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Implementation of Regulation (EU) No 1379/2013 on the common organisation of the markets in fishery and aquaculture products

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1 INTRODUCTION

The common organisation of the markets (CMO) in fishery and aquaculture products (FAPs) exists since 1970. It is the oldest pillar of the common fisheries policy (CFP), of which it is an integral part alongside conservation and financial measures.

The CMO is subject to Regulation (EU) No 1379/2013 on the common organisation of the markets in fishery and aquaculture products[1] (the 'CMO Regulation') and Regulation (EU) No 1380/2013 on the Common Fisheries Policy[2] (the 'CFP Regulation'), in particular its Article 35.

The CMO was reformed together with the CFP in 2013 and seeks to achieve the objectives of the CFP. The reform implied a series of fundamental changes for the Members States and the fishery and aquaculture sector, in particular the strengthening of the role of producer organisations (POs) by empowering operators and a new intervention logic, putting an end to past intervention mechanisms under which public money supported the permanent withdrawal of fishery products from human consumption or their destruction.

The CMO comprises five action areas:

- professional organisations: POs, their associations (APOs) and inter-branch organisations (IBOs);
- common marketing standards: these lay down uniform characteristics for fishery products sold in the EU, whatever their origin, and help ensure a transparent internal market that supplies high-quality products;
- consumer information: mandatory information supplementing general food labelling subject to Regulation (EU) No 1169/2011 on the provision of food information to consumers[3] and a framing of voluntary information, to drive consumers towards sustainable consumption habits;
- competition rules: exclusions from their application are permitted under certain conditions; and

[1] Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

[2] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

[3] Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

- market intelligence: gathering, processing and disseminating economic information on FAP markets to support stakeholders' strategies and policymaking.

The European Maritime and Fisheries Fund[4] (EMFF) and the European Maritime, Fisheries and Aquaculture Fund[5] (EMFAF) support the implementation of the EU market policy for FAPs.

The CMO Regulation has been amended[6] three times:

- firstly in 2013 to temporarily exempt products offered for retail sale to the final consumer in Mayotte from certain labelling obligations, as a result of Mayotte becoming an outermost region from 2014[7];
- secondly in 2015 to align minimum conservation reference sizes with minimum marketing sizes[8]; and
- most recently[9] in 2020 to incorporate crisis measures to respond to the market disruptions that resulted from the COVID-19 crisis; these measures served the same purposes after the Russian war of aggression against Ukraine broke out.

This report describes the implementation and results of the CMO Regulation, in accordance with Article 48 of that Regulation. The report follows the structure of the CMO Regulation. For each section, it covers the following:

- stocktaking of the implementation of CMO provisions and their contribution to achieving the CFP objectives;
- main achievements, in particular those resulting from the reform;
- challenges and shortcomings in the implementation of the Regulation; and

4 Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

5 Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ L 247, 13.7.2021, p. 1).

6 See Annex 1.

7 Council Regulation (EU) No 1385/2013 of 17 December 2013 amending Council Regulations (EC) No 850/98 and (EC) No 1224/2009, and Regulations (EC) No 1069/2009, (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union (OJ L 354, 28.12.2013, p. 86).

8 Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98 (OJ L 133, 29.5.2015, p. 1).

9 Regulation (EU) 2020/560 of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No 508/2014 and (EU) No 1379/2013 as regards specific measures to mitigate the impact of the COVID-19 outbreak in the fishery and aquaculture sector (OJ L 130, 24.4.2020, p. 11).

- areas of improvements under the current legal framework, or outside, where other (more recent) instruments can more effectively or complementarily address the CMO objectives such as the EU Green Deal or the Farm to Fork strategy.

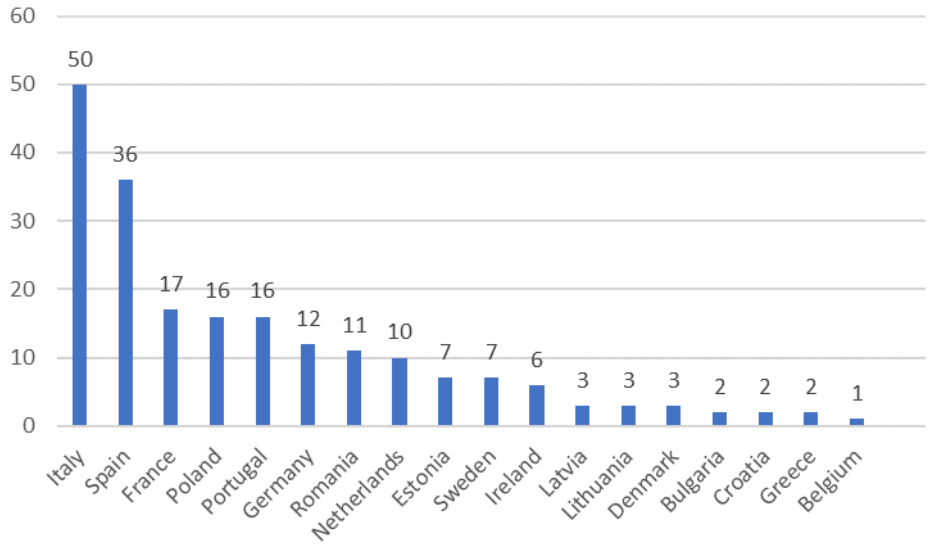
2 IMPLEMENTATION OF THE CMO REGULATION AND CONTRIBUTION TO ACHIEVING THE CFP GOALS

2.1 Professional organisations[10]

2.1.1 Contribution to achieving CFP objectives

As a consequence of their formal recognition, POs have obligations with regard to implementing the CFP objectives. The corollary of these obligations is privileged access to financial support and the ability to benefit from the exclusion from competition rules under the conditions of the CMO Regulation. This does not concern the various other types of collective bodies of producers[11] in the EU, at local, national or transnational levels.

Figure 1 – Number of POs per Member State



Therefore, POs form the backbone of the fishery and, to a lesser extent (although increasingly), the aquaculture sector. POs support the day-to-day management of the CFP and enable its collective implementation at producer level. This is achieved by requiring each PO to draw up and implement production and marketing plans (PMPs). In particular, the CMO Regulation provides that these plans aim to help achieve the objectives assigned to the CMO by Article 35 of the CFP Regulation, and all objectives assigned to POs by the CMO Regulation (Article 7 of the CMO Regulation). On this ground, POs are empowered to collectively manage their members' activities under the strict condition that they comply with conservation obligations. They contribute to food security by ensuring the availability and sustainability of a wide range of seafood. By doing so, POs both carry out a public service mission and optimise their members' market opportunities.

[10] On November 2022, there were 204 POs (163 in fisheries and 41 in aquaculture) in 18 Member States, 9 APOs (in fisheries) in 7 Member States and 7 IBOs in 6 Member States.

[11] E.g. *prudhommies* (France), *cofradías* (Spain).

This key role of POs to help achieve the objectives of the CFP pushed the European Commission to work on promoting the set-up, consolidation and financing of POs across the EU, particularly in Member States where primary production remained largely scattered (aquaculture, small-scale fisheries). A strong presence of POs is a decisive factor in the survival and prosperity of coastal communities and in strengthening the weight of primary producers in relation to the processing industry or retailers. Drawing up EMF(A)F national programmes was a crucial task in this regard.

2.1.2 Rules on setting up POs, APOs, IBOs and transnational professional organisations (TPOs), objectives and measures

EU stakeholders reported[12] that the tools made available to POs under the CMO Regulation, and especially the PMPs, are well adapted to help them pursue their objectives, in particular to better organise the structuring of fish supplies, in order to improve fishers' and farmers' incomes, and implement the CFP on the ground. However, producers highlighted a lack of consistency in the level of support, in particular financial support, among national authorities. This creates significant gaps in the development and functioning of POs across Member States, and challenges to ensuring a level playing field.

To reduce these imbalances, the Commission made continuous information and awareness-raising efforts in order to accompany all those involved in implementing this innovative tool (i.e. the PMPs). These efforts started with a detailed assessment of and recommendations on the national EMFF programmes. Afterwards, the Commission remained permanently available to clarify concepts, remove uncertainties, and facilitate sharing of good practices. Nevertheless, it must be acknowledged that the preparation, implementation and monitoring process is taking place between national authorities and their POs, because in the end they are to decide on the content and level of support to the preparation and implementation of the PMPs, which they are best placed to do. Naturally, this results in a certain degree of unevenness across countries.

For some categories of producers (in particular farmers and small-scale coastal fishers), the functioning of POs remains a challenge. Aquaculture producers acknowledge that the revision of the CMO Regulation has helped provide a more appropriate legal framework for aquaculture POs. Promotion and communication measures led by aquaculture POs have been particularly successful. However, there is still a limited number of aquaculture POs in the EU, so they are not fully succeeding in grouping supply, which could help them face the high structural concentration of retail. Promoting the benefits of setting up POs among aquaculture producers is one of the actions under the EU strategic guidelines for a more sustainable and competitive EU aquaculture for 2021-2030[13], published in 2021.

Reports of the European Parliament also called for a better structuring of the small-scale fishing[14] and aquaculture[15] sectors, and for developing IBOs.

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12 Market Advisory Council advice on the functioning of the CMO, March 2022.

13 SWD(2021) 102 final of 12 May 2021, Commission staff working document, *Strategic guidelines for a more sustainable and competitive EU aquaculture for the period 2021 to 2030*.

14 Report on the optimisation of the value chain in the EU fishing sector (2017/2119(INI)) (rapporteur: Clara Eugenia Aguilera García, S&D/Spain).

Small-scale coastal fishery producers report that they do not always receive appropriate administrative and/or financial support to set up and operate POs. They also report that Member States do not take sufficient account of their specificities laying down criteria for recognition (e.g. sufficient economic activity in the area[16]). Within the limits of its role in this process, the Commission mainly works to facilitate dialogue and understanding among parties, in particular to clarify concepts and regulatory aspects. This approach appears to be effective and helps facilitate the recognition process of POs of small-scale coastal fishers[17]. A further constraint is that lower profit margins and limited administrative resources of small-scale coastal fishers weaken the financial viability of their POs and their capacity to deal with legal and administrative requirements linked to setting up or of running a PO. The possibility for small-scale fishery producers to join an existing PO, resulting in a mixed PO (consisting of small-scale and medium to large fishers) is not the solution either as it does not always address the specific needs of small-scale coastal fishery producers.

There is limited experience with IBOs, which bring together representatives from along the supply chain (production, processing and retail), as they barely exist in the sector. In particular during the COVID-19 crisis, well-functioning IBOs have proven to be a valuable instrument to strengthen the proper functioning of the value chain and collectively mitigate the impact on the different steps.

The possibility to recognise TPOs is considered relevant by both the sector and national authorities. However, only four POs have been formally recognised as transnational. A pilot project[18] carried out in 2020 highlighted that in practice, a lack of specific legal provisions causes some difficulties for both the recognition and the functioning of these organisations. The funding of these transnational organisations is a key issue since no formal mechanism exists to share or organise the financial support of a transnational organisation between two or more Member States. The Commission provided guidance to Member States[19] to clarify existing possibilities and organise cooperation for funding such organisations.

2.1.3 Recognition of POs/IBOs/TPOs

After the entry into force of the reformed CMO, the Commission provided guidance[20] on the recognition procedure to assist both Member States and the sector in this process. In parallel, and to ensure compliance with CMO rules, the Commission requested all Member States to carry out checks on their recognised organisations, and tried to harmonise the frequency of these checks across Member States.

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15 Report *Towards a sustainable and competitive European aquaculture sector: current status and future challenges* (2017/2118(INI)) (rapporteur: Carlos Iturgaiz, EPP/Spain).

16 Article 14(1)(b) of the CMO Regulation.

17 For example, the recognition of the PO Irish Islands Marine Resource Organisation (Ireland) in 2021 and the recognition of the PO Organisation de producteurs du Levant (France) in 2019.

18 EU platform for fishery and aquaculture producer organisations.

19 Letter to the Expert Group for Markets and Trade in Fishery and Aquaculture Products on transnational organisations, January 2021.

20 SWD(2016) 113 final of 1 April 2016, Commission staff working document, *Guidance document on the implementation of Chapter II "Professional Organisations" of Regulation (EU) No 1379/2013 establishing a common organisation of the markets in fishery and aquaculture products*.

a. Horizontal checks of compliance and issues identified

Article 18 of the CMO Regulation requires Member States to verify at regular intervals that POs and IBOs comply with the rules for their recognition. Article 20 of the CMO Regulation allows the Commission to carry out checks. Accordingly, in 2016, the Commission asked all Member States concerned whether checks had been carried out to ascertain POs' and IBOs' compliance with CMO rules, and what the outcome of these checks was. In parallel or as a result of these checks, 3 EU Pilot procedures and an infringement procedure were opened by the Commission to address identified issues of non-compliance. In one case, the Commission itself carried out on-the-spot checks on the recognition of POs.

In some cases, the combination of checks carried out by the Commission and those carried out by Member States has resulted in the withdrawal of PO recognition, for example as it turned out that certain POs were not sufficiently economically active, as required in the CMO Regulation. There have also been cases where national authorities required certain POs to change their statutes, rules or ownership structure to comply with the CMO Regulation. In addition, some Member States published national guidance in particular on criteria for POs' recognition or on the monitoring of recognised POs.

The main issues identified as deficiencies in national checks on POs are set out below.

- Compliance with the condition of plurality of members: some Member States did not verify in detail the ownership structure of POs and in particular the ultimate owners of their members. Some Member States considered that it is not necessary to check if this plurality is genuine and that formal plurality of members of the POs is sufficient. However, where only one natural or legal person ultimately owns the totality of the companies and vessels operating in the PO, the functioning of the CMO system is compromised and the requirements of Article 14(1) read together with Article 17 of the CMO Regulation cannot be met. Therefore, national authorities should carry out checks to verify not only the identity of the different legal or natural persons that are PO members, but also of their ultimate owners or of the natural and legal persons holding the shares of the PO members.

- Lack of appropriate evidence on verification of POs' democratic functioning as required by Article 17(d) of the CMO Regulation. The national competent authorities must verify whether the governance structure in place enables members to scrutinise POs' organisation and decisions.

- Insufficient checks on rules on admission of new members or withdrawal of membership as required by Article 17(f) of the CMO Regulation.

- Absence of up-to-date criteria for assessing whether an organisation is sufficiently economically active in a given area (requirements of Article 14(1)(b) of the CMO Regulation).

- In some Member States, the planned frequency of checks was insufficient.

The Commission intends to repeat its checks to verify that Member States are fulfilling their obligations to carry out checks of their POs.

b. Difficulties with the formal recognition of TPOs

As regards the specific case of TPOs – in particular POs – the pilot project carried out in 2020 highlighted a series of challenges and shortcomings generating uncertainties on:

- the definition of 'transnational', which is not provided in the CMO Regulation; and
- how certain requirements for the recognition of POs must be applied to transnational organisations (e.g. criteria on sufficient economic activity).

The Commission provided clarification to the Member States and explained that Member States may decide to adopt specific rules or definitions and practical arrangements for transnational organisations if these do not conflict with the CMO Regulation or EU legislation in general.

2.1.4 Extension of rules

Section III of the CMO Regulation provides for the possibility to extend certain rules of a PO to cover producers operating in the area of activity of the relevant PO who are not members of this PO. This has rarely been used since 2013: the Commission authorised only two extensions of rules. The main obstacle seems to be the period of application of the extension, ranging from 60 days to 12 months, which is not well adapted to the volatility of the market. A more flexible tool with the possibility to extend the rule for a shorter period of time would be more effective. However, this need for more flexibility conflicts with the time constraints as national administrations and the Commission must examine requests against the requirements imposed by the CMO Regulation. Therefore, while the extension of rules is potentially a powerful tool benefiting the whole producing sector, its use is limited due to its intrinsic complexity.

To make the extension of rules easier to implement, the Commission has published guidelines[21]. In the future, it could be useful to provide more detailed guidance on some specific aspects of the procedure, in particular the criteria to demonstrate POs' representativeness in a given geographical area. To ensure compliance with the 1-month time limit to authorise or refuse a demand for extension of rules, the Commission has also empowered the Commissioner for Maritime Affairs and Fisheries to adopt decisions authorising or refusing extension of rules on the Commission's behalf.

2.1.5 Production and marketing plans

With the entry into force of the revised CMO Regulation, the context in which POs operate changed: intervention mechanisms were abolished (except for storage aid, see below), and support shifted to a market-driven instrument, the PMPs.

PMPs are required for all POs. They are essential tools of the revised CMO to foster support to fishers and fish farmers to implement the sustainable and the collective management of their activities, and in channelling their production more efficiently, to meet market

[21] SWD(2016) 113 final of 1 April 2016, Commission staff working document, *Guidance document on the implementation of Chapter II "Professional Organisations" of Regulation (EU) No 1379/2013 establishing a common organisation of the markets in fishery and aquaculture products*.

requirements (in quantity and quality) and to take advantage of market opportunities. When implementing their PMPs, POs may deploy a wide range of measures to achieve the objectives of the CMO and of the CFP, including the management of fishing opportunities (quotas).

POs and Member States generally recognise PMPs as innovative, effective and flexible tools. In the first couple of years of implementation after the entry into force of the reformed CMO, some difficulties arose with regard to financing and content of the plans[22]. Because the adoption of the EMFF was delayed by several months, numerous POs did not have a clear vision of the financial support they could expect, which delayed the first PMPs or reduced their level of ambition.

The nature of deployable measures deployable and in particular their eligibility for public financial support was also an element of uncertainty for national administrations and POs. Not only because this tool was a novelty, but also because it introduced a different logic regarding eligibility of deployable measures: their eligibility depends on their destination and not on their nature, so any expenditure is potentially eligible as long as it helps achieve the POs' objectives. Frequent interactions with national administrations, POs and sector representatives[23] made it possible to progressively improve the whole process, which is now considered satisfactory and bearing fruit. Under Article 66 of the EMFF Regulation[24], financial support to PMPs was mandatory. Although this obligation has not been carried over into the EMFAF Regulation[25], all Member States concerned expressed their willingness to continue or strengthen the financial support to their POs' PMPs. Nevertheless, it must be underlined that the level of support may differ significantly from one Member State to another, creating level-playing-field issues for POs that must abide by the same rules. The Commission will continue its work on raising awareness of the many reasons why proper financing is important, to reduce disparities. Nevertheless, differences in approaches and treatments are inherent in a system that is designed to meet specific needs and requirements at national and regional levels.

PMPs have also proved to be effective tools for allocating and managing quotas among PO members. PMPs must consist, among other things, of a production programme and must specify measures to be taken by the PO to ensure the sustainable fishing activities of its members. This means that POs may decide on the quantities to be allocated and the best time for fishing activities. For example, reserving certain quantities of nephrops for the end of the year helps prevent stocks from being exhausted too early and allows concerned members to charge higher prices during the end-of-year season.

The content of the PMPs and monitoring their implementation is a process that happens between the POs and their competent authorities. Nevertheless, there is clear converge in

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22 The Commission carried out an interim assessment of the initial difficulties encountered.

23 The Market Advisory Council issued guidance for POs and national administrations on the content and implementation of PMPs.

24 Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

25 Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ L 247, 13.7.2021, p. 1).

terms of good status of stocks (80% of the species covered by quotas being managed by POs), in particular in the North Sea and the North-East Atlantic, and sound economic performance of the fleet, at least until the recent crises that hit the sector (COVID-19 and Russia's invasion of Ukraine). This demonstrates that collective management of quotas by POs is a most effective system to manage a common-pool resource. Similarly, each time an external shock hits the sector, PMPs enabled POs to rapidly adapt their members' activities and marketing strategies to abrupt market developments, significantly increasing the resilience of the sector.

2.1.6 Stabilisation of the markets

In certain circumstances, the six market intervention mechanisms that existed until 2013 led to the destruction or withdrawal of products from human consumption. Therefore, they had become politically unacceptable and economically suboptimal. The revised CMO reduced these market intervention mechanisms to a single storage mechanism, which was available during 5 years (2014-2018). This temporary mechanism allowed POs to adapt and to move progressively to the PMPs. It was only marginally used, confirming that POs were able to adapt swiftly to the new market tools.

The COVID-19 crisis resulted in a sudden closure of most outlets for fresh FAPs. This made it appropriate to restore the possibility of resorting to the storage aid mechanism and extend it to cover aquaculture POs[26] (it was originally reserved for fisheries POs). The mechanism became available again on 1 February 2020 and ended at the same time as the other COVID-19 crisis measures, on 31 December 2020.

Even though POs ensure an efficient planning of activities, for certain species, a storage mechanism would remain a relevant tool. However, it has always been considered that restoring this mechanism on a permanent basis would be a disincentive to maintain rigorous strategic planning through PMPs.

2.2 Marketing standards

Contribution to achieving CFP objectives, and setting and complying with marketing standards

Chapter III of the CMO Regulation covers common marketing standards for FAPs. FAPs covered by the marketing standards framework and intended for human consumption have to comply with these standards.

The objectives of the standards are described in recital 18 of the CMO Regulation. Specifically, marketing standards should enable the market to be supplied with sustainable products and help to realise the full potential of the internal market in FAPs. Moreover, they should facilitate marketing activities based on fair competition, thereby helping to improve the profitability of production.

[26] The list of eligible species listed in the CMO Regulation was adapted to take this change into account: the whole heading 0302 of the combined nomenclature (i.e. 'Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304') is added to the species listed in Annex II to the CMO Regulation.

The marketing standards incorporated in the CMO Regulation of 2013 had originally been adopted in the 1980s and 1990s[27]. They specify harmonised characteristics for preserved tuna / preserved bonito and preserved sardines, and a harmonised grading framework for fresh and chilled fishery products, including minimum freshness and size requirements. The standards apply to both EU and imported products.

In 2019, the Commission carried out a dedicated evaluation of the implementation of the standards[28] to assess whether the existing standards were still fit for purpose. The evaluation found that the marketing standards are generally relevant and efficient and add value within the boundaries of their current scope and underlying criteria. However, it identified shortcomings in the existing framework in terms of its ability to achieve the objectives of the CMO Regulation. In particular, it was found that the framework plays only a limited role in ensuring that products marketed in the EU are sustainable. The evaluation and its underlying consultations also identified opportunities for simplifying, streamlining and modernising the standards. Finally, the evaluation indicated a relatively low level of control by national authorities to ensure compliance with the standards.

Based on the evaluation and the identified issue of not sufficiently addressing sustainability, the Commission launched a revision of the marketing standards framework and published an inception impact assessment in April 2020[29]. Due to the sustainability aspect, the revision of the standards was included in the action plan of the Commission's Farm to Fork Strategy[30].

The Commission held a public consultation from November 2020 to February 2021 and published the results on its website[31]. Targeted stakeholder consultations were held in parallel. The consultations confirmed the potential benefits of an EU framework for consumer information on the sustainability of food products, including fishery products. As announced in the Farm to Fork strategy, it is important to continue work on the sustainable food system initiative that the Commission plans to propose in 2023 for a harmonised EU approach to sustainable food production.

2.3 Consumer information

2.3.1 Contribution to achieving CFP objectives

In order for the CMO to fully achieve its objectives, it is essential that consumers are informed, through marketing and educational campaigns, about the value of eating FAPs, the wide variety of species available, and the importance of understanding the information on labels. Additionally, in order for consumers to be able to make informed choices, they should

[27] Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines; Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito; and Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products.

[28] SWD(2019) 453 final of 20 December 2019, Commission staff working document on the evaluation of the marketing standards framework for fishery and aquaculture products.

[29] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12262-Review-of-the-marketing-standards-framework-for-fishery-and-aquaculture-products

[30] *Farm to Fork Strategy* (europa.eu).

[31] Fish & seafood products – review of marketing standards.

receive clear and comprehensive information on the products sold on the EU market. These must comply with the same rules, regardless of their origin.

To this aim, Chapter IV of the CMO Regulation ('Consumer information') seeks to provide information to consumers through seafood labelling as a key aspect to drive more sustainable purchasing choices and thereby contribute to achieving the sustainability objective of the CFP. Moreover, consumers are important actors in the governance of sustainability because they make choices and have purchasing preferences. In order for consumer information to be provided on all FAPs, key information needs to flow along the supply chain. This can only be achieved through a proper traceability system for all FAPs. To this end, in May 2018, the Commission proposed[32] to strengthen the traceability rules that had been in place since 2009 (laid down in the EU Fisheries Control Regulation[33]), to cover all FAPs. Traceability and related transparency are necessary to ensure compliance with applicable CFP rules. Supported by a proper labelling system, they can guarantee that the information provided to consumers is trustful and reliable. They are also indispensable in the fight against food fraud, including mislabelling.

The CMO Regulation sets out rules on the mandatory and voluntary information to be provided for pre-packed and non-pre-packed FAPs referred to in points (a), (b), (c) and (e) of its Annex I. It introduces new and more detailed mandatory information, for example the obligation to report on the fishing gear and the detailed capture/farming area, or the explicit involvement of mass caterers in the labelling. The CMO Regulation provides that mass caterers must benefit from the same degree of information as final consumers. Mass caterers are thereby in a position to make more sustainable choices and contribute to better inform out-of-home seafood consumption.

In 2016, the Commission launched an information system[34] to facilitate access to and comparison of commercial designations of species in all Member States, gathering all commercial designations recognised in each Member State, and other useful information, such as scientific names, production methods and catch areas. To facilitate the understanding and implementation of consumer information rules, the Commission published a pocket guide[35] for stakeholders in 2014, and an updated list of questions and answers in 2019[36].

Overall, the CMO Regulation on seafood labelling has achieved important goals on improving consumers' awareness. However, certain areas of discord remain, mainly on the scope (processed products, caviar, prepared invertebrates), the information on origin/provenance, the information that is relevant for the sustainability of the product, and the voluntary information.

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32 Proposal for a regulation of the European Parliament and the Council of 30 May 2018 as regards fisheries control (COM(2018) 368 final).

33 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

34 *Commercial designations of fishery and aquaculture products* (europa.eu).

35 *A pocket guide to the EU's new fish and aquaculture consumer labels*.

36 *FAPs Consumer information*, 2019.

2.3.2 Mandatory information

Article 35 of the CMO Regulation stipulates that marks or labels on FAPs referred to in points (a), (b), (c) and (e) of its Annex I that are marketed within the EU must indicate:

- the commercial designation of the species and its scientific name;
- the production method;
- the area where the product was caught or farmed, and the category of fishing gear used by fisheries to capture the products;
- whether the product has been defrosted; and
- the date of minimum durability[37], where appropriate.

As the Special Eurobarometer survey on EU consumer habits regarding FAPs in 2021 reveals, the mandatory information considered the most valuable by consumers is the 'use by' or 'best before' date (69%); the name of the product and the species (57%); and whether the product is wild or farmed (54%). Only 24% identified the fishing gear used as information that should be mentioned.

The targeted consultation on the implementation of the CMO Regulation[38] showed that mandatory requirements for consumer information is highly praised as an excellent measure benefiting EU stakeholders and consumers.

Nevertheless, there are some points to consider. Firstly, many stakeholders asked to include processed FAPs (which represent more than 22% of EU consumption) in the scope of Article 35 of the CMO Regulation. According to them, there is no justification for exempting processed products from information requirements that are important to consumers and play a major role in assessing the sustainability of products. Furthermore, according to many stakeholders, some inconsistencies (e.g. products being identified by CN[39] code and not by the transformation they underwent: caviar, invertebrates) have a negative impact on achieving the traceability and sustainability objectives. Secondly, most respondents to the consultation reported a lack of implementation of mandatory requirements for consumer information. Implementation throughout the EU is considered to be uneven and this is particularly significant in some segments such as fishmongers and mass caterers. Some non-governmental organisations and fishers stressed that national checks are insufficient to ensure proper enforcement. Finally, experts working on the Scientific, Technical and Economic Committee for Fisheries (STECF) pointed out that consumer information under the CMO Regulation should be strengthened to enable a robust assessment of products' sustainability. This concerns in particular more detailed information on the catch area and fishing gear for fishery products as the current categories appear to be insufficient, and on the production system for aquaculture products.[40]

For the purposes of Article 37 of the CMO Regulation, the Commission's information system on commercial designations[41] provides web-based and responsive access, in all 24 official

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37 The date of minimum durability corresponds to the 'best before' date or 'best before end' date referred to in Annex X to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers.

38 See Annex 2.

39 Combined Nomenclature.

40 STECF report on criteria and indicators to incorporate sustainability aspects for seafood products (STECF-20-05).

41 *Commercial designations of fishery and aquaculture products* (europa.eu).

languages of the EU, to searchable information on FAPs, mainly based on the relationship between commercial designations and scientific names as specified by Member States in their national lists. This service remains active and periodically updated.

The indication of the catch or production area in accordance with Article 38 of the CMO Regulation sparks debate, especially when supplemented with additional voluntary information on the origin. In 2019, the Commission ordered a behavioural study[42] to better understand to which extent origin claims on FAPs meet consumers' needs. The study identified some shortcomings (lack of consistency, irrelevant or vague information, etc.) that make voluntary claims on origin rather confusing.

2.3.3 Ecolabelling reporting

Article 36 of the CMO Regulation required the Commission to submit a report to the European Parliament and the Council on options for an EU-wide eco-label scheme for FAPs. The Commission adopted the report in May 2016.

The report highlighted a number of issues linked to eco-labels. First, for an eco-label to be credible, there must be a robust certification process. Second, the perceived proliferation of eco-labels and the parallel use of other communication tools may lead to consumer confusion. Finally, costs linked to certification may be substantial for producers while the sale of eco-labelled products may create new markets for products.

On this basis, the Commission report set out two options for potential policy action:

- setting up a self-standing EU-wide eco-label scheme for FAPs; or
- setting minimum requirements for private eco-labels in terms of sustainability criteria and the underlying certification process.

In the European Parliament and the Council, views diverged on the report, and more specifically the preferred way forward. Consequently, the co-legislators ultimately dismissed the two policy options. In the meantime, the second option has been addressed more broadly by the Commission's proposal on empowering consumers for the green transition[43].

2.3.4 Additional voluntary information

Article 39 of the CMO Regulation stipulates that the following information may be provided on a voluntary basis, in a clear, unambiguous and verifiable way:

- date of catch/harvest;
- date of landing or information on the port of landing;
- more details on the fishing gear;
- the vessel's flag state;

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42 *Behavioural Study on origin claims on fishery and aquaculture products*.

43 Proposal for a directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM(2022) 143 final).

- environmental information;
- ethical/social information;
- production techniques and practices; and
- nutritional content (only for unprocessed single-ingredient food[44]).

This list is open and does not explicitly prohibit other possibilities.

The Special Eurobarometer survey on EU consumer habits regarding FAPs[45] shows that consumers' interest in voluntary information is focused on the date of catch or production (76% of respondents), far ahead of any other information such as environmental information (44%), information on the ship's country, on fishers or on farmers (33% each), or the port of landing or ethical information (26 % each).

However, the sector considers that adding more dates (catch, landing) may become very confusing for consumers. Additionally, quality of FAPs is guaranteed by freshness criteria, which are not deemed as important for processed products. On indicating the landing port or the flag state of vessels, there are concerns about misunderstanding the information on origin.

The Commission's proposal for a directive on empowering consumers for the green transition through better protection against unfair practices and better information[46] suggested new requirements for the voluntary provision of environmental claims.

2.4 Competition rules

Contribution to achieving CFP objectives and exclusions from competition rules

According to Article 41 of the CMO Regulation, POs may be excluded from the application of competition rules as specified in Article 101(1) of the Treaty on the Functioning of the EU (TFEU) in order to achieve their objectives, on condition that it is necessary to attain the objectives set out in Article 39 TFEU and it does not imply any obligation to charge identical prices, does not lead to the partitioning of markets in any form within the EU, does not exclude competition and does not eliminate competition in respect of a substantial proportion of the products in question. This exclusion is an essential tool to allow some practices in the implementation of PMPs such as controlling the quantities put on the market by members to stabilise the markets and prices, comply with conservation obligations and avoid food waste.

This exclusion from competition rules can only be implemented by entities that are entitled to do so under the CMO Regulation and have been recognised by Member States under Article 6 of that Regulation. Therefore, non-recognised collective bodies of producers (e.g. cooperatives, *cofradías*) may not benefit from it. Checks of POs' compliance carried out by the Commission have revealed that activities linked to producing, processing and marketing fishermen's landings were sometimes managed by/through non-recognised bodies. In these cases, Member States' competent authorities have been asked to take necessary measures.

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44 The nutrition declaration is mandatory for all other categories than unprocessed single-ingredient food since December 2016, in accordance with the Regulation (EU) No 1169/2011.

45 *EU Consumer Habits Regarding Fishery and Aquaculture Products, 2021*.

46 Proposal for a directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM(2022) 143 final)

Some organisations do not accept this limitation and plead for an amendment of the CMO Regulation to make them also eligible for exclusion from competition rules and access to funding. However, POs fulfil clearly defined tasks that are instrumental in implementing the CFP. For this purpose, they must comply with a strict and common legal framework under the supervision of their national authorities.

2.5 Market intelligence

To help increase market transparency and efficiency, the CMO Regulation provides that the Commission must gather and process economic information on the EU markets in FAPs and disseminate it to stakeholders and the general public (Article 42 of the CMO Regulation).

To this end, the Commission has set up the European Market Observatory for Fisheries and Aquaculture Products (EUMOFA[47]). EUMOFA has been developed since 2010 in the form of a preparatory action. A dedicated website and database have been online since April 2013 and have been fully operational since the entry into force of the revised CMO.

EUMOFA provides market intelligence to operators of the fishery sector, in the broadest sense, to better understand market trends. EUMOFA also aims to support public-policymaking processes and implementation by public authorities and stakeholders. Moreover, it aims to benefit research bodies, stakeholders and the general public by increasing access to market intelligence and data.

This observatory is particularly relevant as there is no alternative at EU level to provide information on a complex and dynamic market that is characterised by a heavy dependence on imports from non-EU countries (the self-sufficiency rate is 38.9% and only 11% for the 5 most consumed species[48]) and significant trade within the EU (trade flows within the EU are greater than imports from non-EU countries). The EU supply of FAPs for human consumption, which includes both domestic production and imports, totals close to 13 million tonnes in live weight equivalent. People in the EU consume around 23 kg of FAPs per person a year[49].

EUMOFA can be considered as a reference observatory for food commodities. It is also the most comprehensive database on international trade flows of FAPs. The web-based platform provides daily economic data on all steps of the value chain. The observatory is also a centre of expertise that carries out market analyses and issues publications on a series of topics that are of interest to industry and institutional stakeholders. It also publishes analytical material to support policymaking. It played a key role in informing market stakeholders during the recent crises (COVID-19 and Russia's invasion of Ukraine) by providing visibility and clarification on market developments.

Over the last year, EUMOFA has generated around 3 000 monthly visits[50] to its website from more than 140 countries. The number of publications quoting EUMOFA is increasing, and these publications are becoming more diverse (e.g. public reports, scientific and academic

47 www.euomfa.eu

48 Tuna, salmon, cod, Alaska pollock, and shrimps.

49 Source: EUMOFA, *The EU fish market*, 2022.

50 Unique visitors.

publications, specialised press). The wide dissemination of EUMOFA's expertise demonstrates that the observatory is reliable and well recognised.

To deliver on its obligation to provide market intelligence, the Commission carried out regular Eurobarometer surveys on EU consumers' habits regarding FAPs (in 2017, 2019 and 2021)[51].

3 CONCLUSIONS

The common market policy for FAPs, as laid down by the CMO Regulation, effectively helps achieve the CFP objectives, especially in terms of competitiveness, market stability, transparency and ensuring a diverse supply of seafood to consumers.

Professional organisations – in particular POs, which were considered key actors in implementing the CMO objectives from the outset – proved to be instrumental in improving market conditions for seafood supplies, thereby increasing producers' income. With regard to the empowerment of POs under the CMO, the Commission performed a first comprehensive round of checks on the conditions for recognition to ensure compliance and operational capacities of POs. Such checks will be repeated.

POs and national administrations have needed a couple of years to adapt to operating under the PMPs because of their innovative character and mandatory nature. The system is now generally considered fully operational and very relevant to delivering on the objectives of the CMO, to implement the CFP on the ground and seize market opportunities. Nevertheless, difficulties remain, in particular regarding differential treatment by national administrations, be it in terms of financing, administrative support or eligibility of measures. These aspects may constitute a barrier for POs to fully deliver on their missions and require continued assistance by the Commission. The support for setting up and financing TPOs is also considered as an aspect to be improved, which the Commission has already delivered on by providing guidance to Member States and POs.

The CMO has played a positive role in increasing competitiveness by providing a common legislative framework governed by the same marketing standards. However, these standards are not sufficiently promoting sustainable products. As announced in the Farm to Fork strategy, it is important to continue work on the sustainable food system initiative that the Commission plans to propose in 2023 for a harmonised EU approach to sustainable food production.

Provisions on information to consumers are generally considered fit for purpose, even if certain shortcomings will continue to require some attention, such as differences in coverage and compliance for some outlets. Labelling will remain a point of contention in the supply chain as views and priorities are diverging. Nevertheless, more specific information would be needed to empower the consumer to form a fair idea of products' sustainability.

The possibility for POs to derogate from competition rules under the conditions of the CMO Regulation appears necessary to combine profitability with POs' obligation to achieve conservation and stock-management objectives. The ability for POs to programme the

[51] Eurobarometer surveys on EU consumer habits regarding fishery and aquaculture products.

quantities put on the market by their members is an essential tool to maintain prices at appropriate levels and avoid food waste.

By setting up a European market observatory, the Commission set standards in respect of market intelligence. Services delivered by EUMOFA served many purposes for stakeholders. They were highly appreciated in times of crisis, during which the observatory specifically helped inform policymaking and industry strategies.

The implementation of CMO provisions showed that there must be trust and understanding between authorities, the sector and civil society. Regular exchanges have been set up, in particular with the Market Advisory Council[52], to better understand impacts of certain events on the market and the needs of the sector. This dialogue should be continued and strengthened to ease the implementation of the CMO.

In conclusion, the CMO Regulation and the way it has been implemented since the reform can be considered overall as a success. The CMO transitioned from an intervention-based market policy inherited from the common agricultural policy to a market-oriented dynamic policy driven by empowered market stakeholders. This transition proved relevant to ensure long-term sustainability and profitability of the sector as part of a rigorous implementation of the CFP. Areas for improvement are well identified and the Commission will address them by cooperating closely with stakeholders and national administrations to maximise the impact of existing market tools, ensure compliance and address shortcomings.

[52] Roles and achievements of Advisory Councils are described in the Staff Working Document accompanying the *Communication from the Commission to the European Parliament and the Council - The common fisheries policy today and tomorrow: a Fisheries and Oceans Pact towards sustainable, science-based, innovative and inclusive fisheries management* (SWD(2023)103, section 3.12).

ANNEXES

Annex 1 – Legal bases

The common organisation of the markets (CMO) reform implied a drastic simplification of the legal framework.

Until the end of 2013, the CMO was governed by:

- Council Regulation (EC) No 104/2000;
- more than 20 Commission implementing regulations providing detailed rules; and
- several Council regulations.

In January 2014, the new CMO Regulation entered into force. A total of 19 Commission Regulations were repealed[53] and currently the CMO is governed by the following acts:

- Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products (the 'CMO Regulation');
- Commission Implementing Regulation (EU) No 1418/2013 concerning production and marketing plans;
- Commission implementing Regulation (EU) No 1419/2013 concerning the recognition of producer organisations and inter-branch organisations;
- Commission Recommendation 2014/117/EU on the establishment and implementation of the Production and Marketing Plans; and
- three Council regulations on marketing standards (and one Commission implementing regulation) that remained in force:
    - Council Regulation (EC) No 2406/96 laying down common marketing standards for certain fishery products;
    - Commission Regulation (EEC) No 3703/85 laying down detailed rules for applying the common marketing standards for certain fresh or chilled fish;
    - Council Regulation (EEC) No 1536/92 laying down common marketing standards for preserved tuna and bonito; and
    - Council Regulation (EEC) No 2136/89 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products.

The CMO Regulation was amended on three occasions; most recently to introduce crisis measures to respond to the COVID-19 crisis:

- Council Regulation (EU) No 1385/2013 of 17 December 2013;
- Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015; and

[53] Commission Implementing Regulation (EU) No 1420/2013 of 17 December 2013.

- Regulation (EU) 2020/560 of the European Parliament and of the Council of 23 April 2020.

Annex 2 – Public consultation

The European Commission launched a targeted consultation[54] on 17 December 2021 (deadline 14 March 2022) to gather experiences and comments of sector stakeholders[55] on the implementation of the CMO Regulation.

- The Commission received around 125 replies to the CMO questionnaire.
- The market tools provided by the CMO Regulation were generally considered relevant and proved positive in their ability to contribute to achieving the CFP objectives.
- In particular, the key role devolved to producer organisations to collectively manage producers' activities is a major achievement of the reformed market policy. Producer organisations' production and market plans are flexible and effective tools to deliver on the market objectives of the CMO. Stakeholders underlined that there is still room for improvement, for example on the financial support to these plans, which can vary substantially from one country to another, and on mechanisms that are not fully suitable for transnational organisations.
- Consumer information, in particular labelling, is generally considered fit for purpose, although in some cases, a plethora of eco-labels and too specific information puts some limits on the legibility of claims.
- The contribution of the market observatory (EUMOFA) to increasing transparency and improving the understanding of market developments is generally praised.

On 10 June 2022, the Commission closed this consultation process with a stakeholder event on the functioning of the common fisheries policy (CFP) and the common organisation of the markets in Brussels (remote participation was possible).

Discussions and interactions between stakeholders took place in two thematic plenary sessions with short presentations and panels of stakeholder representatives. The thematic sessions covered the social, economic and environmental objectives of the CFP on the one hand, and innovation, resilience and governance in the fisheries on the other.

The outcomes of this consultation process formed an essential input to the report on the functioning of the CMO.

[54] https://ec.europa.eu/eusurvey/runner/TargetedConsultation2022ReportCMO

[55] All sector stakeholders were invited to answer the questionnaire and particpate in the stakeholder event: the fishery and aquaculture sector, non-governmental organisations, and academic, scientific, social and economic partners.