



MAC ADVICE

Consumer Information on Fishery and Aquaculture Products

Brussels, 5 August 2020

1. Introduction

The recently published Farm to Fork Strategy focuses substantially on the empowerment of consumers to make informed food choices as well as the corresponding responsibilities and opportunities for all actors in the food chain, including the seafood supply chain.

The present advice sets out a series of recommendations on information to the consumer on fishery and aquaculture products marketed in the European Union, following a thorough analysis by the Market Advisory Council (MAC) of the relevant legislative framework for consumer information, including both mandatory and voluntary information, with a particular emphasis on origin/provenance information, but also touching upon some mandatory elements that may be of interest to the consumer, such as scientific names, commercial designation, minimum durability, date of defrosting, as well as voluntary elements, such as date of catch/harvest.

The mentioned analysis also covered the impact of the legal requirements of consumer information in relation to different categories of fisheries and aquaculture products. One opinion is that the legal requirements have to be extended to the processed products, while other parts of the value believe that there is no need for adjustments of Article 35 of Regulation (EU) No 1379/2013 (CMO Regulation) to processed products.

In Annex I, supporting information that substantiated the MAC's recommendations is made available.

2. Recommendations

The MAC believes that the differences between the labelling requirements of products under Chapter 03 of Commission Implementing Regulation (EU) 2018/1602 (Combined Nomenclature)

in comparison to products under CN Codes 1604 and 1605 need an impact assessment. The MAC believes that inconsistencies occur in the labelling requirements in the different regulations. The mentioned situation leads to different understandings of the country of origin, which causes confusion among consumers. Taking that into consideration, the MAC recommends the following:

- a) The European Commission should undertake an impact assessment, including socio-economic aspects and consumer behaviour studies, on Article 35 of the CMO Regulation provisions for all fisheries and aquaculture products, in order to determine if alignment among labelling requirements for all fisheries and aquaculture products is necessary, possible and cost-effective;
- b) When undertaking the mentioned impact assessment, the European Commission should especially take into account the cases of fish prepared or preserved food with a fish primary ingredient that represents more than 50% of whether single or several species.
- c) The European Commission should assess if there are inconsistencies between Implementing Regulation (EU) 775/2018 (Based on Regulation (EU) 1169/2011) with Regulation (EU) 1379/2013, in order to determine if alignment among these regulations in relation to the definitions of origin and provenance is necessary;
- d) The European Commission should assess the most appropriate approach, for all seafood products, for the provision of information on origin, when the fish primary ingredient represents more than 50% of the product¹, while taking into account the established importance of this information for consumers;
- e) The European Commission should analyse the opportunities and challenges of including the scientific name in the label for all fisheries and aquaculture products and its benefits for consumers. Including scientific names in labelling is crucial in order to identify what

¹ ANFACO-CECOPESCA disagrees that the cases of fish prepared or preserved food with a fish primary ingredient that presents more than 50% of whether single or several species should be especially taken into account under the mentioned impact assessment. In their view, the treatment of processed products must differ, regardless of the percentage of the primary ingredient, due the difficulties shared by these products and due to the applicable requirements from Chapter 03 of the Combined Nomenclature.

the product actually contains. However, there can be instances where special accommodations need to be made;

- f) The European Commission should advise Member States that, in those special instances where a scientific name is changed following a decision from the scientific community, allowances should be made for a well-defined transitional period where the product can be traded under both names. The MAC strongly urges the scientific community to exercise due diligence henceforth in changing scientific names, considering the disruption this may cause for trade;
- g) The European Commission should provide guidelines on digital tools with the purpose of consumer information, while making use of the available data along the supply chain, including existing data platforms which are often not connected, aiming to improve interoperability and efficiency of the existing systems;
- h) The European Commission should reassess how the CMO Regulation and the consumer information requirements are implemented in the different Member States through different retail channels to determine if harmonisation is guaranteed;
- i) Taking into account the increase in distance selling of seafood products, the European Commission and the Member States should ensure that the relevant consumer information is made available at the point of purchase even in the case of online purchases.

As a general comment, the MAC would welcome increased coordination between Commission services on food labelling issues with respect to fishery and aquaculture products.

Finally, the MAC would also like to recall the distinction made in the earlier advice on Level Playing Field² between the implementation of the existing measures and the case of introducing changes in the future.

² MAC Advice on the Level Playing Field available here: <https://marketac.eu/wp-content/uploads/2019/10/MAC-Advice-Level-Playing-Field-LPF-30.09.2019.pdf>

Annex I

1. Non-exhaustive legislative framework

Information to the consumer on seafood products, both from aquaculture and fisheries, are governed in the EU by a number of rules and regulations, including the following:

- 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 (often referred to as the CMO Regulation)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 (often referred to as the FIC regulation);
- Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code;
- Commission Implementing Regulation (EU) 2018/775 laying down rules for indicating the country of origin or place of provenance of the primary ingredient of a food;
- Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products;
- Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito;
- Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products;
- Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin and Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products;

³ It replaced Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products and Commission Regulation (EC) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products

- Council Regulation (EC) No 1224/2009 on establishing a control system for ensuring compliance with the rules of the common fisheries policy;
- Various national guidance documents, voluntary standards from national standardisation bodies and private industry standards, e.g. the German Food Book Commission's *Leitsätze für Fische, Krebs- und Weichtiere des Deutschen Lebensmittelbuches*⁴.

On 1 January 2002, a first set of rules on consumer information (trade nomination, production method and catch area for fisheries and name of the country for aquaculture products) came into force by Regulation (EC) No 104/2000 in combination with Regulation (EC) No 2065/2001. In these expired Regulations, the scope was limited to products of Chapter 3 of the Customs Code Regulation and labelling of the scientific name was only foreseen on a voluntary basis.

Additional rules on consumer information came into force on 13 December 2014 through the implementation of the CMO Regulation. New elements which had to be added to the labels (for both packed and non-packed products) were the scientific name, the more precise name of the additional sub-area of the catches for FAO fishing areas 27 (the Atlantic and Northeast)⁵ and 37 (the Mediterranean and the Black Sea)⁶, and the name of the fishing gear category that was used, as determined by Article 35 of the applicable CMO Regulation. The mentioned rules did (and still do) not apply to products covered by CN⁷ Codes 1604 and 1605, as they are found in the Annex of the CMO Regulation⁸.

Despite the original Commission's proposal, the scope of the CMO Regulation was not changed by the co-legislators. Today many retailers and brand owners of fisheries products have designed—on the basis of the regulatory framework—a wide range of styling guides for prepacked products which are accessible via on-pack information or links to websites.

⁴ Federal Ministry of Food and Agriculture, 'Leitsätze für Fische, Krebs- und Weichtiere und Erzeugnisse daraus', https://www.bmel.de/SharedDocs/Downloads/Ernaehrung/Lebensmittelbuch/LeitsaetzeFische.pdf?__blob=publicationFile.

⁵ FAO, ATLANTIC, NORTHEAST (Major Fishing Area 27) <http://www.fao.org/fishery/area/Area27/en>.

⁶ FAO, MEDITERRANEAN AND BLACK SEA (Major Fishing Area 37), <http://www.fao.org/fishery/area/Area37/en>.

⁷ Abbreviation: 'Common Nomenclature'.

⁸ 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, Annex I, (h) 1604: Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs; (i) 1605: Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.

2. Review of studies and surveys on consumer behaviour and interests on labelling information received [Recommendations c), d)]

A review of surveys and studies took place, which aimed at evaluating the interests and behaviour of consumers towards products from fisheries and aquaculture, with a particular focus on the origin of these. The MAC noted that there are other elements that are of interest to the consumer, for example common trade name, durability date, among others. While fisheries and aquaculture products were mainly addressed, some parallels were drawn to other food products to inform the debate.

The consumers' willingness to pay for the origin has already been deeply studied in the literature (Carlucci *et al.*, 2015). In Carlucci *et al.* (2015) alone, 49 studies were analysed in which the consumer purchasing behaviour towards a variety of fish and seafood products in different countries and by means of different methodological approaches was investigated. In these studies, it is demonstrated that there is a huge effect of the domestic origin on the consumers' choice when purchasing. A survey on purchase criteria for fresh food products in Belgium (VLAM 2019) showed that both 'country of origin' and 'locally produced' were considered important by 50% of the respondents, while 20% replied they were 'not important' and 30% neutral responses.

It has been documented that information on the country of origin has a positive influence on product choice, this can go from +8 % willingness to pay (price premium in % above the average price) in the case of Italian consumers regarding organic Mediterranean sea bass (Mauracher *et al.*, 2013), to a +45 % willingness to pay in the case of Italian consumers for sea bream from fish farms (Stefani *et al.*, 2012). A consumer is not always willing to pay more for additional information like the country of origin, but in the latter study more than half of the respondents analysed were willing to pay a price premium.

However, a strong consumer interest does not always translate into willingness to pay. For example, the European Commission report on mandatory indication of the country of origin or place of provenance for meat used as an ingredient⁹ showed that, despite consumer interest, at price increases of less than 10%, the "willingness to pay" falls by 60-80%. The report also indicates

⁹ https://ec.europa.eu/food/sites/food/files/safety/docs/labelling_legislation_executive-summary_ew_02_15_293_en.pdf

that origin ranks behind price and quality/sensory aspects in terms of the most important factors affecting consumer choice. Even if these findings are applicable to meat, they show that further assessment is needed to establish certainty on willingness to pay. The VLAM 2019 poll results on fresh food products also ranks 'origin' lower than the top answers 'freshness', 'taste', 'best before date', 'aroma', 'price', etc. Information on packaging in general scores 'important' for 65% of the respondents, according to the poll.

The Commission's study on the mandatory indication of country of origin or place of provenance of unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food also point to a "paradox' in consumer attitudes, in particular in terms of the stated strong interest in origin labelling versus actual purchasing behaviour" ¹⁰.

In addition, the first results from a French experiment on mandatory origin labelling of meat and milk as an ingredient¹¹ show that, despite consumer interest, the mandatory origin indication had no effect on the purchasing behaviour. In this case also, the products are not seafood but the gap between interest and actual purchasing behaviour is clear.

In Spain, 70.4% of consumers consider the country of origin as a quality indicator (Spain's Ministry of Agriculture, Fisheries and Food, 2^o trimester of 2018). Another study of this Ministry about the consumer behaviour shows that at least 21% of Spanish consumers regard the origin of the products as essential information.

According to Lawley et al. (2012), consumers use extrinsic indications, particularly country of origin, as substitute indicators of quality. Extrinsic factors influencing quality evaluations begin at the point of purchase. In fact, the extrinsic factor that appears to be most important to the majority of consumers (in this case, Australian consumers regarding seafood in general and

¹⁰ Prepared by Food Chain Evaluation Consortium for the Directorate General for Health and Food safety (2014) 'Study on the mandatory indication of country of origin or place of provenance of unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food', Executive Summary, http://publications.europa.eu/resource/ellar/20378cf6-2bdf-4eee-87f2-83e096b7e2fb.0001.01/DOC_1, p. 4.

¹¹ Beck, M., van Bunnem, P., Gruev K., Combes J., Schio, L., Forget, V., Deperoyt, J., (2019). Évaluation de l'expérimentation française sur l'étiquetage de l'origine du lait et des viandes utilisés en tant qu'ingrédients. Available here:

https://agreste.agriculture.gouv.fr/agreste-web/download/publication/publie/Ana142/Analyse_1421909.pdf

barramundi specifically) when purchasing seafood is the country of origin – among price, country of origin, and method of production.

The global GlobeScan consumer survey, carried out in 22 seafood markets among 18.909 consumers, which was commissioned by the Marine Stewardship Council (MSC) in 2018, finds that sustainably sourced and environmentally friendly rank just slightly above price as a purchase motivator in the EU seafood market. Also, European seafood consumers are interested to find out more about sustainable seafood from product packaging (52% of the consumers would like to see sustainability information on the package). In terms of product origin, across the 13 EU countries surveyed, 69.5% of those purchasing seafood say they want to know that their fish can be traced back to a known and trusted source. This outcome was confirmed in the updated 2020 study, this time, amongst 26.500 consumers, with the following order of purchase motivators: “fresh > safe > good for my family > taste > sustainably sourced/environmental friendly > price > non-GMO > knowing where the product is from”.

The VLAM 2019 poll of consumers in Belgium eating fish at least several times a year, on the importance of purchase criteria for fish, has the following ranking: Taste (80% find it important), Price (76%), Appearance (66%), Knowledge of Method of Preparation (66%), Nutritional Value (61%), Ecological Impact (60%) and Origin (60%).

The origin of fishery and aquaculture products is in the most recent EuroBarometer survey (2018)¹² on EU consumer habits reflected as the third most frequently mentioned aspect when purchasing (41%), after the product’s appearance (59%) and the cost (52%). When looking into more detail, the origin of the product is actually the second most important aspect in seven EU countries, and the third most important in a further 16. Similarly, a very recent EuroBarometer survey on food safety showed that the most important factor for Europeans when buying food is ‘where the food comes from’, although it should be noted that the study covers foodstuffs as a whole and not fisheries and aquaculture products specifically¹³. That the origin is seen as such an

¹² Special Eurobarometer 475, EU consumer habits regarding fishery and aquaculture Products (2018). By Kantar Public Brussels on behalf of Kantar Belgium at the request of the European Commission, Directorate-General for Maritime Affairs and Fisheries, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2206>.

¹³ Special Eurobarometer Report: Food Safety in the EU (June 2019). By Kantar, at the request of the European Food Safety Authority (EFSA).

important element determining the choice of the consumers can be attributed to the fact that the country of origin is often used by consumers as a summary construct to simplify decision making (Agrawal and Kamakura, 1999). In addition, Brunsø *et al.* (2009)¹⁴ found that heavy users of fish (in this case consumers in Spain) consider that fish from their country of origin is of a higher quality than imported fish. Specifically in relation to food, country of origin is perceived to be linked to freshness, as home country products have often travelled less distance to get to the market and do not require elaborated preservation treatments (Péneau *et al.*, 2009¹⁵; Birch *et al.*, 2012¹⁶). Freshness, as a perceived cue for fish quality, is not just defined by time (national origin), but also by method as consumers not only prefer wild fish and fresh fish to farmed fish, but also to frozen fish (Brunsø *et al.*, 2009, EuroBarometer survey 2018). The correlation between country of origin and the freshness of a product is further confirmed by the EuroBarometer survey results from both 2016 and 2018, as the relative majority of respondents prefers products from their own countries (37%), this is the case for 20 of the EU 28 countries, followed by products from their region (28%). Furthermore, more than one in ten EU citizens prefer products from the EU (16%), whilst just 3% indicate to favour products from outside the EU.

When it comes to tinned or prepared products, there are three features that EU consumers think should be indicated on the product – namely, the origin, the species, and whether the product used is wild or farmed. In fact, the product's origin is by far considered as the most important piece of information that should appear on labels as reported by 68% of almost 28.000 EU citizens spread across all EU Member States. This among other options like information on the species that the product contains, whether the product used is wild or farmed, where the plant that processes the product is located, the fishing gear used to catch the product (EuroBarometer survey 2018).

Information on species that the product contains ranks second, as just under two thirds believes it to be important (65%). The proportion of respondents who think that labels on tinned or prepared products should give this information has even increased by 13 percentage points in

¹⁴ Brunsø, K., Verbeke, W., Ottar Olsen, S., & Fruensgaard Jeppesen, L. (2009). Motives, barriers and quality evaluation in fish consumption situations: Exploring and comparing heavy and light users in Spain and Belgium. *British Food Journal*, 111(7), 699-716.

¹⁵ Péneau, S., Linke, A., Escher, F. & Nuessli, J., 2009. Freshness of fruits and vegetables: consumer language and perception. *British Food Journal* 111(3), 243.

¹⁶ Lawley, M., Birch, D., & Hamblin, D. (2012). An exploratory study into the role and interplay of intrinsic and extrinsic cues in Australian consumers' evaluations of fish. *Australasian Marketing Journal (AMJ)*, 20(4), 260-267.

Germany, and by a smaller amount in 10 other EU countries: Portugal, Malta, Italy, Slovakia, Estonia, Poland, Greece, Slovenia, and Czechia. It is known that consumer preferences differ between region and country and, therefore, small percentage figures are not always a representative indication. More than half of them believe that tinned or prepared products should indicate whether the product used is wild or farmed (53%), which is the case for 18 EU countries (Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Republic of Cyprus, Luxembourg, Malta, The Netherlands, Austria, Portugal, Slovenia, Finland, Sweden, United Kingdom) ranging from 50% in Belgium to 70% in Greece. Moreover, concerning mandatory information on labels of fresh, frozen, smoked and dried fishery and aquaculture products, 89% of consumers think the name of the product and the species is important, of which 54% even indicated it as very important information. This response documented in the EuroBarometer survey (2018) was consistent in all 28 EU Member States. It thereby is the most valued extrinsic mandatory piece of information after the use by or best before date.

The same study concluded that for 19 of the 28 EU countries at least two thirds of fishery and aquaculture products consumers think the distinction between a wild or a farmed product is important information to be put on labels, with 39% of them saying this is very important. Numerous studies have revealed that a preference for wild caught over farmed fish exists with a perception that wild fish is of a better quality (Brunsø *et al.*, 2009; Kole, 2003; Verbeke *et al.*, 2007)¹⁷. This was as well the case in Lawley *et al.* (2012) and in a recent study conducted by the European project PrimeFish (2017)¹⁸ which looked into consumers' preferences and willingness to pay for certain extrinsic factors of fishery and aquaculture products. In the latter, the results show that this appreciation towards wild-caught fish translates, although variable between countries and species, into consumers willing to pay more. For instance, the highest willingness to pay was documented in France concerning salmon where consumers indicated a +58% willingness to pay and for seabass in Germany (+51%), while on the other hand Spanish consumers exhibited the lowest premiums for wild-caught fish.

¹⁷ The first study mentioned covers Spain and Belgium. The second study covers Southern Europe, Norway, Germany, the United Kingdom, and France. The third study covers Belgium.

¹⁸ PrimeFish deliverable D4.7 Choice modelling report on innovative features and the consumers' willingness to pay (2017). This report is one of the outcomes of the EU funded project 'Developing innovative market oriented prediction toolbox to strengthen the economic sustainability and competitiveness of European seafood on local and global market' going by the acronym PrimeFish, http://www.primfish.eu/sites/sites/default/files/D4_7_Willigness_to_pay.pdf

It is thus safe to say that, from a scientific point of view, country of origin, species name, and method of production (wild or farmed) are influential extrinsic variables when it comes to quality evaluation, seafood consumption and willingness to pay by consumers (Gao *et al.*, 2010). Therefore, providing this information on labels is of relevance to the consumer, not only in Europe but across the globe as demonstrated by scientific studies and public polls.

In conclusion, several studies suggest a clear interest from consumers in knowing the origin of seafood products. However, further analysis is needed on the link between origin labelling and purchasing behaviour. The level of consumption of seafood in the EU has not changed significantly in the years that the CMO Regulation has been in force¹⁹, even though it is important to note that increasing consumption is not one of the aims of the consumer information provisions.

3. Labelling requirements [Recommendations a), c)]

Each processed animal product entering the EU or processed in the EU has to be labelled with an additional health mark or identification mark. This indicates that official controls with respect to Regulation (EC) No 2017/625 have been carried out. This mark should not be misunderstood as information on the origin of the raw material. Specific rules about the form of the identification mark for fishery products have been laid down in Chapter II, A, B and C of Regulation (EC) No 853/2004²⁰. The country as well as the agreement number of the establishment of the last processing has to be declared in full writing or with an abbreviation with respect to the relevant ISO norm.

Currently, a set of obligations relating to the consumer information is provided in Regulation (EU) No 1169/2011 on food information to consumers, and for certain fishery and aquaculture products in Regulation (EU) No 1379/2013. More specifically, Article 35 of the latter Regulation establishes as mandatory information for these products the following data:

(a) the commercial designation of the species and its scientific name;

¹⁹ AIPCE-CEP (2019) 'Finfish Study 2019', <https://www.aipce-cep.org/wp-content/uploads/2019/12/AIPCE-CEP-Finfish-Study-2019.pdf>, p. 16.

²⁰ Labelling requirements for Gempylidae species can be found in Regulation (EC) No 853/2004 Annex III, Section VIII, chapter V, letter E. in connection with Regulation (EC) No 1020/2008.

- (b) *the production method, in particular by the following words "... caught ..." or "... caught in freshwater ..." or "...farmed ...";*
- (c) *the area where the product was caught or farmed, and the category of fishing gear used in capture of fisheries, as laid down in the first column of Annex III to this Regulation;*
- (d) *whether the product has been defrosted;*
- (e) *the date of minimum durability, where appropriate.*

However, the above only applies to fishery and aquaculture products referred to in points (a), (b), (c) and (e) of Annex I to this Regulation, thereby excluding animals unfit for human consumption (d), fats and oils (f), extracts and juices of meats (g), flours, meals and pellets (k), fish solubles (l), but it also excludes prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs (h), crustaceans, molluscs and other aquatic invertebrates prepared or preserved (i), and pasta cooked or stuffed with seafood (j). There is a certain contradiction that salted fish is classified under chapter 03, while caviar and caviar substitutes, which are also salted, are under chapter 1604. This contradiction should be addressed in the next revision of the CMO Regulation by listing caviar and caviar substitutes with the concrete CN codes under an additional letter in Annex I of the CMO Regulation.

Furthermore, the European Parliament resolution of 30 May 2018 on the implementation of control measures for establishing the conformity of fisheries products with access criteria to the EU market (2017/2129(INI)), expressed its conviction that European consumers would often make different choices if they were better informed about the true nature of products on sale, their geographical origins, their quality and the conditions under which they have been produced or caught. Above all, the marketing standards should ensure a harmonized functioning of the common market, and a fair and sustainable market for fishery products, in accordance with Article 5(g) of the Common Fisheries Policy (contribute to an efficient and transparent internal market and contribute to ensuring a level-playing field for fisheries and aquaculture products marketed in the Union).

Additionally, the FIC Regulation, in its Article 3, stipulates that EU consumers should be able to base their choice on *"health, economic, environmental, social and ethical considerations"*. If a consumer finds it unethical to consume foods originating from a certain region in the world, he or she has a legitimate reason to seek support for labelling in this respect.

The MAC believes that fishery and aquaculture products fit for consumption, where the primary ingredient is seafood, should be providing the information said in Article 35 of the CMO Regulation. This translates into the need to include and adapt the mandatory consumer information requirements described in this Article to prepared or preserved fish, crustaceans, molluscs and caviar – under codes 1604 (h) and 1605 (i) of Annex I.

The Commission Implementing Regulation (EU) 2018/775²¹ entered into force on 1 April 2020. However, the MAC is of the opinion that the information required under this Regulation is not equivalent to the mandatory information required under the CMO Regulation (the latter demands country of origin and the former only applies to the primary ingredient when the origin of the food is voluntarily indicated. It also provides various options that can be used, e.g. simply stating whether the product is EU or non-EU; the country is not obligatory) and, as such, can create discrepancies not only among EU producers of differing fisheries products but also between EU producers and non-EU producers. This is especially applicable for products (such as caviar and processed/canned fishery and aquaculture products) which fall out of the mandatory labelling (under Article 35) of the CMO Regulation, as the FIC Regulation does not cover these products to the same extent as those covered by Article 35 of the CMO Regulation.

In order to obtain a level playing field, when it comes to fishery and aquaculture products marketed within the Union, the European catching sector, the aquaculture producers, the small traditional fish retailers, and the environmental NGOs, while recognising the implicit technical complexity, believe that prepared and preserved fish products which are containing a minimum of 50 percent of seafood, thus a primary ingredient²², should be included and subject to an adaptation of Article 35 of the CMO Regulation. This is further supported by FIC Regulation clearly indicating in Recital 32 that:

“Mandatory origin provisions have been developed on the basis of vertical approaches for instance for honey, fruit and vegetables, fish, beef and beef products and olive oil. There

²¹ Commission Implementing Regulation (EU) 2018/775 of 28 May 2018 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

²² ‘Primary ingredient’ means an ingredient or ingredients of a food that represent more than 50% of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required (Article 2(2)q of the FIC Regulation (EU) No 1169/2011).

is a need to explore the possibility to extend mandatory origin labelling for other foods. It is therefore appropriate to request the Commission to prepare reports covering the following foods: types of meat other than beef, swine, sheep, goat and poultry meat; milk; milk used as an ingredient in dairy products; meat used as an ingredient; unprocessed foods; single-ingredient products; and ingredients that represent more than 50 % of a food. Milk being one of the products for which an indication of origin is considered of particular interest, the Commission report on this product should be made available as soon as possible. Based on the conclusions of such reports, the Commission may submit proposals to modify the relevant Union provisions or may take new initiatives, where appropriate, on a sectoral basis.”²³

²³ The respective reports mentioned in recital 32 were published in September 2014: (1) ‘Study on mandatory origin labelling for milk, milk used as an ingredient in dairy products, and unprocessed meat other than beef, pig, poultry, and sheep and goat meat (Executive Summary)’, https://ec.europa.eu/agriculture/sites/agriculture/files/external-studies/2014/milk-meat-origin-labelling/exec_sum_milk_en.pdf. On p. 5, it is noted that “[i]n cases where consumers’ willingness to pay for labelling of origin is negligible, introducing mandatory origin labelling may result in pressure on the milk price and supply and by that have a negative impact on dairy farmers’ income prospects. [...] This [*i.e. voluntary labelling*] is a better option than establishing mandatory origin labelling for all stakeholders (businesses and consumers) since it avoids the extra costs and administrative burden associated with the provision of compulsory information. Although a majority of consumers express a general interest in knowing the origin of the milk in dairy products, assessments indicate that willingness to pay for it is likely to be low. However, interested consumers might prefer generic (mandatory) regulation because it has a cost-sharing advantage for them. Products with voluntary origin labelling have been identified in several Member States, and under these conditions a system of voluntary labelling of origin already meets the need for the consumer to be informed.”

(2) ‘Study on the mandatory indication of country of origin or place of provenance of unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food (Executive Summary)’, https://ec.europa.eu/food/sites/food/files/safety/docs/labelling_legislation_executive-summary_ew_02_15_293_en.pdf, which concludes: “The analysis of consumer attitudes towards geographical origin labelling (Theme 1) indicates evidence of a ‘paradox’ in consumer attitudes towards origin labelling, in that there is a discrepancy between declared strong interest and actual purchasing behaviour. The findings also indicate that there are differences in consumer interest and approaches to origin labelling by Member States, as well as between products. This suggests that a harmonised horizontal approach across Member States and products may not be appropriate. [...] [T]he study concludes that the technical feasibility, costs and impacts of the various options/modalities differ significantly by product/product sector. For many options/modalities and product/product sectors assessed, mandatory labelling would entail considerable increases in cost. [...] Therefore, introducing rules on a horizontal basis for the diverse range of products potentially falling within the scope of the three categories covered by the study is, in practice, not feasible. In conclusion, the adverse effects that the generalised introduction of mandatory origin labelling on a horizontal basis of the three categories of foods covered by the study may have on costs, the internal market and EU trade and competitiveness would outweigh the benefits that it could possibly bring to consumers. [...] Furthermore, a key constraining factor in the introduction of generalised rules on origin labelling on a mandatory basis is the difficulty in enforcement, as also highlighted by the expert Focus Group. There

The problem is what is considered country of origin in the Regulation (EU) No 1169/2011 on food information to consumers. The Union's non-preferential rules of origin are laid down in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and its implementing provisions in Commission Regulation (EEC) No 2454/93 of 2 July 1993. Determination of the country of origin of foods will be based on those rules, which are well known to food business operators and administrations and should ease their implementation.

Regulation (EU) No 1169/2011 thus sets out:

Art. 2 1.(g): 'place of provenance' means any place where a food is indicated to come from, and that is not the 'country of origin' as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92; the name, business name or address of the food business operator on the label shall not constitute an indication of the country of origin or place of provenance of food within the meaning of this Regulation;

Art. 2 3.: For the purposes of this Regulation the country of origin of a food shall refer to the origin of a food as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92.

The problem here is what Council Regulation (EEC) No 2913/92 considered country of provenance for fisheries products in its Article 23:

(f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;
(g) goods obtained or produced on board factory ships from the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;

On the other hand, in relation to the mention of Article 32 of the FIC Regulation, the European processing sector reminds that the report from the Commission to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance

is therefore considerable concern that the challenges to effectively enforce any new rules could create a risk for potential fraud. The question of liability along the supply chain also arises."

for unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food²⁴ concluded that:

“Against this background and in view of the Commission policies in terms of better regulation, voluntary origin labelling combined with the already existing mandatory origin labelling regimes for specific foods or categories of food appears as the suitable option. It maintains selling prices at current levels and still allows consumers to choose products with specific origins if they want to, while it does not affect the competitiveness of food business operators and does not impact internal market and international trade.”

In the view of the European processing sector, the described situation is still the reality and, as such, is supported by the sector as the most suitable option.

4. Scientific names [Recommendations e), f)]

Including scientific names in labelling is considered important, especially in certain European regions, in order to identify what the product actually contains. However, there can be instances where special accommodations need to be made. For instance, the indication of the scientific name has in the case of wild shrimp revealed problems with respect to mixtures of wild shrimp which are all allowed to be marketed as shrimp, but originally have different scientific names. The food operator, selling species of e. g. *Penaeidae*²⁵ and of *Solenoceridae*,²⁶ has limited possibilities to declare the corresponding names of the species with respect to each single package because of the abundant natural mix in a single catch. It is important to keep in mind that, for products with a mixture of species, associating a taxonomic denomination (genus + specie) with a specific commercial designation has many implications, for example in the case of the Spanish market.

In those special instances where a scientific name is changed following a decision from the scientific community, there should be a well-defined transitional period where the product can be traded under both names. Furthermore, changes of scientific names can produce

²⁴ Published in May 2015: <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-204-EN-F1-1.PDF>, p. 13

²⁵ I.e. *Penaeus indicus*, *Penaeus semisulcatus*, *Metapenaeus affinis*, *Metapenaeus brevicornis*, *Parapenaeopsis sculptilis* and other species.

²⁶ I.e. *Solenocera Africana*, *S. agassizii*, *S. crassicornis* and other species.

misunderstanding and mislabelling in the value chain if clear rules of procedures to amend scientific names are missing. For that reason, the MAC strongly urges the scientific community to exercise due diligence henceforth in changing scientific names, considering the disruption this may cause for trade.

5. Date of Catch/Harvest

Currently, the date of catch or harvest falls under additional voluntary information, noted in Article 39 a) of the CMO Regulation. The date of catch/harvest was proposed by the Commission in its original proposal for the CMO Regulation (then Article 42 (d)).

Amongst the MAC's membership, it is considered that this piece of information should continue to be voluntary, since it is not deemed to be of high importance to consumers, particularly in the case of preserved fish²⁷. The quality of fisheries and aquaculture products is guaranteed with freshness criteria, such as the processes and good practices of each operator, as well as by marketing standards and health and food safety legislation. Additionally, it should be noted that there are already a number of mandatory dates in relation with hygiene regulation (Use by date, best before date, date of production date of freezing). Adding more dates may become very confusing for consumers. The dates of catch/harvest for fresh seafood products, due to their specificity, are not considered comparable to the dates of other food products, such as meat or milk, and it may be difficult for consumers to understand the nature of this information, which could lead to an increase in food waste. Furthermore, it is important to note that, from a technical perspective, the current fisheries control system solely allows the provision of the date of landing throughout the supply chain.

²⁷ FEAP disagrees with this view, in particular in the case of fish made available to consumers as both non-prepared and prepared fishery products (as defined in Regulation 853/2004) that are, in both cases, unprocessed fishery products. Numerous consumer preference studies prove that freshness ranks as one of the main purchase drivers for these types of fishery products, in which time elapsed from capture/slaughter is the main factor for freshness under similar temperature conditions. Furthermore, it should be noted that the provisions on compulsory food information to consumers established in Regulation 1169/2011 do not apply to fresh fishery products offered to the consumers non-prepacked. Since FEAP considers that this information is important for consumers to be able to make responsible choices this information for consumers should be mandatory. However, this obligation should apply to all or none of the fishery products offered to the consumers in the same way. It would not be adequate to apply it only to capture fisheries or to aquaculture products alone. Both or none. Furthermore, FEAP sees no relation between this requirement and any potential increase in food waste. On the opposite, it would make consumers more aware on the characteristics of fishery products freshness wise.

6. Repacking [Recommendations d), e), f)]

Below, several examples are shown which can be considered an outcome of the lack of clear mandatory information regarding the country of origin and scientific name when it comes to fishery products. However, such mandatory origin provisions have been developed for other products marketed within the Union. As stated in Regulation (EU) No 1169/2011 Recital (32):

“Mandatory origin provisions have been developed on the basis of vertical approaches for instance for honey, fruit and vegetables, fish, beef and beef products and olive oil. There is a need to explore the possibility to extend mandatory origin labelling for other foods.”

It was noted in the discussions that products containing sprat have been traded as *benfri sild*, meaning 'boneless herring', and as *ansjovis*, which represents a situation of misleading information to consumers in the EU market due to the use of different trade names in different Member States and potentially fraud, since it does not comply with the Danish list of commercial designations. This example is shown in figures 1 and 2.

The European processing sector outlined that, in order to market *Clupea harengus* products, the applicable national and EU legislation must be properly respected, which is not the case in the example provided. For that reason, this sector does not find the example to be relevant, since it represents a control problem and not a legislative framework one.



Figure 1: A product containing sprat but traded as *benfri sild*, meaning 'boneless herring', and as *ansjovis*.

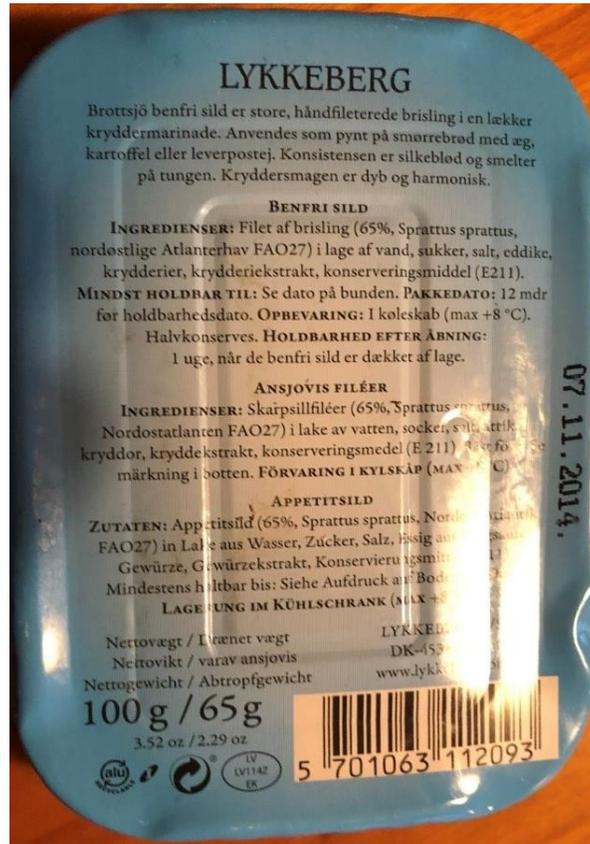


Figure 2: Backside of product in Figure 1.

Product names do not always correspond to the scientific name²⁸. The SWWAC and the EU catch sector stated that this practice is damaging the fishing fleet targeting these stocks as well as the traditional canning industry, leading to unfair competition and even consumer fraud.

Such as anchovy caught in Moroccan waters, processed in a canning factory in Madrid, Spain, but commercialized as anchovy of Cantabrian origin (region in Spain). However, anchovy of Cantabrian origin can only be the anchovy species *Engraulis encrasicolus* and this information is not always indicated on the product, nor is the origin of the fish (FAO area 27) so that the consumer would be able to confirm whether it is indeed anchovy from Cantabria. In the example image on the right (figure 3), anchovy is marketed as Cantabrian anchovy but the ingredients list solely indicates *Engraulis spp*, which could be any type of anchovy. However, this confusing

²⁸ This could be the case for preserved products such as 'bonito', 'bonito del norte', 'pacific plaice', 'anchovy', and 'herring'.

labelling clearly became illegal with the entry into force of the Commission Implementing Regulation (EU) 2018/775 on 1 April 2020.



Figure 3: Anchovy marketed as Cantabrian anchovy, while the product's list of ingredients does not specify *Engraulis encrasicolus*.

7. Origin labelling impact on the fishing industry as they relate to difference in requirements in terms of information to consumers for fresh products and processed products [Recommendations a), b), c), d)]

First of all, it must be noted that the Commission Implementing Regulation (EU) 2018/775 as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food entered into force in April 2020. The Regulation makes it mandatory to indicate the origin of the primary ingredient when it is different than the one of the food voluntarily indicated, which can be misleading for the consumer. Therefore, the information required under this Regulation is not equivalent to the mandatory information required under the CMO Regulation (latter demands country of origin and the former provides various options e.g. non-EU) and as such creates discrepancies not only among EU producers of differing fisheries products but also between EU producers and non-EU producers.

With the above mentioned derogation from Article 35 of the CMO Regulation for prepared or preserved seafood products under codes 1604 and 1605 of Annex I, adequate information may not be guaranteed throughout the entire production chain as required by the CFP as the information does not reach the consumer in all instances. This may prevent consumers from making appropriate purchasing choices with the full suite of information available, including especially origin, in contradiction to Recital 4 of the CFP.

In relation to the marketing standards on preserved products, the MAC would like to draw attention to the its position expressed on its advice on “EU marketing standards for fishery and aquaculture products: Regulations 2136/89 and 1536/92” of 12 of July 2019²⁹.

Furthermore, just providing the country of production or fishing could in certain occasions be misleading to the consumer since a product can be labelled as originated from country X while it could have been processed in country Y or raised in country Z. Therefore, it is important to discuss the need, including the operational complexities, to provide not only the country of production or fishing, but also the country of repacking. The need for this information is demonstrated by the fact that official EUROSTAT statistics on trade flows (fisheries imports and exports) may not reflect the fishing catching or farming areas of the product nor the flag of the vessel, only the “origin” of the country where the fishery product underwent its last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose.

From an economic point of view, the European fishing fleet finds it thus difficult to compete with products imported from third countries since the existing legislation permits to combine both EU and non-EU products in the EU factories’ production lines without the obligation to declare the origin of the fish (flag state vessel and catch area)³⁰. European Parliament resolution of 30 May 2018 on the implementation of control measures for establishing the conformity of fisheries products with access criteria to the EU market (2017/2129(INI)) clearly states clearly states that

²⁹ MAC Advice on EU marketing standards for fishery and aquaculture products: Regulations 2136/89 and 1536/92, <https://marketac.eu/wp-content/uploads/2019/07/MAC-Advice-Marketing-Standards-PROCESSED-12.07.2019.pdf>.

³⁰ ANFACO-CECOPESCA disagrees with the reference to “flag state” as the origin indication for the fish as an ingredient in the labelling. The approach of the Commission Implementing Regulation (EU) 2018/775 must also be considered. Under this implementing regulation, “flag state” is not an option for the indication of the country of origin or place of provenance of the primary ingredient, while geographical references to the FAO Fishing area or third country are foreseen, among another options. Flexibility and voluntariness of the origin labelling possibilities according to the processing operational needs, must be the rule to follow by legislators.

the EU fishing fleet needs to comply with the highest standards (labour, hygiene, sanitary, control, etc.) and consequently fulfilling these requirements are costly³¹. Therefore, the price offered by EU operators would normally be higher than the products from non-EU operators, even more in the case of applicable preferential trade agreements or autonomous tariff quotas. If the origin and the sustainable way of production are lost for the consumer, since the information on the origin in the label is voluntary, the fishing industry is often forced to meet the non-EU operator prices if they want to sell the product in the EU market. The normal consequence is that the EU producer should then try to find a non-EU market with better prices for their products³².

The European processing sector and some European retail associations note that production costs (for both EU and non-EU producers) depend on a great many variables, of which compliance with legal requirements is only one element. In addition, all products placed on the EU market have to comply with the relevant EU legislation. Comparative costs of production do not form part of mandatory consumer information requirements in any sector. Moreover, the “willingness” to pay for such products as an “intention to do it” is not always translated in actual purchase, and should be checked against the actual behaviour of consumers.

In the view of the European processing sector and some European retail associations, the concepts of hygiene (Regulation (EC) No 853/2004) and origin (FIC Regulation) as well as the different origins of a food product and of their ingredients, with the subsequent complexities, have been mixed. The Union Customs Choices established the rules to determine the origin of a processed product, while Commission Implementing Regulation (EU) 2018/775 developed a framework to avoid the misleading of consumers when purchasing an origin-labelled processed product who might believe that the primary ingredient was from the same origin. Moreover, the identification mark is not placed on the product for origin purposes, but to determine the FBO responsible for the last operation under Regulation (EC) No 853/2004. Finally, the sector believes that it is necessary to be aware of the arising repercussions of excessive, not useful, information to consumer as well as the repercussions towards other EU legislative frameworks.

³¹ The European processing sector disagrees with the inclusion of this statement, since it is not a consumer information matter.

³² The European processing sector disagrees with the inclusion of this statement, considering that it does not match reality and it is not a matter of consumer information. The level of price of a product depends on a huge variety of price determining factors and not only the production costs of the EU fleet.

The majority of the MAC's membership would recommend cost-effective solutions to ensure the full traceability of the product and to provide the next step in the supply chain – be that business or end consumer – with relevant information, which are therefore fundamental.

8. Making use of existing traceability systems for consumer information [Recommendation g)]

Initially, the discussion in this section aimed at providing solutions and examples how labelling to consumers has made advances in the recent past, including innovative approaches as they are found in the EU marketplace today. However, over the course of the discussion among MAC members, two major factors led to a different outcome.

First, any such overview of new approaches—often making use of digital tools—which make traceability information of a product usable for consumer labelling was deemed to be hardly exhaustive, thereby only representing a snapshot of solutions.

Second, and more importantly, it was concluded that a more pressing need but also opportunity would lie in promoting the interoperability between existing traceability systems, as they are required today, so as to use the advantages of digital systems. Aside from better interoperability between systems, emphasis should be put on ensuring that any digital system meant to provide more information to consumers should not unreasonably increase the burden on small and medium-size enterprises.

In conclusion, labels may be lacking information which is available but not mandatory to provide on the label. Information, like country of origin, is indicated by consumers of high value when it comes to their perception of the quality of the product, their choice and sometimes their willingness to pay. In addition, these provisions are not mandatory for all food products. In the case of fishery products, mandatory origin provisions are only applicable for certain products depending on the way of production. In this sense, prepared, processed and preserved products are exempted from these requirements.

Therefore, amongst the MAC's membership, with the exception of the European processing sector and some European retail associations, it is considered that the lack of mandatory origin or provenance for all fishery products (with seafood as the primary ingredient) deprives the



industry from obtaining a level playing field and hampers consumers from obtaining information on the products placed on the market.

Additionally, amongst the MAC's membership, with the exception of some European retail associations, it is considered that the same issues arise from the lack of mandatory provisions on scientific names for all fishery products (with seafood as the primary ingredient).