



LDAC ADVICE

The Social Dimension of Sustainable Fisheries Partnership Agreements (SFPA) between the European Union and Third Countries

Ref. R-05-22/WG4-WG5

Status: Adopted by the Executive Committee

Date of submission: 27 May 2022

SUMMARY OF POLICY RECOMMENDATIONS

1. Full implementation of the social clause

1.1. The social clause signed by the social partners in the Sectoral Social Dialogue Committee in Sea-Fishing (SSDC-F) aiming at decent working and living conditions for local fishers working on board fishing vessels operating under a sustainable fisheries partnership agreement (SFPA) should be fully implemented in all SFPAs.

1.2. The implementation of said social clause should be done in coordination with the SSDC-F (legal basis: Article 154 of the *Treaty on the Functioning of the European Union* (TFEU)) when drafting provisions of SFPAs as it falls within their mandate.

1.3. The SSDC-F and the Long Distance Advisory Council (LDAC) call for the directorates-general for Maritime Affairs and Fisheries (DG MARE) and Employment, Social Affairs & Inclusion (DG EMPL) to engage actively to promote the implementation of the social dimension of the Common Fisheries Policy (CFP), in particular in SFPAs.

1.4. The European Commission (EC) should prioritize promotion of ratification and implementation of the *Work in Fishing Convention, 2007* (C188) of the International Labour Organization (ILO) in its SFPA-negotiations with third countries. In order for this to be materialized, it should be expressly included in the mandate given to the EC by the Council of the European Union (Council). It should also be included in the discussions taking place at the level of Regional Fisheries Management Organizations (RFMOs).



2. Minimum standards for work in fishing under SFPAs

2.1. DG MARE is encouraged to bring forward policy recommendations drawn from the results of the SSDC-F ongoing project *Pillars of the Sea* (e.g., study on training and certification of fishers¹ and guidelines on decent recruitment of migrant fishers²).

2.2. The LDAC strongly insists that flag State duties under and based on Article 94 of the *United Nations Convention on the Law of the Sea* (UNCLOS)³ shall be respected under SFPAs at all times. The role of a coastal State should be limited to reporting to the flag State if it has clear grounds to believe that proper jurisdiction and control with respect to a fishing vessel have not been exercised, stating the facts (UNCLOS, Article 94, par 6). However, if a coastal State has ratified and implemented any or all of the international conventions concerning safety at sea in fishing that are in force (e.g., the *International Convention on Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995* (STCW-F) of the International Maritime Organization (IMO) and C188) it may of course exercise port State control in compliance with the convention concerned if a fishing vessel enters into one of its ports.

2.3. Before the Committee on Fisheries of the European Parliament (EP PECH), DG MARE's director in charge of, *inter alia*, social affairs, Mrs Lena Andersson Pench, recently announced that a review report on the state of implementation of Directive (EU) 2017/159, that implements parts of C188 in the Union's *acquis*, would be published soon. This would allow the development of an EU 'balance sheet' or working plan on the level of implementation of the directive in national law. The LDAC requests to receive the report and will decide on the next steps based on the results of the review that concern the external dimension of the CFP.

2.4. In line with the IMO Declaration signed in Torremolinos in October 2019 on safety and labour standards in the fishing sector, further efforts should be made to facilitate the entry into force of the *IMO Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels* (Cape Town Agreement).

The agreement shall enter into force 12 months after the date on which not less than 22 States, the aggregate number of whose fishing vessels of 24 m in length and over operating on the high seas is not less than 3,600, have expressed their consent to be bound by it. Neither the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (SFV), nor the 1993 Protocol to SFV, nor the 2012 Cape Town Agreement gives a definition of the term 'high seas'. Under UNCLOS the term should be understood as: "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State" (see Article 86 of UNCLOS).

1. <https://europeche.chil.me/attachment/1f32df42-8bb8-4ecf-979e-2081d2b39bd1>

2. DG EMPL Call SOCPL-2021-SOC-DIALOG. Pillar 1: Guidelines for the vessel owners on decent recruitment of migrant fishers, including model contracts, to reduce their vulnerability and contribute to prevent situations such as precarious conditions or labour abuse, particularly of non-EEA fishers employed via recruitment agencies;

3. <https://maifa.org/resolution/resolutions/UNCLOS%2094.htm>



Despite the October 2019 Declaration of Torremolinos in which 48 countries ‘promised’ to accede to it, the situation on 22 April 2022 was that just 17 of the required 22 States have expressed their consent to be bound by the agreement. Of these 17 States, the confirmed aggregate number of fishing vessels of 24 metres in length (L) and over operating on the high seas is 1,925, which is still far removed from the required 3,600 vessels. So far, only 8 EU Member States, representing 834 qualifying fishing vessels, have given their consent to be bound by the agreement⁴.

2.5. The EC should launch under its own initiative a proposal for a Directive on implementation of STCW-F in the Union’s *acquis* without waiting for the finalization of the revisions of the convention at international level for two reasons: the revision process has not been completed yet and it might take many years before the revised convention will enter into force given the huge delays that occurred in the past (i.e. adoption of the current convention in 1995 and entry into force after 17 years in 2012) and the evident reluctance to accede of major fishing nations in Asia. See further paragraph 4.

2.6. **The EC should actively promote the ratification of C188 by both its Member States and third countries which are beneficiaries of the SFPAs. The EC is strongly encouraged to propose a compliance and enforcement Directive setting up a social inspection system complementing Directive (EU) 2017/159** (see further paragraph 5.8.).

3. Capacity building

3.1. The LDAC welcomes, on the one hand, that some SFPA partner countries, such as Senegal and Morocco, have ratified C188 be it, that there is still a need for better implementation and for awareness raising among the local fishing sectors and crewing agents. Most SFPA partners, on the other hand, have *not* ratified C188. The ILO runs programmes aiming at providing countries and regions with support for gap analyses, law making, practical implementation issues, capacity building, and training programmes, thus helping out with the ratification and implementation process. Along with promotion of C188, the EU should proactively liaise with the ILO and make funds available in order to set up, propose and execute C188 assistance programmes for SFPA partner countries.

3.2. In cooperation with the ILO, the EU, while at the same time actively encouraging its Member States to do likewise, should also make funds available for development of a full strategy and work plan to achieve effective implementation of C188, starting with countries that have already ratified the convention. ILO and EU might link this action to (initiatives relating to) the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009* (PSMA) of the Food and Agriculture Organization (FAO) which is aligned with and complementary to the Union’s priorities in its International Ocean Governance (IOG) Forum, including multinational negotiations in RFMOs. The EU could also consider providing additional financial support for these actions where required.

4. Belgium (33), Croatia (0), Denmark (101), Finland (12), France (103), Germany (39), Netherlands (153), and Spain (393).
LDAC Advice – Recommendations on Implementation of Social Clause of SFPAs – May 2022



4. Training and certification of fishers within the SFPA framework

4.1. The EU should increase the profile in the political agenda of the need to invest more in crew safety and training as most distant water fleets experience shortages of personnel, especially where young persons are concerned. This would be a win-win situation for both the EU and third countries as they would build capacity in those third countries while contributing to fix population and avoid drainage of work force by offering new employment opportunities and career development.

4.2. Given the lack of proper, harmonized pre-sea training schemes or programmes addressed to coastal States' fishers that will work on board Union vessels operating under SFPAs, the EU should agree that part of the sectoral support funding, earmarked in the SFPAs to develop the local fishing sector, should be used for appropriate vocational and safety training purposes. The EU is therefore strongly encouraged to promote and strengthen capacity building and training component within the sectoral support chapter of the SFPAs (i.e., with the aim of ensuring alignment and compliance with STCW-F). In this respect, DG MARE is advised to coordinate with the SSDC-F.

European fishing organisations should be able to access EMFAF funds earmarked for production and marketing plans to train and upskill non-EU fishers, non-residents of the flag state, regardless of the place where they are trained. These training and upskilling could be facilitating on board EU vessels operating under SFPAs, to maximise the efficiency and use of sectoral support funds already dedicated to fishers training.

4.3. Despite the SSDC-F's pieces of advice to finally ensure safety at sea in fishing, the EU has *not* established a harmonized framework for the minimum qualifications for work on board EU fishing vessels.⁵ Due to this, in order to comply with its duties under UNCLOS, each EU flag State may have developed its own training and certification standards with which, subject to their tasks, *all* fishers, including foreign fishers, on board fishing vessels flying its flag must comply. If they have them in the first place, it will be impossible for the coastal States supplying the local fishers under SFPAs to have their training and certification standards for fishers comply with all requirements of all EU flag States concerned. Due to the same lack of harmonization, EU fishing vessel owners experience great difficulty complying with flag State requirements regarding the minimum qualifications and certificates of fishers working aboard their vessels if SFPAs require local fishers to be taken on board.

As said, local fishers must comply with the training and certification requirements of the flag State in that they must have certificates issued or recognized by or on behalf of the flag State. Usually, they serve as ratings on board EU fishing vessels. As a minimum, they must have a valid medical certificate attesting to their fitness to perform their duties⁶ and a valid certificate proving that they have received

5. See Roderick Ackermann, Nicola Franceschelli, Marga Sanz, George Maridis, and Veronika Kubenova of Blomeyer & Sanz, Bopp van Dessel and Tim Haasnoot of ProSea, Yvon Le Roy of Secoterg France, and Lisa Borges of FishFix, *Research for PECH Committee B Training of Fishers*, European Parliament, Policy Department for Structural and Cohesion Politics, Brussels, July 2018, and Ment van der Zwan, *Training and certification of fishers, The role of the European social partners in sea-fishing*, SSDC-F, Diemen, Netherlands, December 2018. [weblink?](#)

6. See Articles 7, paragraph 1, and 8 of the Annex to Directive (EU) 2017/159.



a basic safety training approved by the competent authority of the flag State⁷. If they perform tasks for which additional qualifications are required, the underlying training and certification must also comply with flag State standards.⁸ Foreign certificates can only be recognized if the flag State has assured itself that the underlying training or examination meets the requirements of the Flag State's training and examination standards. This requires, *inter alia*, on-the-spot audits for which EU flag States purport to not have the capacity.

4.4. Since the Union negotiates and agrees the terms and conditions of SFPAs and the related protocols with the third countries, it is the Union's responsibility to ensure that local fishers to be taken aboard EU fishing vessels operating under these SFPAs comply with the training and certification requirements of the flag States. Along with that responsibility comes the need for harmonization of the standards of training and certification of fishers and the assessment of compliance by third countries concerned with these standards.

The SSDC-F has already taken a first step towards harmonization by publishing guidelines for medical examination of fishers within its ongoing *Pillars of the Sea* projects.⁹ The EU should ensure, through requirements under the SFPAs, that third countries concerned carry out the medical examinations of fishers based on these guidelines, and ensure that EU flag States recognize medical certificates issued by a third country that complies with the said requirement. On-the-spot audits to ensure compliance by the third country should be carried out by the European Maritime Safety Agency (EMSA) for the sake, *inter alia*, of reliability and uniformity.

With a view to further harmonization, the SSDC-F should be asked to also develop a standard for basic safety training of fishers which could be used in the same manner as the guidelines on medical examinations of fishers. In this respect EMSA should play a similar role.

5. Compliance and transparency

5.1. The EC is encouraged to work with SFPA partner countries to improve regulations on the role and accountability of crewing agents in SFPA countries in order to prevent labour abuses, in particular irregularities in application of fisher's work agreements signed between third country fishers and the local crewing agents.

5.2. The LDAC wishes to remind the fishing vessel owners concerned of their responsibility to ensure that fisher's work agreements are respected and calls for tools to monitor compliance.

7. See Article 35, paragraph 3, sub-paragraph (b), in conjunction with Article 1, caption and sub-paragraph (c), of the Annex to Directive (EU) 2017/159.

8. See Article 10, paragraph 2, of the Annex to Directive (EU) 2017/159.

9. International Health Association (IMHA), *Guidelines on the medical examinations of fishers*, SSDC-F, Brussels, May 2021. The existing ILO/IMO *Guidelines on the medical examinations of seafarers* do not apply to fishers any longer.



5.3. Where fishing vessel owners are liable to provide for protection in the form of financial compensation and medical care in case of work-related sickness, injury or death¹⁰, the owner should have adequate insurance, for instance a protection and indemnity (P&I) insurance, that covers all fishers on board, including third country fishers.

5.4. There should also be a clear responsibility to cater for social security protection. Provision of social security protection of its citizens is a responsibility of a State, first and foremost.

C188, Article 34, provides in line with this: “Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory”.

Current SFPAs do not provide that clarity and seem to place the responsibility for social security protection on the fishing vessel owner. Therefore, although it is questionable whether the Union has any competence to agree any social security provision other than those coordinating between the social security systems of its Member States, LDAC advises the EU to bring the provisions concerned in line with the Articles 34-37 of C188 and place the ultimate responsibility for payment of social security contributions, if any, with the fishing vessel owner. Such responsibility shall include any right of the employer to withhold contributions from the fisher’s remuneration if and to the extent that the applicable social security legislation requires contribution from the fisher.

5.5. The LDAC recommends to have bilateral agreements with countries of nationality and residence of migrant workers to ensure equal or at least equivalent treatment and legal coverage.

5.6. The LDAC recommends that, for the sake of security, transparency and accountability, payments of remuneration to third country fishers should be made, when possible, by bank transfer rather than in cash.

5.7. The LDAC recalls the obligation that each fisher (a) has to receive a detailed payslip for each payment of his remuneration, and (b) should sign a receipt in case payment has been made in cash. If an agent pays the remuneration, it is important that the vessel owner insists that the agent shows proof of payment by providing a copy of (a) each payslip, and (b) the said receipt or proof of bank transfer.

5.8. There is a need for monitoring compliance with social responsibilities of fishing vessel owners, employers and crewing agents, for instance through flag State inspection and port State control by EU Member States. The EU can only prescribe such inspections and controls by adopting an EU compliance and enforcement directive which implements the relevant C188 provisions and thus complements Directive (EU) 2017/159. On port State control by SFPA partner countries, see paragraph 2.2.

10. See Article 31, paragraph 3, of Directive (EU) 2017/159.



In this respect, the LDAC wishes to draw attention to the *ILO Guidelines on Flag State inspection on working and living conditions on board fishing vessels* and the *ILO Guidelines on Port State control officers*. Both documents are available on the fisheries section of ILO's website.¹¹

5.9. The LDAC notes that there is a project expected to be launched in 2022 by the SSDC-F on further developing guidelines on decent labour market services for migrant fishers. In the project guidance will be taken from C188, the Maritime Labour Convention, 2006 (MLC) of the ILO, and other relevant ILO guidance. The guidelines will include sample texts to be included in agreements for labour market services between fishing vessel owners and crewing agents and those between fishers and crewing agents. It is important to highlight here, that it is important that compliance with such agreements and applicable laws and regulations shall be monitored from time to time by the responsible competent authority or recognized organization (e.g., certification or classification societies). It is also recommended to look at the *Private Employment Agencies Convention, 1997 (C181)* of the ILO, as it contains provisions about labour market services and how a crewing agent must behave.

-END-

11. www.ilo.org/global/industries-and-sectors/shipping-ports-fisheries-inland-waterways/fisheries/lang--en/index.htm
LDAC Advice – Recommendations on Implementation of Social Clause of SFPAs – May 2022