

ADVICE - OPINION

LDAC Recommendations for a Level Playing Field for EU and non-EU fish products

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Aim of the document:

The LDAC wishes to highlight areas and factors affecting the level playing field (LPF) for EU external fishing operations with reference to the implementation of the United Nations Sustainable Development Goals (SDGs) and key EU policies; as well as positions expressed by the LDAC and other advisory councils. We will also identify recommendations that could be used as basic guidelines for the future, and that could contribute to the revision of the external dimension of the Common Fisheries Policy (CFP).

To achieve sustainable development in the whole fisheries production chain, including the sustainability of the fisheries stocks and the conservation of a healthy environment, it is, in a cross-cutting way, fundamental to ensure a fair competition between the EU and third country's producers, abiding by similar sustainability rules in different areas as well as to encourage the ratification, transposition and implementation of international legal instruments and conventions.

It is of note that some topics affecting the level playing field (LPF) for EU external fishing operations may not be covered by this opinion. In this context, the LDAC wishes to acknowledge that while the different sectors of the blue economy have their own specificities that justify specific policies, their cohabitation raises important challenges like the increasing competition for space, the cumulative impact of activities at sea. More than ever, there is a need for cross-sectoral approaches and collective efforts to ensure a sustainable future for fisheries, and fishing communities, as a key sector of the blue economy^{1,2}.

¹ https://www.ldac.eu/images/EN_Multi-AC_advice_Blue_Economy_09Dec2020.pdf

² https://ldac.eu/images/EC_Reply_joint_advice_Maritime_sector_a_green_post-COVID_future_22Dec2020.pdf

Definition and basis of level playing field (LPF) in the international fisheries production³:

“Level playing field is a concept describing the situation where each and every one of the participants in a specific activity has the same opportunities to be successful. In the world of international trade, the level playing field is based on the concept of fairness, in the sense that economic actors have to operate subject to the same rules...

...Failure to comply with ground rules leads to an imbalance where the compliant party loses competitiveness vis-à-vis the negligent one. Thus, the core of fair trade requires the existence of a level playing field as a condition sine qua non”.

“The basis for a level playing field in the international fisheries production lies on the rules of an international trading system, and from the point of view of European producers, attention should be drawn to three international organisations that are at the forefront of the defence of fair competition in its wider sense: the World Trade Organisation (WTO), the United Nations (UN) and the EU itself”.

Where needed, this document will make a differentiation between level playing field at the internal (differences between EU Member States) and external (EU flag/Member States versus non-EU countries).

Target audience and Structure:

- **Target audience:** European institutions and Member States, Advisory Councils
- **Structure:** Each concrete area identified will be in a separate Chapter and will include relevant aspects with specific recommendations.

³ Own translation; see original text in MARINNLEG (2020), *Level Playing Field y la Pesca. Condiciones principales y recomendaciones*. Vigo, 2020, pp. 3-4

The starting point for the study was the European Parliament resolution of 30 May 2018 on the implementation of control measures for establishing the conformity of fisheries products with access criteria to the EU market (2017/2129(INI)) about equal treatment or “fair competition” between fishery products coming from EU operators and third countries. In fact, the EP identified disadvantages of community operators against international competitors and the need to comply with more stringent standards in different areas.

In general terms, the study concluded that there was some distortion and difference in treatment in detriment to EU operators, who are subject to higher costs in terms of controls and more comprehensive documentation. Aspects such as import control, commercial, pricing and customs regulations, competition matters, food security, national protectionist measures and state aid or subsidies were analysed. The disparity of standards could be partially corrected by implementing the instruments of the international law of the sea related to international labour regulations, as well as by strengthening and improving the social dimension and the common trade policy of the EU.

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EXECUTIVE SUMMARY

In 2018, the European Union (EU⁴) was home to 446 million inhabitants. While the EU accounted for 5.9% of the world's population, its gross domestic products (GDP) accounted that year for 18.6% of the world's GDP and recorded an average gross national income per inhabitant of more than double the world average. Its share of world trade was the world's largest both in terms of exports and imports, and it stood out as the largest source and recipient of foreign direct investment of the G20⁵. The EU also remains the world's leading donor of Official Development Assistance, representing, in 2019, 55.2% of global assistance⁶.

As such, the EU features as one of the world's powerhouses. This has increasingly been reflected in its political agenda. In June 2019, the European Council notably included, in its new strategic agenda, to promote Europe's interests and values in the world as one of its four main priorities. This priority is closely intertwined with the Political Guidelines⁷ and six work priorities of the European Commission for 2019-2024⁸ as well as other EU institutions at further developing a "strong and vibrant economic base" and "building a climate-neutral, green, fair and social Europe"⁹. To meet these objectives, the LDAC shares the views expressed in the EU's strategic agenda that "in a world where common rules and standards are increasingly questioned, it will be vital to promote a level playing field".

The LDAC understands the concept of level playing field as describing a situation where all participants in a specific activity have the same opportunities to be successful. In international trade, the level playing field is based on the concept of fairness. Failure to comply with ground rules leads to an imbalance where the compliant party loses competitiveness vis-à-vis the negligent one¹⁰.

Achieving a level playing field will be essential for the EU to meet its ambitions in the fields of fisheries and, to a greater extent, ocean governance. The EU's ambitions in these areas reflect its important responsibilities as a major "fisheries" and ocean player and its international commitments – particularly in delivering the United Nations 2030 Agenda on Sustainable Development Goals (SDGs).

In this piece of advice, the LDAC reviewed the policy ins and outs of level playing field in a number of areas relevant to the activities of EU fishing vessels and EU capital value chains outside Union waters and, to a greater extent, to the positioning of the EU vis-à-vis other major fisheries players.

The LDAC found that the achievement of a level playing field in international fisheries affairs is affected – and challenged – by many factors and in several areas. Globally, an even level playing field is yet to be achieved.

The distortive effects of an uneven level playing field negatively affect the EU fisheries sector whose competitiveness is undermined by players not subject to or sharing equivalent high environmental, social or labour standards. It also directly contributes to jeopardising the world's collective capacity to achieve the objectives of the 2030 Agenda for Sustainable Development.

⁴ EU-27.

⁵ <https://ec.europa.eu/eurostat/documents/3217494/10934584/KS-EX-20-001-EN-N.pdf/8ac3b640-0c7e-65e2-9f79-d03f00169e17?t=1590936683000>

⁶ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_674

⁷ https://www.eunec.eu/sites/www.eunec.eu/files/attachment/files/political-guidelines-next-commission_en_kopie.pdf

⁸ https://ec.europa.eu/info/strategy/priorities-2019-2024_en

⁹ <https://www.consilium.europa.eu/en/european-council/role-setting-eu-political-agenda/>

¹⁰ See "Definition and basis of level playing field (LPF) in the international fisheries production".

While it is clear to the LDAC that the policies adopted by other players outside the EU can be a serious impediment to achieving an even level playing field, this undertaking is also an internal challenge, within the EU, between Member States.

The LDAC has identified numerous opportunities for the EU to progress and leverage in achieving an even level playing field.

Internally, it requires the EU to renew its efforts at ensuring effective and harmonised implementation of EU law. Developing, adopting and implementing operational and policy solutions to improve EU systems and instruments should be contemplated where necessary. It also requires achieving across-the-board policy consistency, transparency and inclusiveness; as well as ensuring the adequacy of resources dedicated to the formulation and implementation of EU's policies with the ambitions set.

Externally, the EU should use its power to constructively leverage improved fisheries and ocean governance standards through promoting the ratification and effective implementation of all relevant international legal instruments and active participation of all concerned states in the relevant multilateral fora, as well as best practices in fisheries and ocean governance. The EU possesses innovative and powerful instruments to do so.

Where necessary and when duly justified, in an effort to rectify situations of unaddressed uneven level playing field, the EU should however not refrain from taking strong unilateral measures. The EU's *acquis communautaire* could be reinforced to that end, drawing on coercive tools successfully implemented in the EU or abroad.

The credibility of the EU in promoting its interests and standards in the world goes hand-in-hand with its capacity to be irreproachable at home, and to abide by its commitment to policy coherence for development¹¹ and rules-based global order¹². It will also build on its capacity to provide support to others in strengthening their own fisheries and ocean governance standards, and in leading by example in terms of fisheries training and information and communication technologies (ICTS).

This piece of advice formulates concrete and detailed recommendations to assist the European Commission to progress in achieving a global level playing field which could be used as basic guidelines for future policy developments, and, in this context, could contribute to a future revision of the external dimension of the EU Common Fisheries Policy.

In a cross-cutting way, the LDAC encourages the European Commission to develop and implement comprehensive oceans and sea-based regional strategies – sharing common basic features – for improved fisheries and ocean governance, and environmentally sustainable fisheries and socially responsible value chains¹³ that encompass regional-specific aspects pertaining to the level playing field. Such strategies would be a further step to build a strengthened and holistic coordinated political approach to level playing field vis-à-vis third countries.

¹¹ https://ec.europa.eu/international-partnerships/policy-coherence-development_en

¹² https://eeas.europa.eu/sites/default/files/en_strategy_on_strengthening_the_eus_contribution_to_rules-based_multilateralism.pdf

¹³ e.g., https://www.europarl.europa.eu/doceo/document/A-7-2013-0297_EN.html

CHAPTER I: International instruments related to governance of fisheries governance

1.1 - UN framework: key instruments (including UNCLOS and UN Fish Stock Agreement)

The cornerstone of the Law of the Sea, and therefore also for fisheries governance, is the United Nations Convention on the Law of the Sea¹⁴ (UNCLOS), which entered into force in 1994 and has been ratified by 168 parties, including the European Union itself. UNCLOS determines two important issues: on the one hand, it divides the oceans into maritime spaces laying down rules for coastal and third states. On the other hand, it reaffirms the idea that there are shared responsibilities regarding ocean governance, i.e., coastal, port and flag states altogether have their own area of responsibility in a broader sense¹⁵.

So far, two additional Implementation Agreements to UNCLOS have been signed, relating to the Part XI of UNCLOS¹⁶ and the UN Fish Stocks Agreements of 1995 (UNFSA). The latter has been ratified by 91 parties so far, and lays down the principle of cooperation to ensure the conservation and sustainable use of highly migratory and straddling fish stocks. In addition, the UNFSA is the basis for the creation of Regional Fisheries Management Organisations (RFMOs). A third implementation Agreement of UNCLOS is being negotiated, the so-called BBNJ¹⁷, whose objective is to create a legally binding instrument related to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. The implementation of the future agreement shall *“promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.”*¹⁸

Since the adoption and entry into force of UNCLOS, the international codification process has progressed and resulted in a set of international instruments addressing and regulating specific issues in fisheries as well as addressing social aspects related to the fisheries sector. The overall aim of all instruments is to guarantee a sustainable use of fisheries resources and clarify rights and obligations of states and economic actors. The following table gives an overview of the most important international instruments:

¹⁴ https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

¹⁵ The regime of maritime spaces set up by UNCLOS gives coastal states jurisdiction over fisheries up to 200 nautical miles where the so-called Exclusive Economic Zone (EEZ) ends. The EEZ regime establishes the duty of coastal states to protect and conserve the marine environment (Article 56.1 a iii) and all provisions related to the conservation of living resources (Article 61) and their sustainable use (Article 62). In addition, the rules set out regarding populations that are within the EEZ of two or more coastal states, or both within the EEZ and in an area beyond and adjacent to it (Article 63) and the highly migratory species (article 64). The high seas (Article 87) is subject to the states complying with the conventional provisions (Article 116), with the duty to adopt measures for the conservation and administration of living resources (Article 117) and also the obligation to cooperate with other states (Article 118).

¹⁶ Part XI contains 10 articles dealing with procedural aspects (signature, entry into force and provisional application). Nevertheless, Article 2 states that the Agreement and Part XI of the Convention, shall be applied together as a “single instrument”.

¹⁷ International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (General Assembly resolution 72/249).

¹⁸ Art. 48.4.c) draft agreement BBNJ.

Most relevant legally binding conventions	Broadly recognized voluntary instruments
<ul style="list-style-type: none"> - UNCLOS - FAO Compliance Agreement¹⁹ - UNFSA - Agreement on Port State Measures (PSMA) 	<ul style="list-style-type: none"> - FAO Code of Conduct for Responsible Fisheries and related instruments - IPOA-IUU²⁰ - Voluntary Guidelines for Flag State Performance - Voluntary Guidelines for Catch Documentation Schemes - International Guidelines on Bycatch Management and Reduction of Discards

It is well known that the effectiveness of legally binding instruments depends on the number of ratifications and the subsequent robust implementation. While the latter point must be analysed on a case-by-case basis, the situation of ratifications of the world’s biggest producers is reflected in the table in **Annex I**. What the analysis shows is that there is still much work to do. In order to give an example: the FAO Compliance Agreement whose objective is that flag states strengthen their controls over vessels flying its flag to ensure compliance with international conservation and management measures, has only been ratified by one out of the world’s top five producers (i.e., the EU).

International legally binding instruments aim at laying down common norms with the objective of achieving a specific goal. In practice, the compliance with legally binding norms implies higher costs for economic operators. In the highly internationalised value chain of fisheries products an uneven level of compliance has detrimental effects on natural resources and has negative impacts on all dimensions of sustainability, i.e., social, economic and environmental. In practice, this means for economic operators who comply fully with all requirements in favour of the sustainable use of stocks to bear higher operating costs that leads, eventually, to undermining an international level playing field. Apart from endangering responsible businesses, it could lead to situations where these companies migrate to states or regions with fewer restrictions. Higher operating costs could also lead to a situation where the possible economic losses may be counteracted at the cost of the fishers’ salary and/or workload.

¹⁹ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement)

²⁰ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the EC, to:

- **Call on Member States to fully comply with the provisions laid down in the international treaties listed in Annex I.**
- **In its relations with third countries, urge them to have ratified the treaties and prove correct implementation. It must be guaranteed that when trading in fishery products with third countries, the conditions for fair competition should be ensured as dictated by the common organisation of the markets in fishery and aquaculture products (Regulation (EU) No 1379/2013²¹), and in particular through respect for sustainability and the application of social standards equivalent to those which apply to Union products.**

1.2 - EU Regulation on the fight against IUU fishing

Illegal, unreported and unregulated (IUU) fishing was defined for the first time in 2001 in the FAO International Plan of Action to prevent, deter and eliminate IUU fishing (IPOA-IUU)²². The definition laid down in the IPOA-IUU has been mirrored in EU law through Council Regulation (EC) No 1005/2008 (EU IUU Regulation)²³. IUU fishing may be broadly defined as the use of fishing methods or practices that contravene fisheries laws, regulations or conservation and management measures.

A zero-tolerance approach to IUU fishing has been identified as a priority in the Communication on the European Green Deal for the European Union²⁴. This approach is also an essential component of the EU Biodiversity Strategy for 2030²⁵ and paramount to a global transition towards sustainable food systems, as stated in the Farm to Fork Strategy (F2F)²⁶. Moreover, the EU's policy against IUU fishing is an essential part of the leadership of the EU on international ocean governance²⁷.

Mainly driven by the perspective of short-term benefit and profiting from a lack of transparency in global fisheries, it was estimated in 2009 that IUU fishing represented up to 26 million tonnes of fish caught annually, valued at up to EUR 20 billion^{28,29}. The consequences of IUU fishing are numerous, amongst them are: putting oceans ecosystems at serious risk, distorting competition by putting honest businesses at a disadvantage, misleading consumers and endangering the livelihoods of coastal communities, particularly in developing countries, incl. from a food security perspective.

IUU fishing cannot be fought in isolation. It requires every country to fulfil its international obligations as a flag, port, coastal, processing or market state and to cooperate in this endeavour. The failure of some states to discharge their relevant duties jeopardises the efforts of the willing ones and is one of the major impediments to the eradication of IUU fishing and meeting the SDG 14 (life below water)³⁰. It also translates into the impossibility to achieve an even level playing field.

²¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1379>

²² <http://www.fao.org/3/y1224e/Y1224E.pdf>

²³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02008R1005-20110309>

²⁴ COM (2019) 640 of 11 December 2019.

²⁵ COM (2020) 380 of 20 May 2020.

²⁶ COM (2020) 381 of 20 May 2020.

²⁷ https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/join-2016-49_en.pdf

²⁸ <http://www.fao.org/iuu-fishing/tools-and-initiatives/iuu-fishing-estimation-and-studies/en/>

²⁹ <http://www.fao.org/iuu-fishing/en/>

³⁰ <https://sdgs.un.org/goals/goal14>

1.2.1 External level playing field:

Several factors negatively affect the ability of achieving an external level playing field in the fight against IUU fishing. One relates to the lack of ratification and implementation and, in some cases, violation of relevant international conventions and conservation and management measures by some states. Another one relates to the application of uneven standards, particularly amongst major fishing players, all along the supply chain from the moment of the capture to the introduction of the fisheries products in their final market.

The LDAC has long been recognising that the EU IUU Regulation is an important tool to combat IUU fishing and has made the EU the worldwide front-runner in this endeavour^{31,32}. By extension, the LDAC acknowledges that the EU IUU Regulation contributes to establishing a global level playing field in the fisheries sector as highlighted by the 2020 Report to the European Parliament and the Council on its application³³. Though the EU's policy against IUU fishing has had a positive impact globally, further efforts are required to achieve an even level playing field between the EU and other parties by addressing the root causes that impede this situation.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Continue supporting the development of methodologies and indicators for the estimation of the magnitude and impact of IUU fishing^{34,35} and the efficiency of measures taken to combat it.**
- **Continue promoting, worldwide and using all possible channels, the ratification and implementation of relevant international conventions and conservation and management measures including by making full use of all instruments under the EU IUU Regulation, particularly the catch certification scheme and the carding system.**
- **Prioritise action on states having adopted policies of convenience, with a particular focus on well-established and emerging flags of convenience, and/or having an inadequate administrative environment to ensure the efficient and effective performance of their duties as flag, coastal, port or market states.**
- **Step up the engagement with other major fishing players, including China, aiming at similar sustainability and transparency standards being applied to drive positive changes all along the supply chain. In this endeavour:**

³¹https://www.ldac.eu/images/documents/publications/LDAC_Opinion_on_Improving_Application_of_IUU_Regulation.pdf

³²https://www.ldac.eu/images/documents/publications/LDAC-MAC-MEDAC_Joint_Opinion_on_Application_of_IUU_Regulation_9June2017.pdf

³³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0772&qid=1607676610721>

³⁴ <http://www.fao.org/3/ne710en/ne710en.pdf>

³⁵ http://www.fao.org/fileadmin/user_upload/COFI/COFI34/nonwcp/AgendaItem9-EU.pdf

- Wherever necessary, stand ready to make full use of all instruments under the EU IUU Regulation (including evaluation missions and carding decisions but also strengthened import controls); and
 - Strive to align import control schemes to remove loopholes, provide clarity for the industry, and enable information exchange, cross-referencing, trade facilitation and interoperability³⁶.
- Continue providing support to partner countries and other willing states whether they engage in a formal or informal dialogue with the European Commission under the EU IUU Regulation to increase their capacity to fight IUU fishing and effecting fundamental reforms of their fisheries policies.
 - Continue, through the European Fisheries Control Agency (EFCA), exploring the extension of the Joint Deployment Plan concept in the international dimension – in particular in the fight against IUU fishing – involving capacity building and training for monitoring, control and surveillance in third countries.
 - Step up efforts to establish a comprehensive global register of fishing vessels – including the use of the International Maritime Organization number as a unique vessel identifier – promoted under the auspices of the FAO³⁷.
 - Take the opportunity of the revision of the Flag State Control³⁸ and Port State Control³⁹ Directives to take into greater consideration fishing vessels and the issue of flags of convenience in fisheries. Also, adopt and implement the revised EU’s fisheries control system swiftly⁴⁰.
 - Ensure consistency of other EU’s policies (i.e., trade, development, sustainable fisheries partnership agreements, etc.) with the EU’s policy against IUU fishing and that the fisheries sector will be given adequate attention in the formulation of a future EU-wide supply chain legislation⁴¹.

To implement the above, the LDAC would like to make the following recommendations – also relevant to the following section on ‘internal level playing field’ – to the European Commission:

- Ensure the adequacy of human resources dedicated to the formulation and implementation of the EU’s policy against IUU fishing in the Directorate-General for Maritime Affairs and Fisheries (DG MARE) and EFCA with its ambitions.
- Deploy extra-efforts to “close” longstanding formal dialogues under ‘yellow card’ either by issuing ‘green’ or ‘red cards’ should the agreed action plans be completed or not.

³⁶ <http://www.iuuwatch.eu/wp-content/uploads/2020/01/CDS-Study-WEB.pdf>

³⁷ <http://www.fao.org/global-record/en/>

³⁸ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12640-Compliance-with-Flag-State-requirements-shipping->

³⁹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12641-Port-State-control-Further-improving-safety-security-and-sustainability-of-maritime-transport>

⁴⁰ https://ec.europa.eu/fisheries/cfp/control_en

⁴¹ <https://www.euractiv.com/section/global-europe/news/new-human-rights-laws-in-2021-promises-eu-justice-chief/>

- When issuing a ‘green card’, publicise more information about the reasons which motivated the decision and the assurances it has that the measures taken are capable of achieving a lasting improvement of the situation.

1.2.2. Internal level playing field:

Several factors negatively affect the ability of achieving an internal level playing field in the fight against IUU fishing. Achieving an internal level playing field, through fostering and securing harmonised implementation of the EU IUU Regulation in all Member states, is key to the success of EU’s policy against IUU fishing and preserving its credibility. Are of particular interest to the LDAC, the level of harmonisation of import controls amongst Member states⁴² and the adequacy and consistency of their enforcement schemes and sanctioning systems^{43,44,45}.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Continue fostering harmonised implementation, in all Member States, of the EU IUU Regulation; particularly vis-à-vis its chapters II (inspections of third country fishing vessels in Member States ports), III (catch certification scheme for importation and exportation of fishery products), VIII (nationals) and IX (immediate enforcement measures, sanctions and accompanying sanctions)⁴⁶.**
- **Carry out, when the health situation allows or through other means, audit missions to Member States to assess their implementation of the EU IUU Regulation, particularly in those where there are reasons to believe they are in default of their obligations to apply the EU IUU Regulation. The LDAC encourages the European Commission to consider making executive summaries of finalised audits public, while respecting EU privacy laws, in line with other EU policy areas (as it is currently standard practice in other areas (e.g., sanitary)) – as well as Member States’ biennial reports on the Commission’s website⁴⁷; and, should the EU IUU Regulation not being properly implemented, take appropriate remedy action.**
- **Furthermore, Member States should notify the European Commission of definitive rulings in the event of serious infringements detected in Union waters or in Union ports in relation to fishing vessels flying the flag of third countries.**

⁴² http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf

⁴³ <https://www.documents.clientearth.org/wp-content/uploads/library/2016-12-02-slipping-through-the-net-the-control-and-enforcement-of-fisheries-in-france-ireland-the-netherlands-poland-spain-and-the-uk-england-ce-en.pdf>

⁴⁴ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52017SC0134>

⁴⁵ [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652205/IPOL_STU\(2020\)652205_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652205/IPOL_STU(2020)652205_EN.pdf)

⁴⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02008R1005-20110309>

⁴⁷ The European Commission has made available the biennial reports through access to information requests, instead of making them available on request, they should be made available to stakeholders.

- Promote the use of the IT system 'CATCH'⁴⁸, which should become mandatory for Member States once the Commission's proposal for the revision of Council Regulation (EC) No 1224/2009⁴⁹ has been adopted by the co-legislators, amongst Member States, and actively encourages its use by third countries.
- Encourage the swift inclusion of more comprehensive risk criteria and seamless data cross-checks during the next iterations of 'CATCH'. Ensure the CATCH's risk assessment is at the level of or supersedes that of Member States which already have an electronic system to control catch certificates – otherwise, in the interim, ensure there is interoperability between CATCH and national IT systems without increasing burden on economic operators.
- Ensure, building on Article 31 of Commission Regulation (EC) No 1010/2009⁵⁰, application of a harmonised risk management approach for the verification of catch certificates, continuing, to that end, to collaborate with EFCA and taking into account best practices currently implemented in the EU.
- Ensure sanctions for IUU fishing activities imposed by Member States are effective, proportionate and dissuasive; and strive towards more uniform enforcement schemes and sanctioning systems.
- Continue making full use of the mutual assistance system established under Article 51 of the EU IUU Regulation ensuring active participation by Member States and their compliance with the obligations resulting from its implementation.
- Make active attempts to better monitor intra-EU trade flows of seafood products – and their fluctuations –, especially if these are found to relate to at-risk situations about which catch certification information has been circulated between Member States through the mutual assistance system or are linked to countries under formal IUU dialogue.
- Provide, together with EFCA and in close coordination with Member States, further support to their authorities on how best to implement the EU IUU Regulation through guidance, exchange of good practices, training, etc.

⁴⁸ https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/catch-it-system_en.pdf

⁴⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0368>

⁵⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009R1010-20200327>

1.3 - EU Regulation on Sustainable Management of the External Fishing Fleets (SMEFF)

Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets (SMEFF)⁵¹ attempts to facilitate a more effective monitoring of EU flagged vessels operations beyond EU waters regardless of the framework under which they operate. The main progress compared to its predecessor, the Fishing Authorisation Regulation (FAR), include:

- The SMEFF establishes common eligibility requirements for all EU flagged vessels, under which a Member State may only issue a fishing authorisation for fishing operations outside EU waters if it has received complete and accurate information about the fishing vessel that shows its operations are in line with sustainable and legal fishing.
- The SMEFF also provides for the European Commission to maintain an electronic fishing authorisation database containing all fishing authorisations granted. Part of this database is publicly accessible, albeit information on the beneficial owners is kept confidential.

As such, the SMEFF is an instrument that contributes to achieving a level playing field between Member States' fleets. However, further efforts are still needed to exploit its full potential at achieving an internal level playing field. The LDAC is also concerned by the persistent gap between EU standards and those applied by other major distant-water fishing (DWF) nations and, as such, believe that increased efforts should be deployed at driving these nations to apply similar standards.

1.3.1 External level playing field:

Throughout the decision-making process that led to the adoption of the SMEFF, the LDAC highlighted the importance of ensuring a level playing field between EU and non-EU vessels fishing in EU waters⁵². The co-legislators addressed this concern through Title III of the SMEFF and more particularly Article 32 which provides that third-country fishing vessels shall only be issued with authorisations to fish within EU waters if they fulfil the same eligibility criteria set out for fishing operations by EU vessels.

Outside Union waters a level playing field between EU and non-EU external fishing operations is still to be achieved. The LDAC is of the view that other DWF fleets are yet to be submitted to equivalent standards by their flag states aiming at ensuring their sustainable management, particularly from the sustainability and transparency perspectives. This situation particularly concerns areas and species not covered by any RFMO and also concerns fishing grounds covered by SFPAs, sometimes in spite of the clauses embedded in these international agreements (cf. Section 1.4).

The EU is currently one of the few flag states making public its fishing authorisations. The coastal state perspective is no different with, to date, only a limited number of countries having made public basic information about their fishing authorisations (for example Guinea and Liberia). This is despite the fact that some RFMOs (including ICCAT and GFCM) require their contracting parties to report on an annual basis on which coastal waters their flagged vessels fish (for flag states) or who fishes in their waters (for coastal states).

⁵¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2403>

⁵² https://www.ldac.eu/images/documents/publications/LDAC_Recommendations_on_FAR.pdf

It needs also to be noted that some national companies from third countries that have weak fisheries governance, including being IUU carded by the EU (like Cameroun), are the front for vessels whose beneficial owners are European nationals. Some of these vessels fish in the same area than EU vessels, on the same resource, but without the same scrutiny. Unlike the SMEFF, that provides for collection of data on beneficial owners (and their public disclosure under specific circumstances), the third countries hosting these European owned vessels do not record, neither publish, information on beneficial owners.

The EU should promote a dialogue with African countries that fosters the development of a regulatory framework for joint venture with respect to catch (applicable to all vessels of foreign origin), processing and marketing that guarantees that joint ventures operate transparently, do not compete with artisanal fishing and contribute to the development objectives of the country in question⁵³.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Step up its engagement with other major DWF nations aiming at equivalent standards in terms of sustainable management of their fleets being applied, particularly from the sustainability and transparency perspectives⁵⁴.**
- **In the same vein as the ‘non-discrimination clause’ enshrined in SFPAs, encourage and accompany partner coastal countries in strengthening the requirements on sustainability and transparency in access conditions to their EEZ, including requirement on recording beneficial ownership information.**
- **Encourage, using all possible channels within the context of the CFP and beyond, coastal states to make public and keep up to date details of access agreements and lists of vessels licensed to fish within their waters.**
- **Similar arrangements must be set in force to guarantee a level playing field between EU and non-EU fleets in terms of reporting by flag states on the activities of their external fishing fleets (including publish and maintain up to date the list of vessels registered to their flag and lists of vessels authorised to fish outside their EEZ) not only a bilateral but also a multilateral level.**

⁵³ Vid. Recommendations LDAC Conference on External Dimension of the CFP, Las Palmas de Gran Canaria, 16-17 September 2015.

⁵⁴ Notably through high level dialogues on fisheries, bilateral dialogues in the context of the EU IUU Regulation, etc. but also at the multilateral level.

1.3.2. Internal level playing field:

There are issues with the implementation of the SMEFF which varies amongst Member States. Several cases have been reported (notably about vessels from Italy⁵⁵ and Latvia) where vessels with a fishing authorisation do not respect sustainability eligibility requirements, or conditions set up in SFPAs and the SMEFF.

On another note, the LDAC acknowledges the progress achieved with the publication of downloadable and updated lists of authorisations⁵⁶ pending the development of the Union database for fishing authorisations foreseen under Article 39 of the SMEFF. However, it notes that instances of fishing vessels actively fishing outside Union waters while not being recorded in the lists made public have been identified.

As highlighted in previous communications^{57,58}, the LDAC is of the view that ensuring effective implementation of the SMEFF is essential to preserving the credibility of the EU at advocating for similar standards –and more particularly transparency and accountability measures– across the globe.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Prioritise effective implementation of the SMEFF. In this context, the European Commission should proactively take action against Member States who fail to provide information in a timely and accurate fashion.**
- **Deliver the Union public database for fishing authorisations without further undue delay. This should be a user-friendly database that allows to find authorisations since January 17, 2018 per vessel, which is currently not possible.**
- **In the meantime, ensure that the downloadable and updated lists of authorisations contain up to date information. In this context, the European Commission could envisage requesting support from EFCA in verifying whether EU flagged vessels operating outside Union waters – particularly off the West African coast in countries with which the EU has not concluded a SFPAs – are duly included in the lists of authorisations.**
- **Facilitate public access to beneficial ownership information (limited to the name, country of residence and nationality of the beneficial owners, as well as the nature and extent of the beneficial interest held) when there is an overriding public interest in disclosure of this information in case of documented involvement in IUU fishing operations, corruption or money laundering.**

⁵⁵ <https://www.cffacape.org/news-blog/csos-complaint-about-italian-vessels-activities-in-sierra-leone-the-european-commission-is-dragging-its-feet>

⁵⁶ https://ec.europa.eu/fisheries/cfp/international_en

⁵⁷ https://www.ldac.eu/images/EN_LDAC_Letter_on_Implementation_of_EU_SMEFF_Regulation_April2019.pdf

⁵⁸ https://www.ldac.eu/images/Commission_reply_letter_Implementation_SMEFF_regulation_R.03.19.WG5.pdf

This would align the implementation of the SMEFF with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, and the fifth EU Anti-Money Laundering Directive, which provides that Member States must make the registers of beneficial owners of companies publicly accessible to any member of the general public under conditions as stipulated above.

- **Facilitate public access to information on direct authorisations under Article 17 of the SMEFF that provide evidence of the “scientific evaluation demonstrating the sustainability of the planned fishing operations, including consistency with the provisions of Article 62 of UNCLOS, as applicable” when there is an overriding public interest in disclosure of this information, such as documented participation in IUU fishing operations.**

1.4 - Sustainable fisheries partnership agreements (SFPAs)

SFPAs are based on best available science in order to target, in mixed SFPAs, the surplus of resources that cannot be caught locally. In that sense, SFPAs improve the level playing field for local coastal fisheries. SFPAs also contribute to reinforce the capacity of the partner country to manage its fish resources sustainably, through the use of sectoral support for various management and sustainable development initiatives. SFPAs aim to be transparent instruments: information about each SFPAs, their protocols, budgets and evaluations, are publicly available. In some recent SFPAs, a clause for ensuring transparency across the board (publication by the third country of the fishing agreements they have with other fleets, sharing of the list of licensed vessels, etc.) as well as a ‘non-discrimination clause’, under which the third country should offer similar financial and technical conditions to other distant water fleets have the potential, if they were applied properly, to establish an even level playing field.

However, these clauses (transparency and non-discrimination) are not fully implemented (e.g., Mauritania) as often documents are not published or not fully published by the third country. The efficiency of the sectoral support is not always maximised.

SFPAs are the perfect instrument to be used by the EU to encourage third countries to not only actively contribute to tackle IUU fishing, but also to create capacity building benefiting from support from EFCA, enhance the sustainable development of fisheries in the partner countries and promote social standards – including by providing training facilities for local fishers and setting up a mechanism to employ these well-trained fishers. This contributes to improving the global level playing field. Coherence with Free Trade Agreements (FTAs) is hereby important as FTAs may include provisions on trade and sustainable development that do focus on promoting decent work conditions and environmental protection, but often placed in a non-binding section of the Agreement. By extension, coherence and synergies with other EU actions, instruments and policies relevant to these issues (e.g., development) is equally fundamental; with an emphasis on supporting local sustainable fishing communities, particularly the promotion of the role of women.

The LDAC has notably identified the following as implementation issues related to establishing an internal and external level playing field: (i) lack of effective implementation of the non-discrimination clause; (ii) issues with reporting on all (public and private) fishing agreements with other non-EU countries operating in the EEZ of SFPAs partner countries which are particularly relevant to avoid overexploitation of stocks; and (iii) need for urgent efforts to ensure policy coherence for development, coordination and transparency across relevant EU policies and agencies to maximise the beneficial outcomes under SFPAs, and for action from SFPAs partner countries, including in terms of participation and data reporting at RFMOs. The EU evaluation methodology is revised to allow a better understanding of local fisheries development dynamics, to ensure efficient actions – which are key to the sustainable development of fisheries in partner countries – are pursued through SFPAs.

It needs also to be noted that SFPAs include an article promoting cooperation between fishing operators of both parties, including under joint ventures, but without stipulating the conditions for such joint ventures to be sustainable. In many partner countries, the context for the establishment and for controlling the operations of such enterprises set up with foreign companies is weak and opaque.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Building on the recommendations formulated in the previous section relating to the SMEFF which the LDAC believe relevant, strive to achieve effective implementation of the transparency and non-discrimination clauses by and in SFPAs partner countries, further accompanying them in that endeavour.**
- **Ensure coherence of EU trade agreements with SFPAs when it comes to provisions on fundamental international instruments of human, labour and social rights to ratify and to be implemented by the third country⁵⁹.**
- **Ensure that SFPAs enhance the sustainable development of fisheries in the partner countries through coherence and synergies between the use of sectoral support and other relevant EU actions, instruments and policies (e.g., development cooperation). In some cases, like providing training facilities for local fishers and setting up a mechanism to employ these well-trained fishers on board EU vessels, more efficient actions under sectoral support would benefit both local and EU vessel owners.**
- **The EU should increase efforts in cooperation with its partners to further promote decent work in the maritime sectors, such as the build-in of flag State measures under Article 94 of UNCLOS within SFPAs. Besides, the implementation of the social clause of SFPAs should be given more consideration and should be better evaluated.**

⁵⁹ Vid. Reference: LDAC letter on the proposal to improve observance of and compliance with International Law rules in terms of human, labour and social rules in terms of human, labour and social rights applicable to workers in the fishing sector. https://ldac.eu/images/documents/publications/Recommendations_for_enhancing_Protection_of_Human_Labour_and_Social_Rights_applicable_to_workers_in_the_fishing_sector.pdf

1.5 - Fisheries Subsidies

Global fisheries subsidies are estimated to range from EUR 11 billion to EUR 44 billion per year⁶⁰. In the EU, the European Maritime and Fisheries Fund (EMFF now EMFAF for European Maritime Fisheries and Aquaculture Fund) is the fund for the EU's maritime and fisheries policies. Over the period 2014-2020, the EMFF had an overall budget of EUR 6,4 billion notably designed to promote promoting competitive, environmentally sustainable, economically viable and socially responsible fisheries and fostering the implementation of the CFP without resulting in an increase in fishing capacity^{61,62}. For the next long-term EU budget 2021-2027, the European Commission proposed a EUR 6.1 billion fund for European fisheries and the maritime economy⁶³.

A study prepared for the European Commission in 2016 identified that, outside the EU, China, the US and South Korea have the highest absolute value of subsidies. In all three countries, over 95% of the subsidies are dedicated to the catching subsector⁶⁴. Catching subsidies per tonne of catch were identified as highest in South Korea, the US and Japan. The study further identified that data reporting for subsidies value is generally poor.

In line with SDG 14.6, the members of the World Trade Organization (WTO) were meant to have adopted by the end of 2020 an agreement on comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing. Mid-December 2020, the WTO announced that its members missed the 2020 deadline but that they "aim to build on the momentum achieved [in 2020] during fisheries subsidies negotiations and forge an agreement early in 2021"⁶⁵. The LDAC believes it is important that WTO members eventually meet their international commitments by concluding such an agreement in 2021.

1.5.1 External level playing field:

As highlighted in the European Commission's White Paper on levelling the playing field as regards foreign subsidies⁶⁶, "openness to trade and investment is part of the economy's resilience, but it must go hand in hand with fairness and predictable rules". Foreign subsidies can create market distortions and undermine the level playing field. They can also jeopardize our capacity to collectively meet the SDGs. Hence, the importance for WTO members to conclude, at the earliest, the negotiations aiming at forging an agreement on fisheries subsidies capable of delivering on SDG 14.6. In this context, and in view of the importance of protecting fish resources on which developing countries fishing communities depend for their livelihoods, special and differentiated (S&D) treatment needs to be appropriate and equitable, and must not undermine the discipline effectiveness. However, key prohibitions for certain subsidies should apply to all cases, in particular the elimination of subsidies which contribute to IUU fishing.

⁶⁰ https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_intro_e.htm

⁶¹ https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/2015-cfp-funding_en.pdf

⁶² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0508>

⁶³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2018:390:FIN>

⁶⁴ <https://op.europa.eu/en/publication-detail/-/publication/45f78bf8-d24b-11e6-ad7c-01aa75ed71a1>

⁶⁵ https://www.wto.org/english/news_e/news20_e/fish_14dec20_e.htm

⁶⁶ https://ec.europa.eu/competition/international/overview/foreign_subsidies_white_paper.pdf

The generally poor reporting for foreign subsidies previously mentioned adds an extra layer of challenge. Global transparency on subsidies must be achieved but the LDAC agrees that this should not be overly burdensome nor increase complexity for developing countries with capacity constraints, especially LDCs. However, no country should be exempted from transparency-related requirements. As such, specific issues could be addressed under technical cooperation.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Continue leading discussions in the WTO on finding, as soon as possible in 2021, an agreement on fisheries subsidies capable of delivering on SDG 14.6.**
- **For developing countries to benefit from exemptions to ensure they can develop their local fisheries under S&D treatment, the EU should support and encourage them to allocate public funds to initiatives that will increase their capacities to manage their fisheries sustainably (e.g. research, MCS) and maximise the social (e.g. contribution to job creation, food security) and economic benefits from their fisheries exploitations (e.g. landing infrastructure, basic services in coastal areas, etc). In that context, the EU should insist that a condition to be respected is the necessity for developing countries to have a management plan to ensure sustainable levels of exploitation of the resources prior to providing any type of capacity enhancing subsidies under S&D treatment.**
- **Ensure that the agreement reached guarantee that no governments can grant or maintain any subsidies to vessels and operators engaged in IUU fishing.**
- **Strive to achieve improved transparency on subsidies disbursed globally (including programme name, legal basis and granting authority, level of support, type of activity supported and objective, and identity of the recipient). All relevant information should be compiled in an open and user-friendly database or IT platform. In this context, use the EU funding system in international fora as an example, particularly in terms of reporting and transparency.**
- **Give fisheries adequate attention in the formulation of the future legislative initiative on foreign subsidies ('levelling the playing field')⁶⁷. In this context, develop tools that will allow to detect and address possible distortions caused by foreign subsidies and contribute to effectively meeting SDG 14.6 globally.**

1.5.2. Internal level playing field:

As we enter the next Multiannual Financial Framework (MFF 2021-2027) and new European Maritime Fisheries and Aquaculture Fund (EMFAF 2021-2027) timeframe, it is essential that their implementation, and particularly that of EMFAF, align with the Union's international commitments in the field of ocean governance, especially in the context of the 2030 Agenda for Sustainable Development.

⁶⁷ https://ec.europa.eu/info/sites/info/files/2021_commission_work_programme_annexes_en.pdf

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Ensure the consistency of the fisheries subsidies-related policies adopted at home with applicable strengthened international rules and other Union's policies, especially environmental, climate, cohesion, social, market and trade policies.**
- **Secure that access to funds is effectively conditional upon the compliance of Member States and operators with the admissibility and eligibility conditions of the CFP, in particular those relating to budgetary control obligations and the rules against IUU fishing.**

1.6 - Regional Fisheries Management Organisations and Arrangements (RFMO/As)

An extensive regulatory framework has been developed in the last decades stemming from both the EU and international organisations such as the UN and FAO to promote a level playing field in the field of sustainable use of fisheries' resources including fight against destructive practices such as IUU fishing. In order to guarantee compliance with the international norms, and further regulate the use of marine and fishing resources within certain areas, international bodies such as the Regional Fisheries Management Organizations (RFMOs) and other arrangements such as the Regional Seas Conventions (RSC) or multilateral organisations were created.

RFMOs have powers to adopt binding legislative measures for the Parties (both 'Contracting' and to a lesser extent 'Non-Contracting' ones) to the organisation in the field of conservation and management measures (CMMs) dealing with fisheries stocks within their geographical and/or material scope. An ecosystem approach to fisheries has also been developed in recent years to look at the trade-offs and interactions between fish stocks dynamics and habitats features with a view to protect biodiversity and prevent overfishing.

However, RFMOs still present important shortcomings in the adoption and implementation of effective measures relying heavily on consensus-based decisions and therefore political will from flag, coastal, port and market states. Some of these shortcomings have been identified in several studies and performance reviews⁶⁸. In this respect, it must be noted that RFMOs are the only international organisations which are regularly subject to regular performance reviews (e.g., NAFO or IATTC have already gone through this process twice in the last 10 years) with the aim to address the shortcomings and adopt remedial measures within their multi annual strategic work plans through measurable indicators.

In terms of science, the LDAC acknowledges that EU proposals to RFMOs are based on robust and reliable scientific data. In the contrary, data deficiencies and misreporting are most commonly found in those areas where there is an absence of an RFMO, such as those demersal and small pelagic fisheries in West African; or hake and squid fisheries caught by non-EU fleets in the Southwest Atlantic (FAO 41).

⁶⁸ https://wwfeu.awsassets.panda.org/downloads/rfmo_report_en_may2019.pdf

In terms of MCS, all RFMOs count within their governing structure permanent control and compliance committees analysing breach of action or infringements by vessels – and are able to ask for liability or redress to their flag states which are Contracting Parties. As highlighted by most of the relevant RFMOs committees MCS/compliance-related data reporting (including on infringements) and implementation of applicable CMMs in this area remain perfectible and are uneven amongst RFMOs Parties. This also applies to justifications provided at the relevant committees. This uneven level of implementation of existing obligations⁶⁹ is therefore susceptible to directly undermine the effectiveness of adopted CMMs.

In terms of transparency and participation of different actors, RFMOs are generally an example of good governance as they ensure adequate and meaningful participation not only of their Parties but also of non-Parties and registered observers, including key fisheries stakeholders (sector and NGOs). This requires effective consultation procedures and informal technical coordination meetings, open access to information and transparency in deliberations in plenary annual meetings for issues not subjected to confidentiality.

The main challenge for achieving a sustainable use of marine resources worldwide in the future is directly linked to the importance of further strengthening an effective and verifiable level playing field: if economic actors and states do not comply with the same basic rules, sustainability in its three dimensions cannot be achieved – fisheries will not be neither environmentally sustainable, economically viable, nor socially equitable. Thus, checks and balances within RFMO constituent bodies coupled with effective monitoring, compliance and sanctioning mechanisms within the already existing international framework must be reinforced.

The LDAC supports the opening statement made by the European Union on its contribution to the UNGA ICSP-14 that *“the RFMO/As are key instruments to ensure the states can meet their obligations under international law regarding cooperation for the conservation and sustainable management of shared stocks. In this regard, RFMO/As are an essential part of the international legal architecture to ensure the long-term conservation and sustainable management of highly migratory and straddling fish stocks as well as associated and dependent species”*.

For those areas where RFMOs do not exist, the EU is encouraged to continue promoting the constitution of new RFMOs or other regional arrangements, in particular for managing sustainably shared stocks like the small pelagic and demersal stocks in West Africa; the Arctic; or the Southwest Atlantic; amongst others.

In relation to West African small pelagic fisheries both in high seas and within the EEZs of coastal states, the LDAC acknowledges the publication of the EU in 2021 of a study on analysing the legal and financial constraints and challenges for turning CECAF into an RFMO. In this sense, an adequate governance framework with a list of competencies and a solid organisational structure is desirable. An example in this field is the ATLAFCO/COMHAFAT study and report published in 2020⁷⁰.

⁶⁹ E.g. Prohibition of large scale pelagic drift nets operating in the Indian Ocean (cf. https://www.ldac.eu/images/LDAC_Position_drifnets_Indian_Ocean_5March2021FINAL.pdf), report of transshipments at sea of tuna fisheries by Asian longliners of tuna fisheries or implementation of naturally attached fins policy for sharks in ICCAT, re-flagging of IUU-listed vessels by flags of convenience as highlighted during the work to be carried out in lieu of the 22nd Special Meeting of ICCAT, etc.

⁷⁰ https://ldac.eu/images/Report_COMHAFAT- RFMO_Sept_2020.pdf

For the Southwest Atlantic, the present political tensions and disputes between Argentina and the United Kingdom over sovereignty around Falklands/Malvinas, invite to think on looking for interim alternative arrangements such as the revamping of the South Atlantic Fisheries Commission (SAFC), an existing forum created to exchange information on marine living resources, and for the discussion and implementation of measures to improve conservation of commercial fish stocks in the area.

The LDAC issued advice in December 2018⁷¹ containing a number of recommendations linked to the performance and functioning of the RFMOs in line with the mandate given by UNCLOS and developed by UNFSA. It also included recommendations relevant to establishing a level playing field⁷².

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the European Commission, to:

- **Foster dialogue and work within RFMOs towards harmonization of access agreement conditions between coastal and flag states in the management and resource allocation of straddling stocks.**
- **In order to fight IUU fishing and enhance transparency, ask RFMOs to follow the best practices of ICCAT and GFCM in creating a public annual reporting system for all access agreements. To require that coastal states report on foreign-flagged vessels fishing in waters under their jurisdiction for species managed by that RFMO, and from flag states whose vessels fish in waters under the jurisdiction of another member for species managed by that RFMO.**
- **Contribute to establish regional coordination mechanisms, based on dynamic exchange of information in the spirit of the “Kobe process” for tuna RFMOs, must be set up to ensure consistency of applicability of measures related to cross-cutting issues⁷³ within the caveat of their regulatory frameworks.**
- **Showcase RFMOs as “testing laboratory” to promote a regional approach to MCS, through the coordination and setup of regional observer programmes at sea (such as the one for bluefin tuna in ICCAT or transshipments in IOTC) and port control and inspections schemes (for example, NAFO resolution supporting implementation of FAO PSMA).**
- **In terms of transparency, propose to carry out a benchmark exercise between performance reviews within RFMOs to verify alignment with the UNCLOS provisions and related instruments such as UNGA Resolutions of Sustainable Fishing. They might also promote the exchange of good practices amongst RFMOs and other bodies on issues of shared interest.**

⁷¹http://ldac.eu/images/documents/publications/LDAC_Recommendations_on_EU_Role_in_International_Fisheries_Governance_December2018.pdf

⁷² **Annex II** presents a Comparative table of FADs and technical measures for tuna RFMOs

⁷³ E.g. Scientific research, measurement and control of fishing capacity, research and management of FADs, improve MCS and fight against IUU fishing.

- **Defend the role of RFMOs in reinforcing mechanisms to fight against IUU fishing, such as collaborative work on information exchange regarding IUU vessels lists, submission of information to the FAO Global Record of Fishing Vessels or the compulsory allocation of IMO numbers for distant water fishing vessels.**
- **Continue efforts to expand the requirement in RFMOs for states to verify and take appropriate action when nationals are found to be otherwise benefiting from or supporting the activities of IUU vessels through for example, the provision of services. These measures are also in line with Article 39 of the EU IUU Regulation. Furthermore, CCAMLR, SPRFMO, SIOFA and GFCM have recently adopted such measures upon proposal by the EU.**
- **Table and support proposals in RFMOs aiming at improved transparency standards, particularly regarding the beneficial ownership of vessels, potentially taking as a starting point the example of the IOTC which adopted, in 2019, a conservation and management measure mandating states to submit information on beneficial owners of authorised vessels.**
- **Continue actively promoting the constitution of new RFMOs or other regional arrangements where they do not exist, in particular for managing sustainably shared stocks like the small pelagic and demersal stocks in West Africa; the Arctic; or the Southwest Atlantic; amongst others.**
- **Promote research (through studies, establishment of working group) on the socio-economic impacts of resources exploitation, on coastal communities, local job creation, food security⁷⁴.**

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https://ldac.eu/images/documents/publications/LDAC_Recommendation_on_ToR_for_IOTC_WG_on_SocioEconomics_and_Labour_aspects_of_fisheries.pdf

CHAPTER II: Trade policies

2.1 - Sustainable Development in trade arrangements

The LDAC acknowledges the three core objectives of the EU's trade policy for the medium term: (i) supporting the recovery and fundamental transformation of the EU economy in line with its green and digital objectives; (ii) shaping global rules for a more sustainable and fairer globalisation; and (iii) increasing the EU's capacity to pursue its interests and enforce its rights, including autonomously where needed.

The LDAC particularly welcomes that strengthening the EU's focus on implementation and enforcement of trade agreements, and ensure a level playing field; promoting responsible and sustainable value chains; and strengthening the EU's partnerships with neighbouring, enlargement countries and Africa are included in the six areas that are critical to achieving the EU's objectives in the medium term⁷⁵.

2.1.1 - Sustainable development in GSP arrangement

The EU's Generalised Scheme of Preferences (GSP) grants unilateral tariff preferences to developing countries as a means of supporting their economic and social development, as well as promoting human rights, employment standards, sustainable development and good governance practices. The preferential tariff allows developing countries to pay fewer or no duties on exports to the EU. The current EU regulation that governs the EU's GSP came into force on 1 January 2014 and will expire on 31 December 2023⁷⁶. The preparatory work needed to allow the European Commission to decide on the future of the scheme post-2023 is on-going⁷⁷.

The current scheme consists of the following three arrangements: the standard GSP, GSP+, and EBA ("Everything but Arms")⁷⁸. These arrangements offer different levels of tariff incentives corresponding to differing development needs and circumstances of developing countries. The GSP+ is a special incentive arrangement for sustainable development and good governance. It grants preferential market access to countries that meet economic criteria and that have ratified and implement 27 specific international conventions on human and labour rights, environmental protection and good governance⁷⁹.

To date, eight third countries benefit from the GSP+ status⁸⁰. Three of these are of particular interest to the LDAC as fisheries products rank amongst their products that benefit the most from the GSP+ (namely Cabo Verde⁸¹, the Philippines⁸² and Sri Lanka⁸³).

⁷⁵ https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf

⁷⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R0978-20200812>

⁷⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2136-Towards-the-future-Generalised-Scheme-of-Preferences-legal-framework-granting-trade-advantages-to-developing-countries>

⁷⁸ <https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>

⁷⁹ <https://trade.ec.europa.eu/tradehelp/gsp>

⁸⁰ https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157889.pdf

⁸¹ <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-18-F1-EN-MAIN-PART-1.PDF>

⁸² <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-24-F1-EN-MAIN-PART-1.PDF>

⁸³ <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-25-F1-EN-MAIN-PART-1.PDF>

The LDAC acknowledges that the GSP+, and to a greater extent the EU's GSP, has contributed to the promotion of sustainable development as highlighted in the report from the European Commission to the European Parliament and the Council on the application of Regulation (EU) No 978/2012⁸⁴ and wishes to express support to this tool as one to foster sustainable development.

The LDAC nonetheless wishes to highlight the importance it attaches to the scheme being implemented also in a way that protects the interests of the Union sector through ensuring an external level playing field. In respect of fisheries products, this should translate into imported products meeting the same standards that apply to EU fisheries products, particularly from a social and environmental perspective. The LDAC wishes to stress that it would not be acceptable that countries associated with phenomena such as IUU fishing, human rights violations and labour abuses, and that do not take sustained concrete steps to address them within a reasonable time frame and, where appropriate, with support from the EU, benefit from tariff preferences. This applies to the GSP+ as well as the standard GSP and EBA. Such a situation would not only be non-compatible with EU's values but also put at unfair disadvantage operators who adhere to the highest standards which come with costly requirements.

In this context, the LDAC is concerned with the findings made vis-à-vis the Philippines in the report on the GSP covering the period 2018-2019⁸⁵. These indicate that, although the country made some progress in improving the implementation of international labour standards, some important challenges remain and efforts to ensure better and effective enforcement of legislation need to be strengthened, in particular vis-à-vis human trafficking and exploitation/forced labour and the protection of migrant workers⁸⁶. Similar findings had been made in previous reports.

And while neither Cabo Verde, the Philippines nor Sri Lanka are currently under a so-called 'yellow card' or 'red card' imposed under the EU IUU Regulation, the LDAC wishes to recall that the Philippines was added to the list of third countries benefiting from the GSP+ status⁸⁷ prior to the lifting of a yellow card⁸⁸. Although the European Commission clarified that the GSP+ and EU's policy against IUU fishing are governed by "unrelated legal instruments with different policy objectives"^{89,90}, the LDAC wishes to insist on the importance of policy consistency. Similarly, the LDAC notes with concern the alleged cases of IUU fishing involving Sri Lankan vessels in the Indian Ocean⁹¹.

In this respect, the LDAC notes that the current list of 27 international conventions to be ratified and effectively implemented to benefit from the GSP+⁹² largely ignores the legal instruments governing the management of fisheries resources although fish stocks are essential to biodiversity and sustainable development, and fisheries products are amongst the highest traded food commodities with the EU being the world's largest net importer.

⁸⁴ https://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157438.PDF

⁸⁵ https://ldac.eu/images/documents/publications/LDAC_Advice_GSPon_Review_of_Trade_Agreements_Case_of_Philippines.pdf

⁸⁶ <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-24-F1-EN-MAIN-PART-1.PDF>

⁸⁷ https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155839.pdf

⁸⁸ https://ec.europa.eu/fisheries/sites/fisheries/files/illegal-fishing-overview-of-existing-procedures-third-countries_en.pdf

⁸⁹ https://www.europarl.europa.eu/doceo/document/E-8-2014-005847-ASW_EN.html?redirect

⁹⁰ https://www.europarl.europa.eu/doceo/document/E-8-2014-006591-ASW_EN.pdf

⁹¹ <https://iotc.org/documents/draft-2021-indian-ocean-tuna-commission-iuu-vessels-list>

⁹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1500986680646&uri=CELEX:32012R0978>

Notwithstanding the fact that, in accordance with Article 19(1)(e) of Regulation (EU) No 978/2012, “serious and systematic infringement of the objectives adopted by regional fishery organisations or any international arrangements to which the Union is a party concerning the conservation and management of fishery resources” can lead to, in theory, temporary withdrawal of tariff preferences, the LDAC is concerned and found it contradictory that countries not meeting the standards set by those legal instruments can benefit from preferential market access due to the legal instruments governing the management of fisheries resources being currently largely ignored.

In the context of the on-going preparatory work needed to allow the European Commission to decide on the future of the scheme, the LDAC had the opportunity to bring forward recommendations which it considers could improve the EU’s GSP⁹³. In this opinion, the LDAC wishes to formulate synthetic recommendations targeted at addressing the issue of sustainable development in the fisheries sector through the implementation of the GSP+.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the EC, to:

- **Include to the list of international conventions and agreements that GSP+ beneficiary countries are required to ratify and effectively implement nine additional relevant international legal instruments⁹⁴.**
- **Demand effective implementation of the 27 GSP+ legal instruments and the abovementioned additional ones by the beneficiary third countries and ensure effective implementation through close, inclusive and transparent monitoring of the situation in these countries.**
- **Provide appropriate support, through a transparent and accountable mechanism, to the beneficiary third countries to accompany them in meeting these commitments.**
- **Where sufficient information indicates that a beneficiary country is violating core human and/or labour rights, or the principles laid down in the relevant international conventions related to the protection of the environment and good governance, engage, immediately, with the country to swiftly remedy the situation.**
- **Should the beneficiary country fail to engage and to swiftly remedy any such situation, make prompt and full use of all existing mechanisms to redress the situation, including the withdrawal of tariff preferences. Similarly, the LDAC recommends to the European Commission to make full use of the provisions under Article 19(1)(e) of Regulation (EU) No 978/2012.**
- **Ensure consistency of the EU’s GSP policy with the other relevant EU’s policies, including the EU’s policy against IUU fishing.**

⁹³ https://www.ldac.eu/images/LDAC_Advice_Response_EC_Questionnaire_GSP_2020_25May2020.pdf

⁹⁴ United Nations Convention on the Law of the Sea (UNCLOS); United Nations Fish Stock Agreement (UNFSA); FAO Compliance Agreement (CA); FAO Agreement on Port State Measures (PSMA); United Nations Convention against Transnational Organized Crime and the Protocols Thereto (UNTOC); ILO Work in Fishing Convention No.188 (ILO C188); International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F 1995); Cape Town Agreement on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels; and Paris Agreement.

2.1.2 - Other trade arrangements

In addition to the GSP, EU seafood imports can benefit from tariff preferences under other arrangements negotiated with third countries (e.g., FTAs and (interim) Economic Partnership Agreements). The concept of level playing field does not imply that all states have adopted exactly the same legal framework along the value chain for seafood products, however it requires a minimum of fundamental standards. This is even more important for trade relations between partners who are comparable in terms of economic power, e.g., between countries that are considered high or upper middle-income countries according to the World Bank⁹⁵. The EU is at the forefront of numerous questions such as high working standards, environmental protection, sustainable use of natural resources or the ecological transition in a broader sense. The whole package of the Green Deal aims to transform the European economy, but this means that economic operators will have costs of adaptation and probably also more operational costs in the future. For the sake of promoting and effectively implementing all SDGs, the EU must assure that not only its own actors increase their efforts, but also its trading partners, and specifically those with similar economic characteristics as described above. In the case that the EU allows imports of third countries with significantly lower requirements, it not only endangers the achievement of a greener economy worldwide but also risks the weakening of the European seafood business, and eventually employment.

FTAs include chapters on sustainable development, but these should be reinforced and address specific fishery concerns such as the requirements of the IUU Regulation. FTAs should also incorporate a binding dispute settlement mechanism (that includes government-to government consultations, a panel procedure, public access to documents and the consultation of civil society), accompanied by the possibility of applying sanctions in case of non-compliance with the third countries international commitments.

It is recalled that the LDAC published an opinion on ATQs for tuna loins in July 2020 to inform the preparation of the set of ATQs that replaced those established under Council Regulation (EU) 2018/1977⁹⁶. This opinion contained a set of recommendations to the European Commission and a minority position⁹⁷.

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the EC, to:

- **Assure that not only its own actors increase their efforts, but also its trading partners, and specifically those with similar economic characteristics.**
- **Reinforce chapters on sustainable development in FTAs and address specific fishery concerns.**
- **Incorporate into FTAs a binding dispute settlement mechanism accompanied by the possibility of applying sanctions in case of non-compliance with the third countries international commitments.**

⁹⁵ Vid the following page of the World Bank: <https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html>

⁹⁶ Repealed by Council Regulation (EU) 2020/1706 of 13 November 2020.

⁹⁷ https://www.ldac.eu/images/EN_LDAC_Opinion_on_ATQ_for_Tuna_Loins_2021-2023_R.10.20.WG1.pdf

- Ensure that negotiations on reciprocal free access to waters, ports, business ownership, investments and services are not separated from negotiations on reciprocal free trade.
- Secure the need to level the playing field between European industries that implement ambitious climate, environmental, ecological and social standards, and those trade partners that do not pursue the same high standards.

Where import duties need to be suspended or reduced for fishery products to ensure that there is an adequate supply to the Union's market, ensure fair competition between imported fishery products and Union fishery products by taking into consideration the impact of the measures on the competitiveness of Union fish producers and ensure they respect Europe's high norms and standards in sensitive sectors & human rights.

2.2 - Other import-related considerations: food safety and sustainability standard requirements

According to EU regulations imports are subject to control schemes, among others, sanitary and customs control before being introduced into the Union territory and, if applicable, have to pay the corresponding tariffs.

In 2017, the European Court of Auditors published the special report No. 19/2017 with the title "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU"⁹⁸. In this report, the Court of Auditors notes that they "(...) found serious weaknesses indicating that there are shortcomings in the customs legal framework as well as an ineffective implementation of customs controls on imports and this adversely affects the financial interests of the EU". Several activities were identified, such as "(...) (a) undervaluation, i.e., when the importer declares a value of imported goods which is lower than the actual value, often accompanied by the presentation of fake commercial documents; (b) misdescription of origin, where the importer declares a false country of origin of the imported goods; (c) misclassification, by shifting to a product classification with a lower duty rate; or (d) a combination of the above".

These kinds of practices not only have negative impacts on the European treasury, but also on the level playing field: importers following such practices seek a commercial advantage towards their European competitors and those who comply with the norms since they can introduce their products on the Community market with less costs.

As an example, the International Labour Organization (ILO) has pointed out that in the fishing industry, the salaries of workers represent between 30% and 50% of the operating costs, which is why, in many regions of the world, there are operators who try to reduce labour costs through harmful or unlawful practices⁹⁹. EU efforts to make fishing sustainable and socially responsible are incompatible with importing products from certain countries that show little concern for sustainability and social accountability.

⁹⁸ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=44169>

⁹⁹ ILO (2016), Fishers First. Good practices to end labour exploitation at sea, International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), Sectoral Policies Department (SECTOR) - Geneva: ILO, p. 12

Ensuring uniform customs application and identical customs controls between all Member States is essential to prevent third-country operators from using entry points in the internal market with fewer controls to introduce non-compliant merchandise or to avoid paying the corresponding duty. It is important to ensure a level playing field not only at the international level, but also among the Member States themselves.

On another note, information on the country of origin or provenance is of increasing importance to consumers, however existing legislation permits to combine different origin and provenance in processing lines without prejudice to the obligation to declare the origin or provenance of the raw material except under the new Regulation 2018/775 which aims at preventing misleading food information by addressing the case where the labelled origin or provenance of the food is not the same as origin or provenance of the main ingredient. Additionally, prepared, processed and preserved fishery products are exempted from mandatory origin provisions (Article 35 of Regulation (EU) No 1379/2013).

Moreover, according to the DG MARE, the freshness and size marketing standards apply to 75% of EU landings, but to less than 10% of imports (excluded filets and frozen fish), hereby again indicating an unlevel playing field for the EU fishing fleet. Firstly, among EU and non-EU producers, and secondly among the EU catching industry and processors as the first have to declare relevant information that must accompany the fish lot throughout all the stages of the value chain to the final delivery in destiny, including the fishing trip, flag state, and fishing area, which are mandatory to include on the product label for fresh and frozen products, not for processed products. Of course, the LDAC understands there is a need to consider and evaluate the operational issues that a mandatory change would create before implementing any change in the current legislation.

The EU fishing fleet has to compete with the products offered by third country fleets, which could offer their fishery products at a lower price, even more in the case of applicable preferential trade agreements or ATQs, being a free market. Namely, the EU fishing fleet is complying with the highest standards for the benefit of environmental, social, and economic sustainability, which are often costly requirements. This unbalance of standards between EU and non-EU fishing vessels deprives the industry from a level playing field and might have indirect implications in relation to information to consumers. This is in contradiction with a key objective of the Customs Unions, the Common Commercial Policy, and the CFP, which is to ensure an equitable internal market and fair competition, regardless of the product's origin.

When exporting, more than 50% annually according to EUMOFA¹⁰⁰, the same issue occurs, the fishing industry often has to compete with non-EU operator, including on prices. Subsequently, high quality and sustainable EU fishery products are not reaching only EU consumers as the EU producers aim to sell at better prices, which they will try to find at a non-EU market.

¹⁰⁰ Vid. Point 2.1, The EU Fish Market 2020 edition,
https://www.eumofa.eu/documents/20178/415635/EN_The+EU+fish+market_2020.pdf/fe6285bb-5446-ac1a-e213-6fd6f64d0d85?t=1604671147068

Furthermore, among Member States, unequal conditions occur when controlling the imports of fisheries products. Not all Member States perform sufficient controls, especially when it comes to customs controls. Hereby creating not only an imbalance among Member States when it comes to the control of their products in comparison with non-EU products, but also the sustainability and food safety cannot be guaranteed for the EU consumers. Even more so considering that third countries may determine the list of approved establishments but not always carry out effective control of their establishments.

The LDAC also believes that the F2F has some relevance to this section. Although the strategy ignores almost completely seafood production, several of its commitments could prove invaluable for promoting sustainable fisheries through trade. Its commitment to focus international cooperation on innovation, with particular reference to fair value chains, is key. In its implementation, more attention should be given to supporting socially and environmentally sustainable fisheries value chains in third countries, including promoting decent working conditions, improved processing strategies to diminish post-harvest losses, etc.

In parallel, we welcome the announcement that a legislation will be developed to prevent imports associated with human rights violations. When looking at EU seafood imports, two cases of human rights violations can notably be highlighted: the imports of fishmeal and fish oil from West Africa that threaten the right to food of African populations; the violations of labour rights by some third countries fishing fleets, aquaculture production and processing plants that supply fish products for the EU market.

As the EU market is the most important and lucrative market for fish products globally, a future legislation that would ensure products placed on the EU market are free from human rights violations, as suggested by the F2F, would be an opportunity to address these concerns in the EU, but also to lead the way in global fisheries.

In light of the above and in line with the EU Biodiversity Strategy and the related F2F Strategy aiming a move towards even higher sustainability standards, the abovementioned consequences of an uneven level playing field should be put to a halt.

Recommendations:

The LDAC would like to make the following recommendations to the European Commission, to:

- **Develop an EU list of reliable third countries for trade based on the comparison with the EU standards for the three pillars of sustainability and food safety, and their control.**
- **In the context of the implementation and enforcement of the legislation in the area of food safety of fishery products intended for export to the EU, and more particularly as regards audits in third countries and the maintenance of lists non-EU countries authorised establishments, continue ensuring close coordination between the Directorate-General for Health and Food Safety (DG SANTE) and DG MARE to ensure the coherence of their respective policies (i.e. food safety, anti-IUU fishing, SFPAs, etc.), and exploring further possibilities for improved coordination.**
- **Complete the procedure of revision of EU Marketing Standards Regulations for fishery products (Reg. 2406/96, Reg. 2136/89, Reg. 1536/92) in accordance with the new requirements and objectives set in the CFP, as well as the Biodiversity and F2F strategies. The objective should be to contribute to achieving the same level playing field for imports and EU products.**
- **Ensure that, the development of the new legislation to prevent imports associated with human rights violations in the context of the implementation of the F2F takes full consideration of human rights violations that take place in the fisheries and aquaculture sectors of third countries from which the EU imports seafood products.**

CHAPTER III: International instruments related to social aspects (including labour rights)¹⁰¹

3.1 - ILO/IMO/FAO

As previously highlighted, in today’s production models wage costs can represent even more than 60% of the total production costs for a good or service; in maritime fisheries, wages constitute between 30 and 50% of total operating costs¹⁰². This can lead to situations where irresponsible producers – in all sectors and all over the world – try to reduce labour costs in the detriment of the security, health or dignity of workers. SDG 8 “Decent work and economic growth” includes specific targets about minimum standards for all workers such as to eradicate forced labour. Minimum standards for workers are not only essential from a social justice perspective but are also beneficial for competition: in an open and globalized economy, fundamental decent working conditions must be guaranteed in order to prevent social dumping and undermine a level playing field doing harm to workers. Social policies are by no means internationalized and there are huge differences, even within the EU.

<p>The LDAC recalls that social policies are key to deterring forced labour and abuses in fisheries and provide a level playing field for work in the sector within the EU and at global level. The benchmark for an international level playing field regarding working conditions, therefore, should be international instruments such as the internationally broadly recognized eight fundamental conventions and four governance conventions of the ILO listed hereunder:</p> <p style="text-align: center;">Fundamental conventions</p>	<p style="text-align: center;">Governance conventions</p>
<ul style="list-style-type: none"> - Forced Labour Convention, 1930 (No. 29) + Protocol of 2014 to the Forced Labour Convention, 1930 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Equal Remuneration Convention, 1951 (No. 100) - Abolition of Forced Labour Convention, 1957 (No. 105) -Discrimination (Employment and Occupation) Convention, 1958 (No. 111) 	<ul style="list-style-type: none"> - Labour Inspection Convention, 1947 (No. 81) - Employment Policy Convention, 1964 (No. 122) - Labour Inspection (Agriculture) Convention, 1969 (No. 129) - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

¹⁰¹ **Annex III** presents a case study on labour abuses and human rights violations in Vietnam, a third country that has signed a trade agreement with the EU.

¹⁰² ILO (2016), Fishers First. Good practices to end labour exploitation at sea, International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), Sectoral Policies Department (SECTOR) - Geneva: ILO, p. 12

- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

The specific working conditions on board of fishing vessels have been recognized by the EU¹⁰³, and therefore should be taken into consideration in relations with third countries. The following sector specific conventions are of utmost importance:

- IMO Cape Town Agreement 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (as amended)
- IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F)
- ILO Work in Fishing Convention, 2007 (C188)¹⁰⁴

Beside the aforementioned instruments, it should be remembered the duties of flag states according to Article 94 UNCLOS, which lays down that flag states must adopt measures for ensuring safety at sea including vis-à-vis/through administrative, technical and social matters.

Recommendation:

In view of the above, the LDAC would like to make the following recommendations to the EC, to:

- **Call on EU Member States to fully comply with the provisions laid down in the aforementioned international treaties.**
- **In its relations with third countries, urge them to have ratified the treaties, encourage them to their correct implementation in a way that can be demonstrated.**
- **At least at EU level, the compliance with the requirements and standards laid down in Council directive 2017/159 on the implementation of the Social Partners' agreement on the ILO C188 should be guaranteed. To this end clearly defined standards are necessary in the market in order to ensure that the EU market is supplied with sustainable products, that uniform and transparent criteria are applied throughout the single market, that fair competition is guaranteed and the profitability of the EU production is improved.**¹⁰⁵

¹⁰³ Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, DO L 113, 30.4.1992,

https://ldac.eu/images/Directive_92_29_safety_and_health_on_board.pdf

¹⁰⁴ COUNCIL DIRECTIVE (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives 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), OJEU L25/12, 31.1.2017

https://ldac.eu/images/EN_Council_Directive_EU_2017_159_Implementation_Agreement_Work_Fishing_Convention.pdf

¹⁰⁵ MAC advice on LFP (July 2019) – page 3:

- **For ethical and moral reasons and of fairness in competition, all states that intend to export their fishery products to the EU must have ratified, be in the process of ratification or have national legislation equal to the main international social conventions to ensure a level playing field, particularly the ILO C188. This is allowed under WTO since its Member States have the right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment.**

3.2 Other issues

In addition to the above, the LDAC is concerned by the lack of transparency about the size and vessel registration of certain fishing fleets, especially in Asia¹⁰⁶, and particularly concerned by the abuse of migrant fishermen on-board certain Asian fishing vessels^{107,108}, which includes cases of modern slavery and burials at sea of fishermen who, allegedly, fell victim to COVID-19¹⁰⁹, in violation of contractual arrangements (see also **Annex III**). Similarly, the LDAC deplores the risks for observers on board in certain Asian fishing fleets, considering that seven observers from the Pacific Island Countries were found dead on board in the last five years¹¹⁰.

As previously highlighted, the LDAC recalls that the ILO C188 is key to deterring forced labour and abuses in fisheries and set the conditions for a level playing field for work in the sector at global level. It also recalls that the Union Customs Code sets prohibitions or restrictions on imports, exports or goods in transit when they are justified on grounds of the protection of health and life of humans or the protection of the environment.

The LDAC believes that the EU and its Member States should play a leading role in promoting decent working conditions in fisheries worldwide and underline that those fleets, since they do not apply decent working and living conditions, take advantage of unfair competition when fish products enter the Union's market and that these products may even benefit from duty reductions thanks to trade arrangements.

In this context, the LDAC recalls that the F2F calls for a fair, healthy and environmentally friendly food system, which is incompatible with importing fishery products from countries with little or no concern for sustainability.

<https://marketac.eu/wp-content/uploads/2019/07/MAC-Advice-Marketing-Standards-PROCESSED-12.07.2019.pdf>

¹⁰⁶ <https://www.odi.org/publications/16958-china-s-distant-water-fishing-fleet-scale-impact-and-governance>

¹⁰⁷ <https://www.etf-europe.org/wp-content/uploads/2020/11/SSDC-Resolution-human-rights-and-labour-abuses-in-certain-Asian-fishing-fleets.pdf>

¹⁰⁸ <https://www.seafoodsource.com/news/environment-sustainability/us-ramping-up-pressure-on-china-s-use-of-forced-labor-in-distant-water-fishing>

¹⁰⁹ <https://www.bbc.com/news/world-asia-52822943>

¹¹⁰ <https://www.theguardian.com/environment/2020/may/22/disappearances-danger-and-death-what-is-happening-to-fishery-observers>

Recommendations:

In view of the above, the LDAC would like to make the following recommendations to the EC, to:

- **Consider the establishment of a European register of fishing vessels identified as having committed serious labour infringements and not respecting fundamental human rights on board the fishing vessel.**
- **Consider establishing a list of third countries that fail to take action to prevent, deter and eliminate abuse against fundamental labour and violations of human rights in the fishing sector.**
- **In this context, take steps against non-compliant fishing vessels and non-cooperating third countries, similar to those established in Chapter VII of the EU IUU Regulation.**
- **In this framework and in respect of identified fishing vessels, prohibit imports of their products into the EU. In respect of third countries, initiate formal dialogues with their competent authorities and should these dialogues not resolve the shortcomings identified, take trade-restrictive measures including the suspension of tariff preferences¹¹¹ or the prohibition of imports of fishery products into the EU.**
- **Promote, and make gradual progress towards requiring, that all fish products imports entering the EU comply with minimum internationally agreed standards such as those enshrined in ILO C188 and transposed in the EU through the Directive (EU) 2017/159, to avoid that European citizens consume fish without knowing it was caught by vessels that do not respect minimum social conditions.**
- **Ensure better coherence with EU trade policies, including preferential tariff agreements such as the ATQs, FTAs and GSP. This could include allowing for the suspension of such instruments or the relevant negotiations until the third country concerned is found to be duly discharging its duties to take action to prevent, deter and abuse against fundamental labour and violations of human rights in fishing.**
- **Promote and secure, as full member of RFMOs, effective measures to tackle labour abuse through the implementation of ILO C188; fund a research aimed at assessing the occurrence of forced labour and other forms of labour abuse on board fishing vessels registered in RFMOs; improve cooperation and coordination with other RFMOs' parties in the context of the EU International Ocean Governance Strategy in order to include Decent Work in Fishing (SDG 8) as a fundamental pillar to improve fisheries sustainability at a global scale.**

¹¹¹ The article 19 of the GSP regulation already provides for temporary withdrawal of tariff preferences in case of 'serious and systematic infringement of the objectives adopted by Regional Fishery Organisations or any international arrangements to which the Union is a party concerning the conservation and management of fishery resources'. A similar approach could be adopted regarding the social aspects of the fisheries.

ANNEX I: State of ratifications of international conventions by the world's biggest fish producers^{112,113}

Table 1: Conventions related to the conservation of fisheries resources (as of 20.4.2021)

<i>Agreements</i>	<i>UNCLOS</i>	<i>UNFSA</i>	<i>FAO Compliance Agreement</i>	<i>PSMA</i>	<i>Protocol of 1978 relating to the International Convention for the prevention of pollution from ships, 1973</i>	<i>International Convention for the Prevention of Pollution from Ships (MARPOL, Annex IV)</i>
<i>China</i>	X	-	-	-	X	X
<i>Indonesia</i>	X	X	-	X	X	X
<i>India</i>	X	X	-	-	X	X
<i>Vietnam</i>	X	X	-	X	X	X
<i>EU-28¹¹⁴</i>	X	X	X	X	X	X
<i>USA</i>	-	X	X	X	X	X
<i>Russian Federation</i>	X	X	-	X	X	X

¹¹² Vid. MARINNLEG (2020) Level Playing Field y la Pesca. Condiciones principales y recomendaciones. Julio 2020, Vigo.

¹¹³ These three countries were added to the initial list of countries considered by the LDAC due to their relevance to this analysis. Ecuador is the third largest supplier of fisheries and aquaculture products of the EU and has been pre-identified under the EU IUU Regulation. Taiwan is considered the second world's largest distant-water fishing nation after China and had previously been pre-identified under the EU IUU Regulation. Panama is an important flag state and has been pre-identified under the EU IUU Regulation twice.

¹¹⁴ The EUMOFA study (2019) was conducted before the United Kingdom left the European Union.

<i>Japan</i>	X	X	X	X	X	X
<i>Philippines</i>	X	X	X	X	X	X
<i>Peru</i>	-	-	X	X	X	X
<i>Bangladesh</i>	X	X	-	X	X	X
<i>Norway</i>	X	X	X	X	X	X
<i>Republic of Korea</i>	X	X	X	X	X	X
<i>Myanmar</i>	X	-	X	X	X	X
<i>Chile</i>	X	X	X	X	X	X
<i>Thailand</i>	X	X	-	X	X	-
<i>Taiwan</i> <small>(It is not a member of UN)</small>	-	-	-	-	-	-
<i>Ecuador</i>	X	X	-	X	-	X
<i>Panama</i>	X	X	-	X	-	X

Table 2: Conventions related to labour conditions (as of 20.4.2021)

<i>Teatries</i>	<i>Maritime Labour Convention (MLC)¹¹⁵</i>	<i>Work in Fishing Convention (C-188)</i>	<i>Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)</i>	<i>Torremolinos statement on the Cape Town Agreement 2012</i>
<i>China</i>	X	-	-	-
<i>Indonesia</i>	X	-	X	-
<i>India</i>	X	-	-	-
<i>Vietnam</i>	X	-	-	-
<i>EU-27</i>	¹¹⁶ _	X ¹¹⁷	_ ¹¹⁸	X ¹¹⁹
<i>USA</i>	-	-	-	-
<i>Russian Federation</i>	X	-	X	-
<i>Japan</i>	X	-	-	-
<i>Philippines</i>	X	-	-	-

¹¹⁵ The MLC sets minimum requirements for working conditions on vessels, and therefore is also applicable to vessels that transport seafood products.

¹¹⁶ All States have ratified it except Austria and Czech Republic.

¹¹⁷ The following states have ratified C-188: Denmark, Estonia, France, Lithuania, the Netherlands, Poland and Portugal. In 2017, Council Directive (EU) 2017/159, of December 19, 2016, was approved, which applies the Agreement on the application of the International Organization's Work in Fishing Convention 2007 of Labor, held on May 21, 2012 between the General Confederation of Agricultural Cooperatives of the European Union (Cogeca), the European Federation of Transport Workers (ETF) and the Association of National Organizations of Fishing Companies of the European Union (Europêche), OJ L 25, 31.1.2017

¹¹⁸ The following Member States have ratified it: Belgium, Denmark, Spain, France, Latvia, Lithuania, the Netherlands, Poland, Portugal and Romania (as of 20.4.2021)

¹¹⁹ Belgium, Croatia, Denmark, Finland, France, Germany, Netherlands and Spain (as of 20.4.2021)

<i>Peru</i>	-	-	-	X
<i>Bangladesh</i>	X	-	-	-
<i>Norway</i>	X	X	X	X
<i>Rep. Korea</i>	X	-	-	-
<i>Myanmar</i>	X	-	-	-
<i>Chile</i>	X	-	-	-
<i>Thailand</i>	X	X	-	-
<i>Taiwan</i> (It is not a member of UN)	-	-	-	-
<i>Ecuador</i>	-	-	X	Ecuador has signed the declaration signalling their intent to ratify the agreement
<i>Panama</i>	X	-	-	<i>Panama has signed the declaration signalling their intent to ratify the agreement</i>

ANNEX II: Comparative table of FADs and technical measures for tuna RFMOs¹²⁰

tRFMO	IATTC	ICCAT	IOTC	WCPFC
TAC or catch limits for LL	BET			BET
TAC or catch limits all gears		BET/YFT	YFT/SKJ	
Fleet capacity limits	X			X
Limit supply vessels	X (prohibited)		X	
PS effort control	X (72d)			X (vessel days-sets)
PS Time-area closure	X (1m)			
FAD specific measures	<u>C-20-06</u>	<u>Rec 19-02</u>	<u>Res 19-02</u>	<u>CMM-18-01</u>
Marking of FADs	X		X	X
FAD Time closure		X (3 m)		X (3 m)
FAD Time-area closure				X (HS 2 m)
Number of active buoys	450 (by vessel size)	300	300	350
Buoy purchases			500	
Number of buoys in stock			500	
Activation exclusively onboard	X		X	X
FAD deployment Time closure	X (15d)	X (15d)		
FAD recovery	X (15d)			
Non entangling	X (2019)	X (2016)	X (2014)	X (2020)
Biodegradable			X (2022)	
Provision of buoy raw data			X	
Information on lost FADs		X		
Other measures				
PS Full retention	X	X	X	X
PS Transshipment at sea	X	X	X	X

¹²⁰ Santiago, J., AZTI, 2021

ANNEX III: Case study: Labour abuses and human rights violations in third countries that have signed trade agreements with the EU – The case of Vietnam

While acknowledging that Vietnam has ratified six core conventions¹²¹ of ILO, one of the most important conventions for the fishing industry and transposed into Council Directive (EU) 2017/159, namely the ILO Work in Fishing Convention (C188), is lacking in this list. Moreover, for the FTA with Vietnam, ILO C188 was not explicitly mentioned in the sustainable development chapter as a fundamental convention to ratify. Considering that the ILO C188 is applicable to all types of fishing vessels, regardless of their size, and aimed to provide minimum standards to protect fishers in all aspects of their work, this lack of ratification is a massive disregard to responsible fishing by falling short of protecting the living and working conditions of fishers on board.

A 2019 report published by the Environmental Justice Foundation (EJF)¹²² not only found significant levels of IUU among Vietnamese fishing vessels operating across South-East Asia, but the report also revealed that children as young as 11 were being put to work in dirty and unsafe conditions aboard long-distance fishing vessels. These findings suggest that much needs to be done for the Vietnamese sector to become legal, ethical and sustainable.

In relation to IUU fishing, the European Commission issued, in 2017, a ‘yellow card’ to Vietnam notably for failing to control its distant water fishing fleet. According to the carding decision, Vietnam had some 110,000 active fishing vessels, with around 33,000 of them operating in offshore areas, but only 3,000 of them were equipped with proper tracking equipment.

Characterised by widespread illegal practices and a worrisome human rights situation, the LDAC fails to see the level of social and environmental sustainability standards in Vietnam as the EU fishing fleet has to meet under EU regulations. Imported products from Vietnam would therefore jeopardise the competitiveness of the EU fishing industry and create unfair competition between EU’s own produce and those imported from Vietnam.

¹²¹ The ILO Conventions on the Right to Organise and Collective Bargaining (C98), Forced Labour (C29), on non-discrimination (C100 and C111) and on child labour (C138 and 182).

¹²² <https://ejfoundation.org/resources/downloads/ReportVietnamFishing.pdf>