



DRAFT MINUTES
30th meeting of LDAC Working Group 5
HORIZONTAL ISSUES

Thursday 27 October 2022
Hybrid meeting/Berlaymont Hotel, Brussels-Web conference – Zoom

Chair: Julien Daudu (EJF)
Vice Chair: Daniel Voces (Europêche)

1. Welcome by the Chair.

Mr. Julien Daudu, WG5 Chair, welcomes all Working Group 5 members and observers, including guests representing European Commission DG MARE, national administrations and different organisations.

The complete list of attendees is included in ANNEX I.

2. Adoption of minutes of the last WG5 – 23 March 2022.

The minutes of the previous meeting held on 23 March 2022 are approved with no changes or additional comments.

3. Adoption of the agenda.

The agenda is approved with only some suggested points added in point 8 – AOB:

- 8.1-Follow up of the meeting between EC and social partner (held on 26 October 2022). Messrs. Daniel Voces and Juan Manuel Trujillo
- 8.2- DG MARE participation in LDAC WGs meetings
- 8.3- NWWAC draft letter on VMEs: asking for LDAC support
- 8.4- Steering Committee meeting to organise the workshop on European Fishing Investments in Third Countries
- 8.5- LDAC participation in EFCA advisory board
- 8.6- Europêche information on call for tenders

4. Fight against Illegal, Unreported and Unregulated fishing (IUU):

4.1. Update from DG MARE/ECA on work policy:

4.1.1. European Court of Auditors (ECA) summary of the findings of the ECA performance [audit report](#) on EU action to combat illegal fishing.

Mr. Paul Stafford and Mr. Frédéric Soblet, from European Court of Auditors, ECA, have presented the summary of the findings of the ECA performance audit report on EU action to combat illegal fishing: Control systems in place but weakened by uneven



checks and sanctions by Members States. But they also informed LDAC members of two other reports in preparation: on aquaculture and on blue energy.

The ECA presentation is available on [LDAC website](#). It recalls the scope of the report based on two fronts: the control systems for preventing the import of IUU products from outside the EU and Members States' control system for checking national fleet and waters. The report analyses:

- EU import control through the catch certification scheme: improvement in traceability and control but lack of digitalisation and differences in the scope and quality.
- EU import control through the carding system: it allows positive reform in countries concerned.
- Members States' checks on their fleet and waters: national checks often detected instances of illegal fishing but significant shortcomings in some MS leading to overfishing.
- The use of EU money: 23 projects audited were in line with priorities and helped reinforce the control system.
- The sanctions: situations varied among MS.

In conclusion, ECA made two principal recommendations to the Commission:

- Monitor that MS reinforce their control systems for preventing the import of illegal fishery products;
- Ensure that MS apply dissuasive sanctions against illegal fishing.

EC representative, Mr. Pawel Swidereck, noted that the EC accepts the ECA's recommendations. He underlined that implementation of the related measures are mostly under the responsibility of MS. He also noted that the policy/legislative changes proposed by EC in the framework of the revision of the Control Regulation are in line with the ECA recommendations.

LDAC members have thanked the ECA for this report, even if it comes late in the process of revision of the Control Regulation. They noted that discussions on that regulation are still open so the external views and recommendations of this report could be helpful.

Answering questions, ECA representatives explained that recreational fishing hasn't been taken into account in this report. ECA representatives also explained that ECA has to evaluate implementation of EC regulations, so it is the ECA that decided to make this evaluation. On the way a card ("yellow"/"red") is withdrawn, ECA explained that they didn't evaluate this point and EC representative explained that they try to have a follow-up and if a country has made the relevant changes against an agreed action plan (e.g., on laws and regulations, etc.).

ACTION: Draft a letter to the EC highlighting the recommendations of ECA study on this subject, also including references to LDAC approved piece of advice related to this topic (i.e., level playing field).

4.1.2 DG MARE summary of the findings of the [study](#) on the legislative frameworks and enforcement systems of Member States regarding obligations and sanctions to nationals for infringements to the rules arising from the IUU Regulation.

EC representatives, Mr. Pawel Swidereck and Mrs. Stavroula Kremmydiotou, have presented the findings of the study on legislative frameworks and enforcement systems of MS regarding the obligations and sanctions to nationals for infringements to the rules arising from IUU Regulation, as stated in art. 39 and 40 of this regulation.

EC representative recalled that the IUU Regulation establishes an EU system to prevent, deter and eliminate IUU fishing activities both within and outside EU waters.

While taking account the primary responsibility of flag States, it is essential that nationals of Member States be effectively deterred from engaging in or supporting IUU fishing, including through the management/ownership of fishing vessels flying the flag of third countries, operating outside the EU or providing services to IUU vessels in any shape or form.

Articles 39 and 40 of the IUU Regulation lay down obligations both for Member States and for nationals (natural and legal persons) involved in IUU fishing activities. These cover, among others, the prohibition of engaging in or supporting IUU fishing, the obligation to take all appropriate measures to identify nationals supporting or engaged in such activities, the obligation to take appropriate action with regard to nationals identified as engaged in or supporting IUU fishing and the prohibition of granting public aid (either through national or EU funds) to operators involved in the operation, management or ownership of fishing vessels included in the EU IUU vessel list.

The issue of nationals engaging in or supporting IUU fishing is one of the pillars of the IUU Regulation and, without it, it is impossible to curb down IUU fishing.

Throughout the years, EC has been in contact through the mutual assistance mechanism with various Member States regarding the issue of nationals. However, these communications were mostly carried out on an ad-hoc basis and did not enable to gain a complete picture of the implementation of Articles 39 and 40 of the IUU Regulation. However, in spite of some studies and reports issued on the topic of enforcement under the Common Fisheries Policy (CFP), there was no sufficient data available to gain a complete understanding of the legal and practical state-of-play in the Member States regarding the implementation and enforcement of the existing obligations on nationals. This was particularly the case with regard to EU nationals when they operate on board vessels without nationality or on-board vessels registered in third countries.



The EC decided to commission the study which would not only gather data but also assess the suitability of the existing legal framework and enforcement measures in place in all the Member States.

The results, in terms of MS performance, were dissatisfactory. In general, not all the provisions of Articles 39 and 40 of the IUU Regulation are reflected in the legal frameworks of Member States.

EC representative noted that it is particularly worrisome that in a number of Member States, the applicable legislation does not directly or expressly implement Articles 39 and 40 of the IUU Regulation but rather provides the general legal framework to implement the requirements of the CFP. It could be argued that this enables, at least to some extent, their application but this is however not reflected in the data submitted by Member States. With regard to the rest of the provisions of Articles 39 and 40, the EC noted that there are significant gaps in the national framework of Member States.

Some Member States argued that there was no need to enact any legislation on nationals due to the direct applicability of the provisions. While this might be true for some (for example Art 39.1 on the prohibition of engaging in or supporting IUU fishing), it would not cover all the obligations contained in those articles. For example, Art. 39.3 mandates MS to take action against nationals but the nature of those actions is left to the discretion of the MS.

The adoption of specific rules on nationals is therefore deemed necessary for the proper implementation of these requirements in the Member States. This is especially the case for obligations which require setting up the relevant procedures for control and enforcement, the designation of competent authorities, and the adoption of sanctions.

Another area of concern that the study highlighted was regarding enforcement. All Member States – with the exception of one – have put in place sanctions but these apply only within the limits of jurisdiction set for each Member State. As a result, in some Member States there can be no enforcement measures against their nationals when they are on board vessels registered to third countries or vessels without nationality.

This however is not only in contrast to the wording of the IUU Regulation but also in contrast to binding global fisheries instruments, which either loosely promote the exercise of discretionary, active personality-based jurisdiction, or include a general obligation to exercise sufficient jurisdiction (Art. 7 UNFSA and PSMA preamble, including the practice of RFMOs).

It is necessary to clarify rules on jurisdiction in place to ensure that enforcement authorities have the power to exercise their authority over any national, regardless of whether they are on the national territory or on board a vessel flying the national flag



or the flag of any other country. Currently, only 8 Member States can exercise extraterritorial jurisdiction against their nationals.

Potential additional follow-up actions will be decided in due course. EC is also reviewing the recommendations made by the consultants and the feasibility of implementing them.

ACTION: EC offered to update the LDAC during the next session of WG5.

4.2. Q&A with DG MARE on cooperation with third countries (in particular China, Ecuador, Ghana, Liberia, Panama, USA, Vietnam).

EC representative, Mr. Pawel Swidereck, made a summary of the situation by country of the carding system.

China: last IUU WG was in February 2022, since then, work has continued. Chinese authorities seem to be more reactive. LDAC members have made a lot of comment on Chinese situation. Most of them underlined the absence of level playing field as, for example, China is putting drastic measures on import products into China. Members also underlined policy statements by top EU leaders on the need to “counter” China’s presence around the world. Vis-à-vis RFMO, the EC representative explained that China is doing everything not to have any flagged/owned vessel included in RFMO IUU lists – to underline that China operates within the legality of international rules. From a more general perspective, China reportedly operates a large fleet of which only a part is reported in the FAO Global Record of Fishing Vessels (reportedly those operating in high seas). On top of that, some IUU vessels are not authorized by China and are considered by the Chinese authorities as “stateless” but they are owned and engaged by Chinese nationals. As such, the EU asks China to do something about it.

ACTION: Ms. Ángela Cortina, OPNAPA, will send to the Secretariat the information in relation to problems faced by EU companies that want to export their products to China or that want to sell to a third company that exports to China but are impeded. The Secretariat will send that information to the EC representatives attending this meeting.

Ecuador: EC mentioned an overall relatively positive dialogue dynamic.

Ghana: dialogue is ongoing, Ghana has made some actions but there are some difficulties in implementing.

Liberia: EC expressed hope that the dialogue was still good in the right direction, but underlined that the country still maintains its international register. EC needs to be reassured on the goodwill of Liberia. On the question of fish caught from scientific



fisheries, EC explained that there are considered as any other fish import in regard the compliance with all the rules.

Panama: doesn't seem to be volunteer, there – however – could be a dynamic dialogue in the coming months.

Vietnam: in the last 5 years, there is improvement, some tools have been implemented, like VMS but a gap between political statements and implementation was noted.

Morocco: EC is not planning to have an active dialogue but will intensify interactions with counterparts in control as Morocco is expected to implement in the future their own catch certification scheme.

4.3. Update on LDAC draft advice on China's global distant water fleet.

Mr. Daniel Voces, Européche, did a presentation of the work of the Focus Group and explained the latest changes inserted in the draft circulated for discussion and endorsement of WG5. After a last discussion on the text, it was decided to try to adopt the advice during the next Ex.com in November 2022, after a last reading and modifications to precise some points.

Nevertheless, it could be useful to organise with EC a meeting on this advice during the next WG meeting in March 2023 in order to define an engagement plan with EC, as it was done with the advice on “level playing field”.

The MAC wants also to participate in this advice. LDAC will propose to the MAC to co-sign the document as it is, in order to speed up the transmission to the EC.

ACTION: Try to finalise the LDAC advice on China's global distant water fleet for November Ex.com, so it could be sent to DG Mare before their next IUU WG with China, scheduled in December 2022 or January 2023. This advice should be used to develop some work on special topic in the coming months.

4.4. Draft proposal for LDAC opinion to improve cooperation and governance on fisheries between Spain/EU and Morocco.

Mr. Raúl García, WWF, presented a draft based on pending action from the last 2 years of the WG5. In order to complete this draft, he proposed to create a Focus Group with experts in different areas (e.g., Ms. Béatrice Gorez on sustainable fisheries partnership agreements (SFPAs), Ms. Vanya Vulperhorst on IUU Fishing, Mr. Juan-Manuel Trujillo on socio-labour aspects, EUROPÊCHE, CEPESCA on concrete aspects of implementation of the agreement with different and problematic areas, etc.).



This group could identify and refine recommendations. The cooperation between EU and Morocco must be seen also in the general approach, where fisheries are only a small part but with commitment to support ecological transition, human rights, green economy, etc.

ACTION: it was decided to create a focus group to refine the ideas and to decide how to articulate this opinion with other ACs. (MEDAC, MAC, SWWAC...)

Mr. Juan-Manuel Trujillo, Ms. Béatrice Gorez, Mr. Daniel Voces, Ms. Vanya Vulperhorst and Mr. Julien Daudu (on behalf of EJJ) expressed their interest in participating to this Focus Group.

4.5. Presentation of the results of the study: “Analysis of the EU fishing fleet’s implementation of the SMEFF Regulation: Reflagging behaviours”

Mr. Ignacio Fresco, Oceana, presented the work done by a coalition of five NGO on the implementation of the SMEFF regulation on reflagging behaviours. These five NGOs, Oceana, WWF, EJJ, PEW and The Nature Conservancy (the so-called “EU IUU Coalition”)) work on transparency and the fight against IUU fishing. After the loopholes identified in 2016 in the FAR, this coalition focalised on reflagging behaviours following the SMEFF regulation’s entry into force.

They identified several points: Member States adhere to article 6 of SMEFF regulation, no vessels have returned to the EU fleet from a non-EU country with a yellow card, some vessels exhibit potentially problematic reflagging behaviours whilst maintaining beneficial ownership within the EU, reflagged vessels may be exporting their catch to the EU.

In that context, the coalition made some recommendations to EC: engage with other major distant water fishing nations, considers the performance of destination flag States, harmonised and effective implementation of import controls, effective cooperation/dialogue with flag States, control on nationals: ensure effective implementation of art 39 and 40 of IUU regulation, facilitates public access to beneficial ownership.

The Chair of WG5 proposed to take into consideration these recommendations on the letter on ECA report. The presentation is available on [LDAC website](#).

5. DG MARE outcomes on the Communication of the Functioning of the Common Fisheries Policy (CFP) and summary of the event on CFP (June, 2022)

EC representatives, Mr. Vincent Guerre and Ms. Camille Gallouze, made a summary of where the discussions are on future Communication of the Functioning of the CFP. This

report is mandatory in the CFP. This reflection is based on several consultations. Even if EC considers it is the good moment to have evaluate the situation, the Commissioner would not want to open the door to a CFP reform. The idea is to analyse governance and to evaluate if the tools in place are relevant.

This communication will try to find improvements and will be linked with a technical document on all the CFP aspects (LO, regionalisation, external dimension...). Mr Vincent Guerre emphasised on the need to have trust and commitment from all stakeholders in order to have successful CFP. Discussions needs to be transparent and smooth. He described the strategy to engage with stakeholders. The publication is planned for early 2023.

Some members have underlined that it could be important to introduce some modifications in the CFP as regard the social dimension, decarbonation, joint ventures. The Chair of WG5 informed the EC and reminded the members of the LDAC workshop on third countries investments by EU societies planned to take place in mid-2023.

6. International Ocean Governance: ongoing processes.

6.1. Update and main outcomes by DG MARE of IOG meetings in 2022 (renewed EU agenda on IOG; 2nd UN Ocean Conference (June, Lisbon), Intergovernmental conference on BBNJ (August 2022, NY), 2022 UNGA Resolution on Sustainable Fisheries, UN Biodiversity (COP15, Dec. 2022), etc.)

EC representative, Mr. Marc Richir, made an update on IOG, beginning by an update on the last COFI meeting. He underlined the positive achievements and the difficult discussions:

- Positive achievements: transhipments, the establishment of the Sub-Committee on Fisheries Management (that will deal with artisanal fisheries, climate change...), focus on small-scale fisheries. For now, there is no agenda for the first meeting of this Sub-Committee, but, as suggested by a LDAC member, it could be interesting to deal with the access agreement and the artisanal fisheries.
- Difficult discussions: crisis with Russia, extensive agenda and a problem of work methodology.

On the Update of the EU Agenda on Ocean Governance, Mr. Marc Richir, EC, explained that the Council was about to adopt a position on the document. He underlined two problems:

- On deep sea mining: in its Communication, EC proposes a moratorium on deep sea mining until the effect are known on biodiversity, European Parliament has voted to a clear moratorium, but the Council has strong discussions on this subject. Members States have divergent position on different subjects, including vis-à-vis the EC competence.



- On flags of convenience: EC proposed to deal with this, but some Member States consider that international rules are comprehensive and they don't need to be modified.

On the 2nd UN Ocean Conference (June, Lisbon), EC considers it as a success because a lot of commitments have been taken, even if all the SDG 14 targets haven't been accomplished. Another Ocean Conference could be organised in 2025 by France and Costa Rica. EC representative however underlined the great number of conferences on oceans and of engagements taken (some of which don't materialise) which could lead to fatigue in the international community and with stakeholders if objectives aren't reached.

On BBNJ, negotiations were intense and flourishing, but not enough to find a compromise because of political positions from China and Russia. Moreover, some delegations weren't enough prepared on financial aspects. So now, the 5th conference isn't closed and a 5th bis will be organised soon. LDAC members have recalled the importance of the FAO and the RFMOs. It is a key point of the discussion on MPA, must of all where there isn't RFMOs.

On 2022 UNGA Resolution on Sustainable Fisheries, the major point is on VMEs with the results of the workshop held in August. The objective is to translate the workshop report into the resolution.

The Chair of WG5, Mr. Julien Daudu, is thankful for this update.

6.2. Draft proposal for LDAC opinion on BBNJ.

Mr. Jacopo Pasquero, EBCD, made an update of the discussion on the development of a LDAC opinion on BBNJ procedure since last summer. The problem is that the text discussed in August in the last Conference isn't finalised. Nevertheless, the LDAC should release an opinion to inform the EC and Members States.

ACTION: The draft advice will be circulated amongst members and a specific FG will be called on this topic.

7. Social Dimension of CFP and labour issues linked to imports and trade:

7.1. Presentation of the European Commission of its proposed to prohibit products made with forced labour on the EU market.

In absence of feedback and participation by the EC on this matter, the subject hasn't been addressed. Instead, the discussion on the LDAC piece of advice on China was reopened.

7.2. Update by the European Commission on the development of the new legislation on Due diligence in the value chain. Importance for the social and environmental sustainability of EU fisheries value chains.

In absence of feedback and participation by the EC on this matter, the subject hasn't been addressed. Instead, the discussion on the LDAC piece of advice on China was reopened.

8. AOB.

8.1-Follow up of the meeting between EC and social partner (held the date before).

Mr. Daniel Voces, EUROPÊCHE, did a summary of this meeting that was on the social dimension in the SFPAs. LDAC has made an advice on it and the Social Dialogue Committee had asked for a meeting with DG MARE, in particular for Mauritania SFPA. The EC is drafting a protocol to introduce a social chapter in the SFPA. The EC is also considering new standards that weren't in the scope of the social partners. For that reason, there is a need to talk on it in the remit of the sectorial social dialogue, because it concerns different countries, different fisheries and so needs differ.

8.2- DG MARE participation in LDAC WGs meetings

The Chair of WG5, Mr. Julien Daudu, explained the reason of the exchange of letters with the EC concerning the organisation of WGs and, in particular, the participation of ECA at the WG5. Finally, ECA participated and the exchange were fruitful. But, even if EC participation at WG5 was quite extensive, it wasn't the case for other WG during the week.

ACTION: The Chair proposed to send a new letter to DG MARE and also ask for a meeting with DG MARE on this topic.

This topic could be added in the agenda of the next Inter-AC meeting (17th Nov).

8.3- NWWAC draft letter on VMEs: asking for the LDAC support.

LDAC secretariat has received a demand from NWWAC to support a letter on stakeholder engagement over the implementation of the Deep-sea Access Regulation to DG Vitcheva.

Mr. Daniel Voces, EUROPÊCHE, gave some information on the context of this letter and on the problem of how stakeholder consultations are organised by DG MARE.

As it is a sensible subject and not in the LDAC scope, it was decided to:



ACTION: consider mentioning the content of the NWWAC letter on VMEs in the LDAC letter on DG MARE participation in LDAC WGs.

8.4- Steering Committee meeting to organise the workshop on European Fishing

The Chair of the WG5, Julien Daudu, recalled that it is still possible to members to join the Steering Committee to organise the workshop on European Fishing Investments in Third Countries (to be held probably in July 2023). If someone is interested to be part of it, please contact with the LDAC Secretariat.

8.5- LDAC participation to EFCA advisory board

The LDAC Vice-Chair, Ms. Vanya Vulperhost, has participated to the EFCA advisory board. She will circulate a report on it. She highlighted that EFCA is interested in the LADC advice on China.

ACTION: the LDAC will send to EFCA the advice on China once it is approved.

8.6- Européche information on call for tenders

Ms. Rosalie Tukker, EUROPEÛCHE, informed LDAC members of the call for tenders that SDC has just launched on four subjects:

- Pillar 1: Guidelines for vessel owners on decent recruitment of migrant fishers.
- Pillar 2: Training programme for doctors performing medical examination of fishers.
- Pillar 3: Legal analysis on market and custom tools to combat forced labour in the fishing industry.
- Pillar 4: Upgrade of the "Fishery Speak" app, an interactive glossary, providing an overview of the main phrases used on board a fishing vessel.

CLOSURE OF THE MEETING

The Chair, Mr. Julien Daudu, thanks all attendees, the representatives of the EC, the interpreters and the LDAC Secretariat for the work put and closes the meeting.



Annex I: Attendance list
LDAC WG5
27 October 2022

WG5 MEMBERS (in person)

- | | |
|---|---|
| 1. Julien Daudu. EJF | 9. Edelmiro Ulloa. Opana / OPP3/ Acemix / Agarba |
| 2. Daniel Voces. EUROPÊCHE | |
| 3. Rosalie Tukker. Europêche | 10. Ángela Cortina. Opana / OPP3/ Acemix / Agarba |
| 4. Béatrice Gorez. CFFA-CAPE | |
| 5. Joelle Philippe CFFA-CAPE | 11. Juan Manuel Trujillo. ETF |
| 6. Isadora Moniz. OPAGAC | 12. Héctor Martín. Bolton Food |
| 7. Jacopo Pesquero.EBCD | 13. Alexandra Philippe. EBCD |
| 8. Erik Olsen.The Danish Society for a Living Sea | 14. Vanya Vulperhorst. OCEANA |

OBSERVERS (in situ)

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|---|----------------------------------|
| 15. Paul Stafford. European Court of Auditors | 19. Sofia Villanueva. DG MARE-B4 |
| 16. Frédéric Soblet. European Court of Auditors | 20. Marc Richir. DG MARE |
| 17. Pawel Swiderek. DG MARE-B4 | 21. Vincent Guerre. DG MARE-B3 |
| 18. Stavroula Kremmydiotou. DG MARE-B4 | 22. Camille Gallouze. DG MARE-B3 |
| | 23. Manuela Iglesias. LDAC |
| | 24. Benoît Guerin. LDAC |
| | 25. Caroline Mangalo. LDAC |

WG5 MEMBERS (by ZOOM)

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| 26. Anertz Muniategui.ANABAC | 33. Sara Fröcklin. SSNC |
| 27. Jorge Bravo.CONXEMAR | 34. Hélène BUCHHOLZER. Seas at Risk |
| 28. José Ramón Fontán. ANEPAT | |
| 29. Juan Manuel Liria. CEPESCA | 35. José Beltrán. OPP-Lugo |
| 30. Felicidad Fernández. ANFACO/AIPCE | 36. Rob Banning. DPFA |
| 31. Tim Heddema. Pelagic Freezer-Trawler Association | 37. Luis Vicente. ADAPL |
| 32. Michel Goujon. ORTHONGEL | 38. Raúl García. WWF |
| | 39. Xavier Leduc. UAPF |
| | 40. Anaïd Panossian. CFFA-CAPE |

OBSERVERS (via Zoom)

41. Carmen Paz-Martí. Secretaría General de Pesca
42. Alberto Martín. MSC
43. Ana Sedenko. Ministry of Agriculture of the Republic of Lithuania
44. Stephanie Czudaj. GIZ