

MAC-LDAC Advice

The need for harmonised import controls between Member States in order to prevent the products of illegal, unreported and unregulated (IUU) fishing from entering the European Union market

Brussels & Madrid, 21 April 2023

1. Background

As requested by the European Parliament, the European Court of Auditors (ECA) recently performed an examination of the EU framework, action and spending aimed at preventing products of illegal, unreported and unregulated (IUU) fishing from ending up on EU citizens' plates¹. The special report concluded that "the control systems in place to combat illegal fishing are partially effective; although they mitigate the risk, their effectiveness is reduced by the uneven application of checks and sanctions by Member States"².

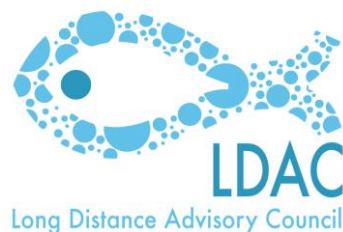
Illegal, unreported and unregulated (IUU) fishing puts pressure on fish stocks as it skews scientific stock assessments and undermines sustainable management efforts³. It is crucial that the EU uses all the tools at its disposal to prevent IUU fishing worldwide; ensuring that no fisheries products caught in this manner end up on consumption markets is an important direction of work; especially, the EU market should be well protected from exposure to IUU caught fisheries products.

Enshrined in EU law in January 2010, the EU Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (henceforth 'the EU

¹ European Court of Auditors. (2022). Special report 20/2022: EU action to combat illegal fishing – Control systems in place but weakened by uneven checks and sanctions by Member States. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61941>

² European Court of Auditors. (2022). Special report 20/2022: EU action to combat illegal fishing – Control systems in place but weakened by uneven checks and sanctions by Member States. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61941>

³ MRAG (2015). German Market Analysis and IUU Assessment. Available at: <https://mrag.co.uk/resources/german-market-analysis-and-iuu-assessment>



IUU Regulation⁴) establishes a prohibition to import fisheries products, unless they comply with a catch certification scheme. Insofar, catch certificates validated by the exporting country must accompany all seafood consignments exported by non-EU countries to the EU and include a plethora of information such as: catch species, consignment weight, details on the vessel's fishing permissions, and details on when and where the fish was caught, the flag of the catching vessel and if any processing took place. Due to the sometimes geographically remote nature of IUU fishing and consequential difficulties in monitoring and regulating the activities of fishing vessels, import controls are essential measures to prevent illegally-caught seafood from entering the EU market.

Under the EU IUU Regulation⁵, Member States must submit a report to the European Commission every two years providing detailed information on the application of the EU IUU Regulation and on seafood import controls (biennial reports)⁶.

2. The need for harmonised import controls

A lack of consistency in harmonisation of import controls implemented across EU Member States leaves the EU at high risk of importing products acquired from illegal, unreported and unregulated (IUU) fishing. Inadvertent import of these products into the EU market means the EU and its Member States may indirectly support the economic benefit of these illicit activities, which can also be linked to human and labour rights abuses⁷. Disparity in the level of control applied by Member States puts the EU at risk of so-called "Member State

⁴ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

⁵ Art. 55 Regulation (EC) No 1005/2008.

⁶ The biennial reports on the application of Council Regulation (EC) No 1005/2008 submitted by EU Member States to the European Commission for the 2018/19 reporting period were accessed through access to documents requests by member organisations of the MAC. The MAC acknowledges that this information is partial due to data not being available for some EU Member States. Biennial reports for the 2018/19 reporting period are available at: <https://www.iuuwatch.eu/2022/01/eu-member-states-biennial-reports/>.

⁷ Selig, E.R., Nakayama, S., Wabnitz, C.C.C. et al. (2022) Revealing global risks of labor abuse and illegal, unreported, and unregulated fishing. *Nat Commun* 13, 1612. Available at: <https://www.nature.com/articles/s41467-022-28916-2>. Accessed 2.3.22.

Fishing vessels engaged in IUU fishing often engage in labor abuses including, exploitation, forced labor, debt bondage, human trafficking, and modern slavery:

<https://oceansolutions.stanford.edu/key-initiatives/addressing-illegal-fishing-and-labor-abuses>



shopping,” where certain Member States are targeted for the importation of illegal catch as controls are lax⁸. Therefore, the entire EU import control scheme is only as strong as its weakest link⁹.

It is important to also note the impact of the United Kingdom’s exit from the European Union. Certain Member States (notably France, Ireland and Spain) are likely to receive a much greater number of catch certificates, given the UK’s new status as a third country. This further exemplifies the need for the reinforcement of the import control structures. Conversely, EU Member States are obliged to emit catch certificates for imports to the UK.

3. State-of-play

In addition to the special report conducted by the European Court of Auditors¹⁰, recent studies released by the EU IUU Fishing Coalition¹¹ and others have identified clear disparities between the import controls of Member States when analysing the information contained in the biennial reports submitted by Member States for the 2018/19 reporting period^{12,13}. The MAC has also recently written a letter to the Commission requesting information, per Member State on the volume of catch certificates given that the data included within the

⁸ ClientEarth. (2021). Digitising the control of fishery product imports: A panorama of the systems in place in the EU and ways forward. Available at: <https://www.clientearth.org/media/umnbgg5s/eu-catch-system-report-clientearth-2021-jt.pdf>. Accessed 2.3.22.

⁹ According to the European Court of Auditors, “the lack of digitalisation of the Catch Certification Scheme reduces efficiency and increases the risk of fraud”.

¹⁰ European Court of Auditors. (2022). Special report 20/2022: EU action to combat illegal fishing – Control systems in place but weakened by uneven checks and sanctions by Member States. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61941>

¹¹ The Environmental Justice Foundation (EJF), Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF (the ‘EU IUU Fishing Coalition’) are working together to promote EU leadership in improving global fisheries transparency and governance to end illegal, unreported and unregulated (IUU) fishing.

¹² EJF, Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF. (2022). Water-tight? Assessing the effectiveness of EU controls to prevent illegal seafood imports. Available at: <https://www.iuuwatch.eu/2022/11/blog-eu-member-state-import-controls-insufficient-to-block-illegally-sourced-seafood-from-entering-the-market/>.

¹³ ClientEarth. (2021). Digitising the control of fishery product imports: A panorama of the systems in place in the EU and ways forward. Available at: <https://www.clientearth.org/media/umnbgg5s/eu-catch-system-report-clientearth-2021-jt.pdf>. Accessed 2.3.22.



biennial reports is not always uniform and can require further information¹⁴. In response to that letter, the Commission noted that “Member States are using different approaches to controls under the catch certification scheme and are therefore not reporting the requested information in a uniform manner”¹⁵.

Even though some of these issues should be solved in part if the EU adopts the CATCH system, the import control systems Member States currently use is also a topic of significant disparity; some Member States have entirely digitalised systems while others rely on purely paper-based systems.

Identified disparities between the import controls of Member States include differences in:

a) Routine documentary checks of import catch certificates;

Documentary checks of all import catch certificates are a crucial part in the EU’s import control scheme and failure to perform these checks opens the system to abuse as the products of IUU fishing may pass under the radar. There are disparities between the documentary checks undertaken by Member States in terms of the proportion of catch certificates that are subject to checks, as well as the procedures involved. The authorities responsible for catch certificate checks also differ between Member States (e.g., customs, veterinary/health department, fisheries authorities). This can also create confusion over both the data in the biennial reports and what should be included in the reported data.

b) Application of a risk-based approach to assessing catch certificates;

Effective risk assessment, as required under the IUU Regulation, is essential to identify consignments for further scrutiny given the scale of fisheries imports into the EU¹⁶. There is

¹⁴ The Market Advisory Council’s letter to the Commission ‘Request for information, per Member State, on volume of catch certificates’ is available at: <https://marketac.eu/wp-content/uploads/2022/07/MAC-Letter-Request-for-data-on-catch-certificates-07.07.2022.pdf>. Accessed 3.3.23.

¹⁵ The Commission’s response to the Market Advisory Council’s letter ‘Request for information, per Member State, on volume of catch certificates’ is available at: <https://marketac.eu/wp-content/uploads/2022/10/Reply-to-MAC-Letter-on-volume-of-catch-certificates.pdf>. Accessed 3.3.23.

¹⁶ Art. 16 Regulation (EC) No 1005/2008



evidence that the standards of risk assessment vary considerably between Member States and that several Member States are yet to apply a risk-based approach to the verification of catch certificates¹⁷.

c) Verifications of catch certificates to ascertain compliance of imports;

Verifications are requested based on the results of the risk assessment (if applied) to determine compliance of seafood imports. The EU IUU Regulation also stipulates a number of scenarios in which verifications are mandatory. The number of verification requests sent to non-EU countries pales in comparison to the number of catch certificates received by Member States¹⁸. Although in some cases this could be due to an increased integration of information flows and a reduced number of errors when third countries fill in the catch certificates, it remains clear that there are wide disparities between Member States' depth of checks. Indeed, many Member States receiving a high proportion of catch certificates validated by yellow-carded non-EU countries verified few or no catch certificates¹⁹.

d) Physical inspections of consignments;

Direct Landings:

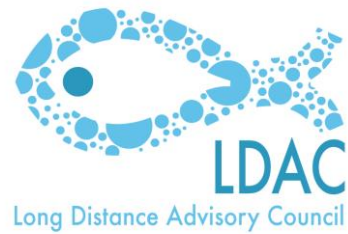
Member States must carry out inspections in their designated ports for a minimum of 5% of landing and transshipment operations carried out by non-EU country fishing vessels. Of the 10 Member States which reported non-EU country direct landings, only 8 reported inspecting over 5% of these direct landings, as required under Article 9(1) of the EU IUU Regulation²⁰.

¹⁷ EJF, Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF. (2022). Water-tight? Assessing the effectiveness of EU controls to prevent illegal seafood imports. Available at: <https://www.iuuwatch.eu/2022/11/blog-eu-member-state-import-controls-insufficient-to-block-illegally-sourced-seafood-from-entering-the-market/>.

¹⁸ According to the biennial reports submitted by EU Member States for the 2018/19 reporting period, Member States received 581,309 import catch certificates and only 1326 verification requests were sent to non-EU countries over this period.

¹⁹ EJF, Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF. (2022). Water-tight? Assessing the effectiveness of EU controls to prevent illegal seafood imports. Available at: <https://www.iuuwatch.eu/2022/11/blog-eu-member-state-import-controls-insufficient-to-block-illegally-sourced-seafood-from-entering-the-market/>.

²⁰ France, Ireland, Latvia, Lithuania, Netherlands, Spain, Sweden and the United Kingdom.



Falling short of this share risks so-called “Member State shopping,” where the ports of certain Member States are targeted for direct landings by vessels landing or transshipping illegal catch as inspections are lax. There are, however, best-case examples within this category, with Spain inspecting over 90% of direct landings in both 2018 and 2019, significantly more than the 5% required under the EU IUU Regulation.

Freight Consignments:

Unlike direct landings, there is no requirement for Member States to inspect 5% of freight consignments, so there are unsurprising discrepancies between the number and quality of inspections carried out by Member States. In the 2018/19 biennial reports, 7 Member States reported that they didn’t carry out physical inspections of import consignments²¹.

e) Rejection of consignments in cases of non-compliance;

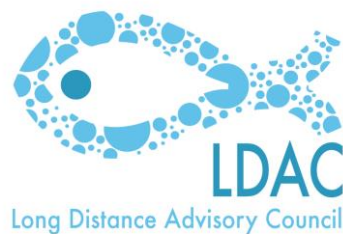
There are a number of occasions in which the competent authorities of a Member States shall refuse the importation of fishery products into the EU. When compared to the number of imports received annually into Member States, the number of refusals is very low. 17 Member States declared that no imports were refused within the 2018/19 reporting period, and a total of 47 imports were refused across the remaining Member States²². This number of refusals is low considering the 580,000 import catch certificates received by Member States over the same period.

f) Biennial reporting to the European Commission on activities under the IUU Regulation;

Member States are required to submit biennial reports to the European Commission no later than 30th of April in the calendar year following the reporting period. Based on these submissions, the Commission produces a report to be submitted to the European Parliament and to the Council every 3 years. Certain sections within the biennial reports for the 2016/17

²¹ Belgium, Czech Republic, Finland, Greece, Hungary, Latvia and Romania

²² EJF, Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF. (2022). Water-tight? Assessing the effectiveness of EU controls to prevent illegal seafood imports. Available at: <https://www.iuuwatch.eu/2022/11/blog-eu-member-state-import-controls-insufficient-to-block-illegally-sourced-seafood-from-entering-the-market/>.



and 2018/19 reporting periods provided to the members of the MAC in response to an 'access to information' request were redacted by some Member States²³. There are also a number of identified improvements which could be made to the reporting template of the biennial reports as some non-specific questions result in a lack of consistent responses from Member States and differences in the level of detail provided. This is very notable in the case of reasons for refusal of catch certificates, for example.

4. Recommendations

Considering the need for harmonised import controls to effectively prevent IUU fishing products from entering the EU market, the MAC and the LDAC, in alignment with the conclusions of the ECA-2022 special report, believe that the European Commission should:

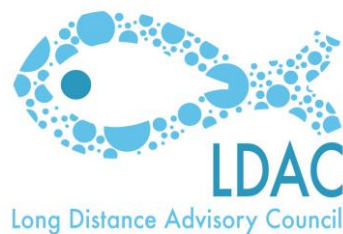
- a) Continue to strive towards a consistent application and implementation of import control procedures across the EU including catch certificate checks, a risk-based approach and verifications, and initiation of infringement procedures against those Member States that have failed to meet the requirements of the EU IUU Regulation;
- b) Makes the biennial compliance reports publicly available as is currently standard practice in the context of the EU hygiene legislative package;
- c) Hold accountable Member States that fail to uphold key requirements under the EU IUU Regulation (e.g., failure to inspect 5% of direct landing operations);
- d) Consider the application of a DG MARE audit team to determine how best to improve implementation of the EU IUU Regulation in Member States failing to uphold requirements under the Regulation and to verify the information provided in the biennial reports;
- e) Facilitate agreement on, and ensures application of, standardised risk analysis criteria and establishes clear benchmarks for the verification of high-risk catch certificates and inspection of consignments, taking into account best practices currently implemented in the EU;

²³ France provided very little information in the biennial report for the 2018/19 reporting period received through an access to information request, choosing to redact much of the information.



- f) Work swiftly to ensure that the CATCH IT system is fully operational and that Member State national authorities are fully familiarised with its use, prior to the adoption of the revised Fisheries Control Regulation;
- g) Secure sufficient human resources in order to ensure a more rapid and effective delivery of the aforementioned IT system;
- h) Encourage EU Member State engagement with the newly established CATCH IT System while still voluntary, prior to the adoption of the revised Fisheries Control Regulation, including through the publication of “good practices” guidelines related to the paperless catch certification scheme and the CATCH system;
- i) Encourage non-EU country engagement with the CATCH IT system, for example through the promotion of workshops and seminars between Member States and with third-country authorities and exporters to share experiences and recommended ways forward;
- j) Encourage the swift inclusion of more comprehensive risk criteria and data cross-checks during the next iterations of the CATCH IT system, as recommended by the Long Distance Advisory Council (LDAC)²⁴. To ensure a race to the top, the European Commission must ensure that the risk assessment applied in CATCH is at the level of or supersedes that of Member States which already have an electronic system to control catch certificates. In the interim period, the European Commission must ensure that there is interoperability between CATCH and national IT systems without increasing the burden on economic operators;
- k) Provide adequate support to the national authorities responsible for seafood imports control. This may include, where available, the production of a list of the management and conservation measures that apply in non-EU countries, and the sharing of detailed information on shortcomings identified in the context of the implementation of the EU IUU Regulation with relation to non-EU countries;

²⁴ LDAC. (2021). Advice – Opinion: LDAC Recommendations for a Level Playing Field for EU and non-EU fishing products. Available at: https://ldac.eu/images/EN_LDAC_Advice_LPF_25May2021.pdf.



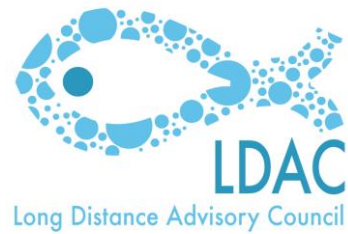
- l) Encourage Member States to improve transparency within the biennial reports. The European Commission should consider public release of these reports as well as the results of the Commission's audits of Member State implementation of the IUU Regulation, as was done in the case of Member States reports on the implementation of the Fisheries Control Regulation, following a recommendation made by the European Ombudsman²⁵. The information contained within these reports plays a crucial role in assessing Member States' application of the EU IUU Regulation and the catch certification scheme as well as in identifying and monitoring shortcomings in the system. Interested stakeholders should be provided with full access to this information;
- m) 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.;
- n) Improve the biennial reporting format to ensure detailed and standardised responses by Member States.

Considering the need for harmonised import controls to prevent IUU fishing products from entering the EU market, the MAC and the LDAC believe that the Member States should:

- a) Allocate sufficient capacity and resources to ensure effective implementation of import controls;
- b) Ensure that necessary procedures are put in place in preparation for the legal adoption of the CATCH IT System and that the system is ready for use as soon as applicable. Swift engagement with the system is to be encouraged;
- c) Following the introduction of CATCH, establish a shared risk-assessment and risk-management system at the EU level. Workgroups should be organised for that

²⁵ Recommendation of the European Ombudsman in case 452/2018/AMF on the European Commission's failure to disclose information on the existence of EU Pilot dialogues and to publish proactively Member State reports on the implementation of the Fisheries Control Regulation.

Available at: <https://www.ombudsman.europa.eu/en/recommendation/en/115440>



purpose with the technical support of EFCA and the organisation of courses and publication of guidelines;

- d) Support the establishment of a standardised EU-wide approach to risk analysis and ensure it is effectively applied in detecting higher-risk catch certificates and consignments;
- e) Apply standardised, thorough verification and inspection procedures of higher-risk catch certificates and consignments as agreed with, and defined by, the Commission;
- f) Ensure consignments containing illegally caught products are refused entry to the EU market;
- g) Ensure comprehensive data submission to all questions within the biennial reports and full transparency;
- h) Promptly submit biennial reports as required under the EU IUU Regulation, regardless of whether there are no catch certificates received over the reporting period.