union (Europêche)



1. Introduction & Management summary

The sea-fisheries sector depends on sustainable management of the marine biological resources *and* sustainable ‘management’ of its fisher workforce to be able to harvest those ‘riches of the seas and of the oceans’ sustainably. The European Union has taken its responsibility for the conservation of the marine biological resources. The international community has taken its responsibility for ‘sustainable management’ of the fisher workforce by adopting standards and guidelines for safety of life and property at sea which cover (a) safe construction of fishing vessels and their equipment and seaworthiness, (b) safe manning of fishing vessels, (c) labour conditions of fishers, and (d) the training and certification of fishers (*cf.* Tables 1 and 2). Under international law, parties to the ‘United Nations Convention on the Law of the Sea’ have the obligation to take measures ensuring safety at sea which conform to those international standards, whilst taking the guidelines into account. The Union and all its Member States are party to the Law of the Sea. The international community also insists that fisheries policies shall be aligned with policies on safety at sea and health and safety on board fishing vessels.

As it turns out, the recently reformed common fisheries policy of the European Union has *not* been aligned with the international standards and guidelines for safety at sea in fishing. Although the Union’s basic regulation on the policy contains text on social sustainability, the meaning of the term ‘social’ has been kept quite vague. From the preparatory work it becomes clear, however, that, in the vision of the Union, despite high-flown, idealistic and promising language, ‘social’ in fishing relates to a fair standard of living in terms of employment and income rather than to safety at sea in the required broad sense. The actions of the European Commission concerning the so-called ‘discard ban’ confirms this, because the assessment of the impact of such a ban, that has been carried out, and that, in accordance with the basic regulation, *must* cover the social impact, failed to cover the impact on safety at sea and solely focused on the impact on employment. This is symptomatic for the treatment that befalls sea-fishers to their lot. In terms of the necessary protection of human life’s integrity, the reformed fisheries policy is certainly *not* a fully-fledged *responsible* fisheries policy. A, if not *the*, cause of this failure is, that, apart from the international standards for the safe construction of fishing vessels, the Union has only marginally implemented the other standards (*cf.* Table 1).

Where the Union has shared competences to take action and adopt minimum requirements, in order to overcome the Union’s underachievement concerning safety at sea in fishing, the sea-fisheries’ social partners at Union level have taken initiatives that should have led to the implementation into Union law of the international minimum standards on training and certification of fishers and on decent minimum living and working conditions on board fishing vessels. Unlike EU’s actions taken for shipping, to date these initiatives have not resulted in legislative actions by the Union. Again, despite its high-flown, idealistic and promising language, this is mainly due to the Commission’s apparent reluctance to actually take its responsibilities, which may be caused, *inter alia*, by the fact that safety at sea in fishing is a cross-departmental responsibility whilst an effective interdepartmental approach is missing. The Union has the statutory task to promote the role of the social partners at Union level and to facilitate social dialogue. True promotion and true facilitation require sincere commitment of and responsible participation by the Union’s institutions. Instead, the Commission delays and frustrates social partners’ initiatives and responsible directorates-general plainly refuse to enter into an open and meaningful discussion with the social partners on this essential subject of safety at sea in fishing. In a Union that attaches so much importance to safety and health of its workforce, the political and bureaucratic disregard for safety at sea in fishing is unjustified and therefore intolerable.

What the European Commission needs to do in the short term to take the shortcomings away, you will find summed up in Chapter 8 of this paper.

2. The Union and UNCLOS responsibilities

Under Article 94 of the <United Nations Convention on the Law of the Sea (UNCLOS) every flag state has the duty *vis-à-vis* ships flying its flag to take such measures as are necessary to ensure safety at sea with regard, *inter alia*, to (a) the construction, equipment and seaworthiness of ships, (b) the manning of ships, (c) the labour conditions of their crews, and (d) the training of their crews. Items (b) - (d) concern social matters. In taking such measures every flag state shall ensure conformity with applicable international instruments. The International Maritime Organization (IMO), the International Labour Organization (ILO) and the Food and Agriculture Organization (FAO), all specialized agencies of the United Nations, have indeed developed and adopted international instruments on all four duty areas, not only for shipping but also for fishing.¹ The following table shows the six major instruments that have been adopted in view of the international flag state duties relating to safety at sea and indicates whether or not an instrument has been transposed into the *acquis communautaire*.

Shipping		Fishing	
International instrument	Transposition	International instrument	Transposition
IMO International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS)	Various instruments	IMO Torremolinos International Convention for the Safety of Fishing Vessels, 1977 as amended (Torremolinos)	Directive 97/70/EC as amended
IMO International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended (STCW-S)	Directive 2008/106/EC as amended	IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F)	Marginally through Directive 93/103/EC
ILO Maritime Labour Convention, 2006 (MLC)	Directive 2009/13/EC	ILO Work in Fishing Convention, 2007 (C188)	Marginally through Directives 92/29/EEC, 93/103/EC, 94/33/EC, and 2003/88/EC

Table 1

The European Union and all its Member States are party to UNCLOS. This creates responsibilities and duties concerning safety at sea in a broad sense – even for the Union – and citizens may expect and trust that these responsibilities and duties are taken seriously and acted upon by the authorities. Safety of human life is of such paramount importance that international instruments to ensure human life’s integrity must be taken seriously and acted upon by the Union and its institutes, especially with regard to fishing since fishing is considered a hazardous occupation when compared to other occupations.²

In July 1995, the IMO adopted the <International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995> (STCW-F). The parties to the convention desired <to further promote safety of life and property at sea and the protection of the marine environment by establishing in common agreement international standards of training, certification and watchkeeping for personnel employed on board fishing vessels>³. A large majority of the present Member States of the Union participated in the conference that led to the adoption of the convention. STCW-F sets minimum standards for:

1. Cf. R.R. Churchill and A.V. Lowe, «The law of the sea», Manchester, UK, 1999³, «Safety of shipping», pp. 264-278.
 2. Cf. Article 3, paragraph 1, of the «Charter of Fundamental Rights of the European Union»: «Everyone has the right to respect for his or her physical and mental integrity»; Preamble to ILO’s «Work in Fishing Convention, 2007» (C188); and SEC(2011) 891 final of 13-07-2011, paragraph 2.3. «The lack of social sustainability», p. 19.
 3. Preamble to STCW-F.

- training and certification of nautical officers (skippers and officers in charge of navigational watch) on board fishing vessels of 24 metres in length and over operating in *limited* waters⁴;
- training and certification of nautical officers on board fishing vessels of 24 metres in length and over operating in waters beyond limited waters (i.e. *unlimited* waters);
- training and certification of engineer officers on board fishing vessels powered by main propulsion machinery of 750 kilowatts (kW) or more;
- training and certification of GMDSS⁵ radio personnel;
- basic safety training for *all* fishing vessel personnel; and
- watchkeeping.

By May 2000, a second edition – taking ‘on board’ STCW-F – of the 1988 IMO ‘Document for Guidance on Fishermen’s Training and Certification’ was adopted by the FAO, ILO and IMO and was now titled ‘FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel’⁶. It not only gives guidelines for training and certification of fishing vessel personnel covered by STCW-F, it also covers personnel on board small fishing vessels, nautical officers on vessels between 12 and 24 metres in length, and engineer officers on vessels powered by main propulsion machinery of less than 750 kW.

In October 1995, the FAO adopted the non-mandatory ‘Code of Conduct for Responsible Fisheries’ which is consistent with, *inter alia*, the ‘Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993’ to which the Union is one of the contracting parties. The code recommends,

- that states «should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair living and working conditions and meet internationally agreed standards adopted by the relevant international organizations» (paragraph 6.17) and
- «that health and safety standards are adopted for everyone employed in fishing operations [and that such] standards should be not less than the minimum requirements of relevant international agreements on conditions of work and service» (paragraph 8.1.5),
- that states «should enhance through education and training programmes the education and skills of fishers and, where appropriate, their professional qualifications [while such] programmes should take into account agreed international standards and guidelines» (paragraph 8.1.7) and
- that flag states «should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international conventions, internationally agreed codes of practice and voluntary guidelines» (paragraph 8.2.5).

4. Annex 1 to Resolution A.539(13) adopted by the IMO: «*Limited waters* means those waters having limits defined by the Administration [of the flag State] within which a degree of safety is considered to exist which enables the standards of qualification and certification for skippers and crews of fishing vessels to be set at a lower level than for service outside the defined limits. In determining the extent of limited waters the Administration should take into consideration the following factors: (1) the size of the fishing vessel concerned; (2) the distance from a port of refuge; (3) the provision of electronic position-fixing devices; (4) the provision of rescue services and communication facilities; (5) the provision of meteorological broadcast services; (6) the weather conditions normally prevailing in the waters; (7) the limitations imposed due to ice creation; (8) normal navigational hazards; and (9) traffic conditions».

5. Global Maritime Distress and Safety System.

6. International Maritime Organization, «FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel», London, 2001², ISBN 92-801-5105-3.

Within the scope and context of the code, these recommendations make it clear that a fully-fledged responsible fisheries policy not only encompasses measures for the conservation of marine biological resources, but also integrates or takes into account measures complying with international standards on safety at sea, including those concerning training and certification of fishers and decent living and working conditions on board fishing vessels.⁷ In other words, fisheries policies should be coherent with policies on safety at sea in order to avoid unintended safety and health hazards.

In June 2007, after at least seven years of preparation in which the Union and its Member States participated, the ILO adopted the *Work in Fishing Convention, 2007* (C188). While recalling UNCLOS and mindful of the core mandate of the ILO, which is to promote decent conditions of work, the international community recognized «that the International Labour Organization [considered] fishing as a hazardous occupation when compared to other occupations»⁸. The Convention sets international minimum standards for the fishing sector on responsibilities of fishing vessel owners, skippers and fishers, minimum age, medical examination, conditions of service, manning, minimum hours of rest, crew lists, fishers’ work agreements, payment of fishers, repatriation, labour market services, food and accommodation, occupational safety and health, basic training, health protection and medical care on board and abroad, fishing vessel owner’s liability, social security, flag state control, and port state control. The European Commission took a strong coordinating role during the three International Labour Conferences that resulted in the agreement and nearly all of the present EU Member States and their social partners voted for its adoption by the 2007 conference.

The ILO tripartite Global Dialogue Forum for the Promotion of the *Work in Fishing Convention, 2007* (No. 188), held in Geneva from 15 to 17 May 2013, invited the Director-General of the ILO «to promote the need for governments to align fisheries policies with policies on safety at sea and health and safety on board fishing vessels».⁹ The European Union and countries like France, Lithuania, Morocco, the Netherlands, Spain, and the United Kingdom, that all have an interest in sea-fisheries, participated in this forum and seconded the initiative.

In this paper we use the term *safety at sea* in a broad sense. It regards safety of life and property at sea and it should be protected through measures concerning, *inter alia*, (a) the construction, equipment and seaworthiness of fishing vessels, (b) the manning of fishing vessels, (c) the labour conditions of their crews, and (d) the training and certification of their crews. Item (a) concerns technical matters; the items (b), (c) and (d) concern social matters.

Safety at sea in fishing		Torremolinos	STCW-F	C188
		1977/1993/2012	1995	2007
a.	Safe construction, equipment, and seaworthiness of fishing vessels	✓		
b.	Safe manning of fishing vessels		✓	✓
c.	Labour conditions of fishers			✓
d.	Training and certification of fishers	✓	✓	✓

Table 2

✓ = main standards; ✓ = additional or copied standards

7. See also: Olafur Hannibalsson, Gudrun Petursdottir, Jeremy M.M. Turner, «Safety at Sea as an Integral Part of Fisheries Management», FAO, Rome, 2001, Fisheries Circular No. 966.

8. Preamble to C188.

9. International Labour Organization, «Final report of the discussion, Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188) - Geneva, 15-17 May 2013», Geneva, Switzerland, 2013, GDFWF/2013/11, ISBN 978-92-2-127816-0 (print), ISBN 978-92-2-127817-7 (Web pdf), Points of consensus, Point 4, Item 20 (c) (vii), p. 30.

3. The shortcomings of the Union's Common Fisheries Policy

*AFFIRMING
as the essential objective of their efforts
the constant improvements of the living
and working conditions of their peoples*

From the preamble to the
Treaty on the Functioning of the European Union

As mentioned, a fully-fledged responsible fisheries policy not only encompasses conservation measures, but also integrates or takes into account measures complying with international standards on safety at sea, including those concerning training and certification of fishers and decent living and working conditions on board of fishing vessels. Therefore, fisheries policies should be coherent with policies on safety at sea in order to avoid unintended safety and health hazards. Such approach is fully supported by Article 9 of the *«Treaty on the Functioning of the European Union»* (TFEU) which provides that

«[i]n defining and implementing its policies, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health».

On 11 December 2013, after four-and-a-half years of preparation, the Union adopted a reformed Common Fisheries Policy (CFP).¹⁰ One of the considerations introducing the new CFP Basic Regulation (CFP-BR)¹¹ is that it should contribute to the improvement of safety and working conditions of «fishing operators»¹², but does it? Does it, at least, protect against deterioration of safety at sea as a result of the reforms? Is it a fully-fledged *responsible* fisheries policy?

The term «safety at sea» does not appear in the regulation. The term «safety» only appears in the consideration referred to above and in a consideration concerning «animal health, animal welfare, food and feed safety»¹³. The term «occupational safety and health» does not appear, nor do the terms «health» and «welfare» in relation to fishers. The terms «training» and «education» do not appear either. The term «social», however, does appear in the regulation, but a definition is missing.¹⁴ We assume, therefore, that the term should be understood in accordance with the TFEU, in particular with its Part Three, Title X on Social Policy. However, if we understand the term «social» from the preparatory work for the new, reformed CFP¹⁵, its meaning appears to be quite narrow, i.e. employment, income and, possibly, safety (at sea?) and working (and living?) conditions. In the summary of the impact assessment, that was carried out prior to the adoption of the new CFP-BR, we read that one of the

10. Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.

11. *Idem*.

12. Regulation (EU) No 1380/2013, consideration (15). Who are meant by «fishing operators»? Fishing vessel owners? Fishers? Both? Cf. Article 4, paragraph 1 (30) of the regulation.

13. Regulation (EU) No 1380/2013, consideration (16).

14. Regulation (EU) No 1380/2013: considerations (4), (7), (15), (19), (21), (33), and (48); and Articles 2 (1), 9 (4), 17, 22 (2), 26, and 31 (1).

15. COM(2009) 163 final of 22-04-2009 (Green Paper); SEC(2010) 428 final of 16-04-2010 (Consultation synthesis); OJ C 18 p. 53 of 19-01-2011 (Opinion of the European Economic and Social Committee (EESC)); COM(2011) 425 final of 13-07-2011 (Proposal); SEC(2011) 891 final of 13-07-2011 (Impact Assessment); SEC(2011) 892 final of 13-07-2011 (Summary of Impact Assessment); and OJ C 181 p. 183 of 21-06-2012 (Opinion of EESC on the Proposal).

general objectives of the reform is to achieve «social sustainability», which means «transforming fisheries and related activities into a source of attractive jobs that enable *a fair standard of living* for those who depend on them and ensure the viability of fishing communities [and that] social sustainability in these areas must rely on economic diversification into related maritime activities as well as fishing itself» (stress added).¹⁶ Although, to a certain extent, «attractive» could be linked to «safety at sea», this explanation tends more to the income aspects of a social agenda than to the safety aspects of it. In the common fisheries policy provisions of the TFEU, the phrase «a fair standard of living» is, after all, linked to «the individual earnings of persons engaged in [fisheries]»... Such interpretation of the term «social» is far too limited in respect of the international safety at sea duties concerning social matters which include taking internationally induced measures with regard to the manning of fishing vessels and the labour conditions and training of their crews.¹⁷

One of the objectives of the eventually adopted CFP-BR is, that it «shall ensure that fishing [...] activities [...] are managed in a way that is consistent with the objectives of achieving [...] social and employment benefits [...]».¹⁸ What these «social and employment benefits» are, is guesswork, especially in the absence of fully-fledged Union legislation concerning minimum standards of training and certification of fishers and decent living and working conditions on board fishing vessels.¹⁹ The impact assessment document²⁰ says: «As regards specific objectives, policy action should increase the quality of employment – in terms of income, safety and working conditions – in the fisheries sector and give alternative development options to coastal communities»²¹, but «[c]hanging the safety regulations falls beyond the scope of the CFP»²² (stress added). In relation to the external policy (regarding fishing activities outside the Union’s fishing zone of 200 nautical miles from the base lines of the Union’s coastal Member States), «the Union shall [...] promote employment within the Union».²³ That is the only explicit CFP-BR objective as far as employment in fishing is concerned. From the preparatory work, however, we understand that various measures might have implicit employment benefits.²⁴ For this paper our first concern is safety at sea. We have therefore not perused the regulation further on its possible consequences for employment. What, then, are the other social benefits to be achieved? According to the TFEU an objective of the CFP is «to ensure a fair standard of living for the [fisheries] community, in particular by increasing the individual earnings of persons engaged in [fisheries]».²⁵ This is not an explicit objective of the CFP-BR, but we assume that various measures might have implicit consequences, whether positive or negative, for the earnings and thereby for the standard of living of the fisheries community. As said, our main concern for this paper is the impact of the new CFP on safety at sea and that is why we have not scrutinized the regulation on its consequences for fishers’ earnings.

16. SEC(2011) 892 final of 13-07-2011, paragraph 3.2. «The general objectives of the reform», pp. 3 and 4.

17. Cf. UNCLOS, Article 94, paragraphs 1, 2 (b), 3 (b), and 5. See also: Deirdre Fitzpatrick & Michael Anderson (editors), «Seafarers’ Rights», Oxford, UK, 2005, paragraphs 4.10 and 4.11, pp. 136 and 137.

18. Regulation (EU) No 1380/2013, Article 2, paragraph 1.

19. As can be seen in the Table 1, the international standards on training and certification of fishers and decent living and working conditions on board fishing vessels have only been implemented *marginally* through EU legislation.

20. SEC(2011) 891 final of 13-07-2011.

21. SEC(2011) 891 final of 13-07-2011, paragraph 4.3.3. «Social sustainability», p. 29.

22. SEC(2011) 891 final of 13-07-2011, endnote 88, p. VIII.

23. Regulation (EU) No 1380/2013, Article 28, paragraph 2 (c).

24. See in particular: SEC(2011) 891 final of 13-07-2011, paragraphs 7.1.3. (p. 42), 7.2.3. (p. 44), 7.3.3. (p. 48), 7.4.3. (p. 51), and 11.3. (p. 60).

25. TFEU, Article 39, paragraph 1 (b).

Are there, then, notwithstanding the restriction given in no more than an *endnote* (!), any explicit or implicit social objectives relating to *safety at sea* the Union wishes to achieve through the new CFP? In the impact assessment document, that came with the Commission's proposal for a reform of the CFP²⁶, we read:

«Fishing is, by definition, a risky activity. Injuries and fatalities are significantly higher than elsewhere, including construction. Although, the number of injuries has been reducing over the last ten years, the fatality rate has remained constant. *Lack of sufficient professional training and re-training*, in particular as regards the [small scale coastal fleet (SSCF)], and poor maintenance of equipment are considered to be the two main causes of injuries and fatalities. The legislation in force applies only to fishing vessels longer than 24m. As a result, more than 90% of the EU fleet²⁷ is excluded from *any* social legislation. Seafaring workers (including fishers) are either excluded from the scope of EU's labour legislation or the [EU-]legislation permits [Member States] to do so²⁸» (stress added).²⁹

Although this passage is embarrassingly inaccurate³⁰, which says something about the lack of social commitment of the Commission where fishing is concerned, the relation it lays between safety at sea and professional training (and fishing vessel maintenance) gave us hope. Especially, because the European Economic and Social Committee (EESC), in its opinions on the Green Paper and the Commission's CFP-BR proposal, noted that professional qualifications were not systematically recognized in different EU countries and strongly suggested that the Commission should consider implementing a system of common core qualifications and recognition of diplomas³¹ which could encourage fishers to move from one country to another and help prevent the risk of accidents.³² It gave us false hope, because the Commission did not take up the gauntlet (see further chapter 5 hereafter). «Changing the safety regulations falls beyond the scope of the CFP.»³³ The CFP-BR does not hold any explicit objective or concrete measure concerning safety at sea.

From the preparatory work we further understand that in any case there might be implicit consequences for safety at sea. The impact assessment document purports that measures involving improved catching opportunities accompanied by a reduction of the size of the fleet will result in a small increase of employment on larger vessels, which will then have a positive effect on safety «as it appears that many vessels go to sea short handed [...], which poses an increased safety hazard».³⁴

26. COM(2011) 425 final of 13-07-2011.

27. In document SEC(2011) 891 final of 13-07-2011 this is endnote 67 (p. VI): «As regards safety on board fishing vessels, two EU Directives are applicable: Directive 97/70 introduces into Community law the provisions of the 1993 Torremolinos Protocol laying down safety standards for sea going fishing vessels longer than 24 metres. Provisions are extended to third country vessels landing in an EU port, in order to enhance safety and to avoid a distortion of competition; and Directive 93/103 introduces minimum safety and health requirements for work on board fishing vessels longer than 15 metres».

28. In document SEC(2011) 891 final of 13-07-2011 this is endnote 68 (p. VII): «For a description and analysis of the EU labour legislation and of the work in process see Preparatory study for an impact assessment concerning a possible revision of the current exclusion of seafaring workers from the scope of EU social legislation. MRAG and others, April 2010, submitted to DG EMPL».

29. SEC(2011) 891 final of 13-07-2011, paragraph 2.3. «The lack of social sustainability», p. 19.

30. See the endnote.

31. See also: European social partners in the sea fishing sector, «Mutual Recognition of Certificates in the Sea Fishing Sector in Europe», Brussels, December 2000.

32. Cf. OJ C 18 p. 53 of 19-01-2011, item 4.2.2, first dash, p. 44 and OJ C 181 p. 183 of 21-06-2012, items 3.12.1, 3.12.3 and 3.12.5, p. 192.

33. SEC(2011) 891 final of 13-07-2011, endnote 88, p. VIII.

34. SEC(2011) 891 final of 13-07-2011, paragraph 7.2.3. «Social sustainability», p. 44.

That assumption is far too simplistic. Safety at sea depends, *inter alia*, on sufficient numbers of *qualified* crew on board fishing vessels that are properly constructed and maintained. There is no statistic evidence (presented) that reduction of a fleet's size will result in redundant fishers being reintegrated on board remaining vessels that have vacancies.³⁵ The researchers did not look into the impact of the intended measures on safety at sea any further.³⁶ Hence, there is no way of knowing with some certainty whether or not the reformed CFP jeopardizes safety at sea in fishing or affects the living and working conditions on board fishing vessels negatively.

We also found the claim that «bringing the sector back to profitability is an effective way of making fishing vessels safer [...] working places»³⁷. How? Neither the preparatory work, nor the reformed CFP give a straight answer. The assumption is, of course, that regained profit will motivate and enable fishing vessel owners to invest in renovation of their vessels, which will result in improved safety. Unfortunately there is no evidence for this assumption. On the contrary, renovation of fishing vessels often leads to smaller, hence less safe working spaces.³⁸

As said, the CFP-BR does not hold any explicit objective or concrete measure concerning safety at sea. The principles of good governance by which the CFP shall be guided, make no reference to safety at sea nor to the international standards on safety at sea that should be respected. Although references are made to «the primary responsibility of the flag state», «consistency with other Union policies», and «the use of impact assessments as appropriate», these do not seem to have been made with a *responsible* common fisheries policy in terms of safety at sea in mind.³⁹

One of the CFP reforms, for instance, is the introduction of a landing obligation that is generally known as «the discard ban».⁴⁰ The details of its implementation must be specified in multiannual plans.⁴¹ Before measures are included in multiannual plans, account must be taken of their likely economic and *social* impact.⁴² The impact assessment, that was carried out prior to the adoption of the new CFP-BR, did indeed look into the impact of the discard ban. However, the assessment was limited to the impact on employment, not on fishers' income, not on safety at sea, not on training and certification of fishers, not on living and working conditions on board fishing vessels.⁴³ This is evidence of a very narrow view on what «social» entails. But that is not all. The Commission's proposal for the implementation of the discard ban did not come with the prescribed impact assessment because «the impacts of introducing a landing obligation [had] already been assessed under the impact assessment supporting the reform of the CFP [and a] further impact assessment would not add to the information already available from the previous assessment carried out».⁴⁴ In the opinion of

35. Without action plans for the reintegration of fishers on board remaining vessels (perhaps in a different segment), reality in the Dutch fishing sector, for instance, shows that fishers made redundant rather find employment outside the sector than within, *if* they find employment.

36. On one essential point, however, the document does contain a very relevant observation: an ageing fishing fleet combined with poor investments in maintenance jeopardizes safety at sea (and affects living and working conditions negatively, we add). Cf: SEC(2011) 891 final of 13-07-2011, paragraph 7.5.3. (p. 52).

37. COM(2011) 417 final of 13-07-2011, p. 5.

38. Françoise Douliazel, Henri Pinon, Cédrik Renault, «ErgoSpace», Institut Maritime de Prévention (IMP), 2007.

39. Regulation (EU) No 1380/2013, Article 3, paragraphs (g), (h), and (i).

40. Regulation (EU) No 1380/2013, Article 15 - «Landing obligations».

41. Regulation (EU) No 1380/2013, Article 15, paragraph 5.

42. Regulation (EU) No 1380/2013, Article 9, paragraph 4.

43. SEC(2011) 891 final of 13-07-2011, paragraph 9.5.3., p. 56.

44. COM(2013) 889 final of 17-12-2013, p. 5.

the social partners this is negligence verging on irresponsible governance, in particular as the sector's stakeholders have voiced their fears for the ban's negative impact on safety at sea and the living and working conditions of the fishers⁴⁵.

On 15 May 2014, the Union adopted Regulation (EU) No 508/2014 on the European Maritime and Fisheries Fund (EMFF). Through this regulation funds will be made available to (co-) finance achievement of certain objectives of the reformed CFP, including its social sustainability objectives: «The EMFF shall contribute to the achievement of the [...] [objective]: [...] promoting [...] socially *responsible* fisheries [...]»⁴⁶ (stress added). Priorities are, *inter alia*, «the improvement of safety and working conditions»⁴⁷ and «the development of professional training»⁴⁸. No doubt the EMFF is an important policy tool that will certainly contribute to safer fisheries, if the funds are used responsibly and sensibly. It does not, however, introduce the indispensable international standards and guidelines into the Union's legislation – the standards and guidelines policy makers' and stakeholders' initiatives should be based on.

We cannot escape from the conclusion that the reformed CFP does *not* meet the standard of a fully-fledged responsible fisheries policy. It should effectively integrate the three pillars of sustainability protecting our fishers – people, planet, profit – without jeopardizing fish stocks for future generations. However, it certainly fails to integrate measures concerning safety at sea as envisaged in UNCLOS and the FAO «Code of Conduct for Responsible Fisheries». *A fortiori*, contrary to good governance requirements, and due to a political and bureaucratic view on safety at sea in fishing that is too limited, the CFP fails to take international safety at sea standards and guidelines for fisheries into account. Therefore, the status quo urgently requires the Commission to:

1° take its responsibilities by ensuring that all impact assessments relating to or following from the CFP look into the impact of envisaged measures on safety at sea, including, but not limited to

- a. safe fishing vessel construction, equipment (including fishing gear), and seaworthiness,
- b. safe manning of fishing vessels,
- c. decent living and working conditions on board fishing vessels, and
- d. training and certification of fishers; and

2° adjust its proposals to the results of such impact assessments where necessary, taking safety at sea policies and related international standards and guidelines into account.

Otherwise, the 'social dimension' of the CFP will remain a paper... shark. It should be needless to say that paying lip service to safety does not suffice in any sector, including fisheries.

45. These fears concern, *inter alia*, fishing vessel stability and fishers' privacy.

46. Regulation (EU) No 508/2014, Article 5.

47. Regulation (EU) No 508/2014, Article 6, paragraph (1) (d).

48. Regulation (EU) No 508/2014, Article 6, paragraph (1) (f).

4. Cross-departmental responsibilities

From the CFP impact assessment document we further learn that the directorate-general responsible for and specialized in safety at sea, Directorate-General for Mobility and Transport (DG Move), was not involved in the assessment.⁴⁹ In March 2007, Mr Efthimios E. Mitropoulos, now former, Secretary-General of the IMO, in an address to the Committee on Fisheries of the FAO, had already placed the finger on that sore spot: «At IMO, an argument usually made by our delegates at meetings dealing with fishing vessel safety and personnel, in their majority, is that they usually represent Governmental departments (Ministries of Transport or Mercantile Marine, for example) other than the one that is directly responsible for regulating and overseeing the fishing industry (this, in many countries, being the Ministry of Agriculture), over which they have little influence. Be that as it may, *I strongly believe that the safety of human life is of such paramount importance that all bureaucratic impediments should be brushed aside to ensure its integrity.* I am here today to do just that: to share my concerns with you by means of a direct communication with you» (stress added).⁵⁰ We fully subscribe to Mr Mitropoulos's heartfelt statement.

Mr Mitropoulos continued: «The lack of internationally *enforced* standards of education, training, minimum competency and minimum vessel safety has, and will continue to, cost fishers their lives, their property and their livelihoods; it will continue to cost their families the loss of their loved ones on whom they depend, in many cases, for survival. This state of affairs cannot go on. [...] Although it is not possible to eliminate all the hazards of nature, *it is possible, with the appropriate commitment from those of you responsible for regulating the fishing industry, to make it safer.* The means to do so are there at our disposal, and I urge all parties concerned to make good use of them» (stress added).⁵¹ We could not have said it better.

Directorate-General for Maritime Affairs and Fisheries (DG Mare) is responsible for the common fisheries policy. DG Move is responsible for safety at sea. Directorate-General for Employment, Social Affairs and Inclusion (DG Empl) is responsible for the Union's social agenda, which includes safety and health of workers. Where safety at sea in fishing is concerned, their policy areas overlap and there might even be other directorates-general having responsibilities touching upon it. Clearly, even within the Union's institutes safety at sea in fishing is a cross-departmental responsibility and it belongs to the Commission's overall responsibility to ensure that its commissioners and directorates-general cooperate with and support each other in order to protect human life's integrity in fishing. We fail to understand why an interdepartmental approach could not be achieved. In a world that attaches so much importance to safety and health of its workforce, we also fail to understand the political and bureaucratic disregard for safety at sea in fishing. There is no justification for it and it is therefore intolerable.

49. SEC(2011) 891 final of 13-07-2011, p. 1.

50. As quoted in IMO Model Course 3.22, «Flag State Implementation», 2010 Edition, London, United Kingdom, p. 75.

51. *Op cit*, p. 76.

5. Standardized training and certification of fishers

The former Secretary-General of the IMO referred, of course, to the IMO Torremolinos convention and to STCW-F. The Torremolinos convention has not come into force to date, despite the amendments made to it in 1993 and 2012, but at least the European Union has implemented it through Directive 97/70/EC. The IMO STCW-F convention has come into force on 29 September 2012, seventeen years after its adoption, but has not been implemented through an EU legislative instrument and that is one of our great concerns and frustrations. Over the past decade our committee pleaded with the Commission numerous times to propose its transposition like it had done with the similar IMO instrument for seafarers, the STCW-S convention.⁵² So far the disappointing result of our efforts is just a questionable «Proposal for a Council Decision authorising Member States to sign and/or ratify, in the interest of the European Union, the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995, of the International Maritime Organisation»⁵³ which has not been adopted by the Council yet. The purpose of the proposal is questionable (i) because several Member States have already acceded to the convention without any objection from the Union⁵⁴ and (ii) because the chosen legal basis for the decision does not pin down the actual ground for it, namely safety at sea, which is covered by the articles 100, paragraph 2, and 153, paragraph 1 (a), TFEU (*q.v.*). In view of this, we find it quite odd that the proposal was made by DG Mare and not by DG Move that is responsible for safety at sea⁵⁵, and we are still waiting for the Commission's motivation for its decision to propose, against the preference we voiced so many times, this Council Decision instead of a proposal for transposition of the convention.

Why is an EU-wide, harmonized implementation of STCW-F so important?

In order to avoid fisheries policies jeopardizing human life's integrity, these policies must be aligned with policies on safety at sea that are based on international standards and guidelines. In fact, Article 7 TFEU⁵⁶ provides that «the Union shall ensure consistency between its policies and activities», hence, in order to avoid *in*-consistencies, both must be connected inextricably. Since the Union has exclusive competence concerning the conservation of marine biological resources and has a common fisheries policy, the Union should therefore also take responsibility for safety at sea in *fishing* as it has done for *shipping*. It is inefficient and ineffective to have to take the various national measures into account. Action at Union level is the most effective way to establish a common level of training and certification of fishers and a level playing field. Further, Union action in the sector of maritime transport aims at the improvement of maritime safety. As fishers and seafarers and their vessels and ships share the seas and the oceans, Union action concerning training and certification of fishers is not only in the interest of the fishing sector but also in that of maritime transport. Fishing vessel personnel operating their vessels in Union waters should, in the interest of safety at sea in general, therefore be subjected to standardized Union rules on training, certification and watchkeeping for fishing vessel personnel and the CFP should respect these rules. So, a consistent level of training for the award of vocational competency certificates to fishers should be ensured in the interest of safety at sea.

52. Presently Directive 2008/106/EC on the minimum level of training of seafarers, as amended by Directive 2012/35/EU.

53. COM(2013) 595 final of 20-08-2013.

54. Denmark, Latvia, Lithuania, and Spain.

55. SEC(2011) 891 final of 13-07-2011), paragraph 4.3.3. «Social sustainability», p. 29 and endnote 88, p. VIII: «Changing the safety regulations falls beyond the scope of the CFP».

56. TFEU, Title II - «Provisions having a general application».

Directive 2005/36/EC on the recognition of professional qualifications applies to maritime occupations such as those of fishers. It will help promote compliance with the obligations laid down in the Treaty of Lisbon to abolish obstacles to the free movement of persons and services between Member States, but it does not ensure a standardized level of training for all fishers serving on board vessels flying the flag of a Member State. A standardized level of training is, however, vital from the viewpoint of safety at sea because, for instance, persons working on board a fishing vessel who originate in different Member States must know from each other what their competences are. There is only one way to establish this and that is standardized training and certification throughout the Union. It is therefore essential to define a common minimum level of training for fishers in the Union. As explained above, actions taken at Union level in the field of safety at sea must be in line with internationally agreed rules and standards. The level should therefore be based on the standards of training already agreed at international level, namely those of the STCW-F convention of the IMO. As said, several Member States have already acceded to STCW-F. Further, the importance of creating a level playing field in EU's labour market for fishers cannot be underestimated, especially not where certain Member States have a surplus of fishers and others have a shortage. Transposition of STCW-F into an EU legislative instrument will not only improve safety at sea, it will also further the free movement of fishers.

Another, quite urgent reason for transposition of STCW-F into an EU-instrument lies within the port state control provisions of the convention.⁵⁷ EU fishing vessels entering a foreign 'STCW-F compliant' EU port could be faced with certification demands they cannot comply with because the flag state has not acceded to and implemented STCW-F. Fishing vessels operating in third countries' exclusive economic zones under EU fisheries access agreements could be faced with similar problems if the third country has acceded to STCW-F (e.g. Mauritania, Morocco, Norway) but the flag state has not. On the other hand, since these agreements do not respect, due to the absence of Union legislation we presume, the flag state duties we have referred to above, fishing vessel owners run the risk of having to break flag state law on safe manning of fishing vessels and training and certification of fishing vessel personnel once they are obliged to have local fishermen on board. And last, but not least, STCW-F offers a system for recognition of fishers' certificates of competence which is far less bureaucratically complicated for fishers – who usually can only spend short periods ashore which often fall in weekends – than the system of Directive 2005/36/EC. It thereby offers fishers better chances for jobs on the EU and international labour markets and thus better employment protection.

The majority of Member States have waited too long now, perhaps because they do not consider their fishing fleet being 'international' or due to their fears for the administrative burden to have to «ensure, in order to recognize [...] a certificate issued by or under the authority of another Party [to STCW-F], that [STCW-F's] requirements for standards of competence, as well as the issue and endorsement of certificates by that Party, are fully complied with»⁵⁸. If the Union transposes the convention into a Union directive, that 'yoke' can be 'carried' for all Member States at once by the European Maritime Safety Agency (EMSA) in conjunction with the similar task the agency already has for shipping. The administrative burden for both the administrations of Member States and the fishers/fishing vessel owners would even be more reduced if the Union would introduce single EU certificates of competence...

Why these obvious considerations have not convinced the Commission to propose the transposition of the STCW-F convention to date we do not know because the Commission systematically avoids a

57. Cf. Article 8, in particular paragraph 4, Regulation I/4, and Regulation I/7.2 of STCW-F.

58. Cf. Regulation I/7.1 of STCW-F.



meaningful, open social dialogue with us, especially where safety at sea is concerned and despite the Union's statutory task to promote the role of the social partners at Union level and to facilitate social dialogue⁵⁹. Whilst «[c]hanging the safety regulations falls beyond the scope of the CFP»⁶⁰, we have invited DG Move more than once to come to our meetings and talk with us about STCW-F and a possible transposition of the convention into EU law. Each time the directorate-general refused to appear without giving any explanation. True promotion and true facilitation require sincere commitment of and responsible participation by the Union's institutions. The Union's institutes neither execute this Union task sincerely nor responsibly where safety at sea in fishing is concerned.

59. Article 152 TFEU.

60. SEC(2011) 891 final of 13-07-2011), endnote 88, p. VIII.

6. Decent living and working conditions for fishers

In its «Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Reform of the Common Fisheries Policy», the Commission writes:

«Job attractiveness and decent working conditions are *pressing* issues for the fleets in general, and they are particularly important for many small-scale coastal fleets. Together with developing social dialogue at all levels, bringing the catching sector back to profitability is an effective way of making fishing vessels safer and better working places, as well as making fishing an attractive, secure way of making a living. The reformed CFP needs to contribute to the modernization of the working conditions on board of vessels, to ensure that modern health and safety standards are met.» «Swift ratification by Member States of the International Labour Organization’s 2007 Work in Fishing Convention [(C188)] is another important step towards ensuring decent working conditions on board fishing vessels.» «The Commission and the Council have encouraged[, through Council Decision 2010/321/EU of 7 June 2010,] the Member States to ratify [C188]. In view of the above the Commission will actively engage with social partners» (stress added)⁶¹.

These, were promising words. At that moment in time, 13 July 2011, *nota bene* persuaded by the Commission to do so, the social partners in our committee had already been working for a year on a so-called «social partners’ agreement» (SPA) at Union level for a Union-wide implementation of ILO’s C188. Article 155 of the TFEU provides:

«Should management and labour [⁶²] so desire, the dialogue between them at Union level may lead to contractual relations, including agreements. [...] Agreements concluded at Union level shall be implemented [...], in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.»

On 21 May 2012, our committee’s efforts did indeed result in an agreement at Union level «concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization»⁶³ and our social partners have indeed, on 10 May 2013, jointly requested its implementation by a Council decision on a proposal from the Commission.⁶⁴ The agreement demonstrates a clear plea of the social partners for decent living and working conditions on board European fishing vessels and fishing vessels calling European ports, regardless of their flag and the nationality of the crew.

After having delayed the adoption of the agreement’s final version for about one year, to date, more than another year later, despite the promising words we cited above, the Commission has still not proposed implementation of the fisheries SPA, purportedly due to resistance from unnamed Member States, a vague austerity policy which is said to demand an impact assessment, and tarrying to put out

61. COM(2011) 417 final of 13-07-2011, pp. 5 and 6.

62. «Management and labour» is Union-speak for «employers’ and workers’ representative organizations» a.k.a. «social partners».

63. «Agreement concluded by the General Confederation of Agricultural Co-Operatives in the European Union (COGECA), the European Transport Workers’ Federation (ETF), and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) of 21 May 2012 concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization». In order to align the agreement with existing Union legislation, the agreement was amended on 8 May 2013.

64. Letter of 10 May 2013 to Commissioner László Andor for Employment, Social Affairs and Inclusion and Commissioner Maria Damanaki for Maritime Affairs and Fisheries (reference: EP(13)43/FISH(13)3538 final).

a tender for such an assessment. Speaking of austerity, in this case the impact assessment is a totally unnecessary, time and money wasting exercise because a very large majority of the Member States, led by the Union, and their social partners have already given their consent to C188 when the convention was adopted in Geneva on 14 June 2007. It may very well take another two years before the Council can or will take a decision – if a Commission proposal will ever reach the Council. The tardiness has become unbearable. In the meantime Member States delay their ratification and implementation projects to avoid double consultation and legislation processes whereas the SPA was supposed to be an incentive for Member States to swiftly ratify C188⁶⁵. Not knowing what the European Union and its Member States will do, third countries also delay their ratification and implementation of C188. In view of this, there is already pressure on our committee to withdraw our request and terminate the agreement...

«Promoting the ratification and enforcement of other international standards as regards living and working conditions in the fishing sector, such as the ILO (International Labour Organi[z]ation) Work in fishing Convention (n° 188) is in line with activities of the Sectoral Social Dialogue Committee for Sea-Fishing *and the European Commission*. The objective of [C188] is to ensure that fishers have decent working conditions.

«The Commission is *currently* assessing the request from the EU Social Partners in the sea-fisheries sector to implement their Agreement of 8 May 2013 concerning the transposition of the provisions of ILO C 188, pursuant to Article 155 TFEU» (stress added)⁶⁶,

the Commission writes in its proposal of 20 August 2013 for a Council decision to authorize the Member States to accede to STCW-F... One year later, it is very difficult to hide our disbelief. This is one of the reasons why we have filed a complaint with the European Ombudsman recently.

All of this is in shrill contrast with the speedy efforts of the Commission to propose a Council directive for the implementation of the agreement made between the European social partners in shipping to implement ILO's «Maritime Labour Convention, 2006» (MLC): Their agreement was concluded on 8 May 2008; the Commission published its proposal on 2 July 2008⁶⁷ (!); and Council Directive 2009/13/EU was adopted on 16 February 2009.

What have fishers, who share the seas with seafarers, what has the fishing sector done to deserve such a discriminatory and evasive treatment?⁶⁸ We do not know the answer.

65. Consideration (8) of the SPA.

66. COM(2011) 595 final of 20-08-2013.

67. COM(2008) 422 final of 02-07-2008.

68. According to the ILO, there are some 35,000,000 fishers around the globe and perhaps 1,500,000 seafarers. Europeans love their fish. According to the FAO, they consume between 22 kg (in 1998) and 24 kg (in 2030) fish/fish products per capita per year (FAO Fisheries Circular No 972/4, Part 1, Rome, 2007, p. v). On January 1st, 2013, the population of the Union was estimated at 505,700,000...

7. European Union's Maritime Security Strategy?

*Und der Haifisch, hat keine Zähne*⁶⁹

Commissioner Maria Damanaki's blog of 13 June 2014 titled «Fighting the plague of illegal fishing» illustrates the Union's shortcomings perfectly: «Illegal practices worldwide», she writes, «are a threat to the viability of fish stocks and are of great concern. Furthermore, recent news has shown that some third countries fisheries industries are working under unacceptable conditions. Allegations over disrespect of human rights in Thailand's prawn industry are shocking. There is no place for forced labour in our world». We could not agree with her more. But, do we, the European Union, have sufficient tools to enforce change? The EU regulation against illegal, unreported and unregulated (IUU) fishing activities⁷⁰ and the European fisheries control measures⁷¹ Commissioner Damanaki refers to, make no reference to substandard living and working conditions *of fishers* as a denominator of illegal fishing activities. Should this have been different, a proper Union-legal framework is lacking. Which minimum level of protection is our reference? What defines substandard living and working conditions? If we wish to «sanction» countries, who tolerate forced labour or child labour in their fisheries sectors, through «trade bans», what legal framework, which operational international standards do we refer to? What can we ask or demand from these third countries? The ILO «Declaration on Fundamental Principles and Rights at Work, 1998» is very important in general terms for the global fight against forced labour, child labour and perhaps human trafficking, but it cannot ban the atrocities on its own. In particular not, as fisheries often take place outside the territories of countries. One of the very useful instruments available is ILO's «Work in Fishing Convention, 2007» (C188), which gives the details, the tools, the rules on how to legislate, how to behave and how to enforce in case of such extraterritorial activities.⁷² As long as the Union has not implemented C188 in its own legislation it has very little to go on – both morally and practically. Giving negligent countries a «yellow card», as the commissioner suggests, comes across as a rather lame measure. In our opinion, the European Union should indeed get its own act together first (pun intended) because the world is watching and waiting and is not impressed.⁷³

69. «And the shark, has no teeth», freely adapted from Bertolt Brecht, «Dreigroschenoper», «Die Moritat von Mackie Messer», 1928.

70. Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

71. Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

72. Cf: International Labour Organization, Sectoral Activities Department, Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188), Document GDFWF/2013/11, «Final report of the discussion», «Points of consensus», Point 2, in particular Item 14, 2013, Geneva, Switzerland, p. 28. See also: International Labour Office, Governance and Tripartism Department and Sectoral Activities Department, «Caught at Sea - Forced Labour and Trafficking in Fisheries», 2013, Geneva, Switzerland, in particular Appendix IV, «Summary of the tripartite consultation on forced labour and trafficking in the fisheries», pp. 75-85.

73. Why would we ratify, implement and enforce C188 if the EU itself doesn't do it?

8. What the Commission needs to do in the short term

As you have now seen, the European Union and its institutes do not care much for safety at sea in fishing and have not responded adequately to the worries and the calls of its social partners and of the international community nor – as a consequence thereof – to the worries and calls of the Union itself. Compare this with the legislative efforts made for shipping and it becomes evident why the state of play has become rather cynical: big, solemn, promising words and – (as it appears) *intentional* – inertia mixed together, form a discouraging potion that is not at all in the interest of those fisher men and women who go to sea. In a Union that attaches so much importance to safety and health of its workforce, the comparative political and bureaucratic disregard for safety at sea in fishing is unjustified and therefore intolerable. It is time for a change. What is needed, is a well-balanced common policy wherein internationally induced measures on safety at sea in fishing *complement* conservation measures.⁷⁴ Not more; not less.

It is a reality that the fisheries sector depends *not only* on sustainable management of marine biological resources, *but also* on sustainable ‘management’ of its fisher workforce to be able to sustainably harvest those ‘riches of the seas and of the oceans’. It is therefore our aim to bring the CFP and the conservation measures into a realistic balance with the necessity to protect fishers’ human dignity and their physical and mental integrity through appropriate common measures on safety at sea that find their basis in minimum standards and guidelines for fishing that have already been agreed at international level *with the support* of (a large majority) of the Union’s Member States and their social partners. From that perspective, in view of what we have produced in this paper, it is indeed time to brush aside all bureaucratic impediments. This is what needs to be done by the Commission in the short term to take away the Union’s shortcomings:

1. Ensure effective coordination – if necessary by a specific structure to deal with this particular matter (Article 20, Rules of Procedure of the Commission C(2000) 3614 or by appointing a high-level expert coordinator – between its commissioners and its directorates-general which are involved in any policy touching the fishing sector with the aim to avoid policy inconsistencies and threats to safety at sea in fishing.
2. Ensure consistency between measures concerning the conservation of marine biological resources on the one hand and safety at sea in a broad sense on the other hand through impact assessments and appropriate adjustments of envisaged measures; such assessments to cover at least:
 - a. employment;
 - b. income;
 - c. fishing vessels’ construction, equipment, fishing gears, and seaworthiness;
 - d. manning of fishing vessels;
 - e. training and certification of fishers; and
 - f. living and working conditions of fisherswhilst taking international standards and guidelines on safety at sea into account.
3. Speed up the process of transposition of the social partners’ agreement on implementation of ILO’s C188 into an appropriate EU legislative instrument.

74. It seems that we have the Committee on Fisheries of the European Parliament on our side. Cf: «Draft Opinion of the Committee on Fisheries for the Committee on Employment and Social Affairs on the proposal for a Council decision authorising Member States to sign and/or ratify, in the interest of the European Union, the International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel, 1995, of the International Maritime Organisation COM(2013) 595 [...].», Brussels, 9 December 2013, 2013/0285(NLE), item e, p. 4.



4. Propose the transposition of IMO's STCW-F convention into an EU directive.
5. Ensure meaningful and effective social dialogue through sincere commitment of and responsible participation by *all* directorates-general involved, including DG Empl, DG Mare, and DG Move.



List of abbreviations

C188	Work in Fishing Convention, 2007 of the ILO
CFP	Common Fisheries Policy
CFP-BR	Common Fisheries Policy Basic Regulation (1380/2013)
DG Empl	Directorate-General for Employment, Social Affairs and Inclusion of the EC
DG Mare	Directorate-General for Maritime Affairs and Fisheries of the EC
DG Move	Directorate-General for Mobility and Transport of the EC
EC	European Commission
EESC	European Economic and Social Committee
EMFF	European Maritime and Fisheries Fund
EU	European Union
FAO	Food and Agriculture Organization
ILO	International Labour Organization
IMO	International Maritime Organization
kW	Kilowatt(s)
MLC	Maritime Labour Convention, 2007 of the ILO
SPA	Social Partners' Agreement
SSCF	Small scale coastal fleet
STCW-S	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995 of the IMO as amended
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 of the IMO
TFEU	Treaty on the Functioning of the European Union
UNCLOS	United Nations Convention on the Law of the Sea

Endnote

Fishing is, by definition, a risky activity. Injuries and fatalities are significantly higher than elsewhere, including construction. Although, the number of injuries has been reducing over the last ten years, the fatality rate has remained constant. Lack of sufficient professional training and re-training, in particular as regards the SSCF, and poor maintenance of equipment are considered to be the two main causes of injuries and fatalities. The legislation in force applies only to fishing vessels longer than 24m. As a result, more than 90% of the EU fleet⁷⁵ is excluded from any social legislation. Seafaring workers (including fishers) are either excluded from the scope of EU's labour legislation or the legislation permits to do so^{76, 77}.

Fishing a risky activity «by definition»? We cannot accept such defeatism. Even though having 100% safety will always be an illusion because it is not possible to eliminate all hazards of nature, we are quite sure, that fishing is a risky activity because (international) safety at sea standards on safe construction of fishing vessels, safe manning of fishing vessels, training and certification of fishermen, and decent living and working conditions on board fishing vessels remain largely ignored, even by the Union.

The observation, that the legislation in force only applies to fishing vessels longer than 24 metres and that as a result more than 90% of the EU fleet is excluded from *any* social legislation, is incorrect. It may be true for the application of Directive 97/70/EC, implementing the 1993 Torremolinos Protocol, but Directive 93/103/EC, concerning the minimum safety and health requirements for work on board fishing vessels, applies to fishing vessels of 15 metres in length or over (18 metres in length or over for fishing vessels built before 23 November 1995), however, its provisions on equipment and maintenance, information for fishers, training of fishers, detailed training of persons likely to command a vessel, and consultation and participation of fishers, apply to *all* fishing vessels regardless of size.

There is also quite some European social legislation that *does* apply to fishing without any limitation to its application based on the length of the vessel (e.g. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, Directive 2003/88/EC concerning certain aspects of the organization of working time, Regulation (EC) No 883/2004 on the coordination of social security systems, &c).

The observation, that seafaring workers (including fishers) are either excluded from the scope of EU's labour legislation or that the legislation permits Member States to do so, is also incorrect. The study, endnote 68 of the impact assessment document refers to, has in the meantime been followed up by the Commission's Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC (COM(2013) 798 final of 18-11-2013). However, not all (possible) exclusions apply to (all) fishers: In Directive

75. In document SEC(2011) 891 final of 13-07-2011 this is endnote 67 (p. VI): «As regards safety on board fishing vessels, two EU Directives are applicable: Directive 97/70 introduces into Community law the provisions of the 1993 Torremolinos Protocol laying down safety standards for sea going fishing vessels longer than 24 metres. Provisions are extended to third country vessels landing in an EU port, in order to enhance safety and to avoid a distortion of competition; and Directive 93/103 introduces minimum safety and health requirements for work on board fishing vessels longer than 15 metres».

76. In document SEC(2011) 891 final of 13-07-2011 this is endnote 68 (p. VII): «For a description and analysis of the EU labour legislation and of the work in process see Preparatory study for an impact assessment concerning a possible revision of the current exclusion of seafaring workers from the scope of EU social legislation. MRAG and others, April 2010, submitted to DG EMPL».

77. SEC(2011) 891 final of 13-07-2011, paragraph 2.3. «The lack of social sustainability», p. 19.

96/74/EC, the exclusion regards seagoing personnel of merchant navy undertakings.⁷⁸ Are fishing vessels «vessels plying the high seas» and what are «the high seas» (Directive 2002/14/EC)? Directive 2009/38/EC offers that «Member States may provide that this Directive shall not apply to merchant navy crews». Directive 2008/94/EC: «Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive [...] share-fishermen». *Besides, these directives have not much relevance for safety at sea.*

However, fishers, working on fishing vessels flying the flag of a European Union Member State, might be employed or self-employed. It is not always clear whether or not an EU social legislative instrument applies to self-employed fishers as well as to employed fishers. Reliable statistics on the number of self-employed fishers working on EU fishing vessels are not available, but it is very hard to believe that the category of self-employed fishers would represent 90% of the fleet.

78. But does the Directive apply at sea beyond the territorial waters of the flag State? How does the Directive relate to the concept of innocent passage through coastal States' territorial waters in, that laws and regulations of a coastal State concerning innocent passage shall not apply to the manning of foreign fishing vessels (*cf.* Articles 17 and 21, paragraph 2, of UNCLOS)? And how does, in view of innocent passage, the Directive relate to flag State duties under Article 94 of UNCLOS?

