



MAC ADVICE

Inception Impact Assessment on the Marketing Standards Framework for Fishery and Aquaculture Products

Brussels, 15 May 2020

1. Introduction

The Market Advisory Council (MAC) welcomes the opportunity to contribute to the European Commission's Inception Impact Assessment on the marketing standards framework for fishery and aquaculture products.

In 2018, in accordance with the Better Regulation Package Guidelines, the Commission launched an evaluation of the framework to assess the extent to which these were still fit for purpose. In this context, the MAC adopted an opinion covering marketing standards for fresh products¹, which was followed by an opinion covering processed products².

The Commission has continuously emphasised that the common marketing standards should enable the market to be supplied with sustainable products, an objective that has achieved particular relevance under the recently introduced European Green Deal. The MAC generally supports the objectives of the European Green Deal, particularly the ones on sustainable food under the Farm to Fork strategy, and aims to assist the Commission achieve these. At the same time the actual Farm to Fork Strategy, which is to create an integrated approach across different sectors to build sustainable European food systems, will not be launched until after the consultation deadline of the Inception Impact Assessment. The content of the strategy therefore remains unclear to the MAC, and the MAC cannot know how the revision of the marketing standards fits into this wider strategy. This caveats this advice. Furthermore, the MAC considers that a revision of the marketing standards framework will need to take into

¹ Advice adopted on 28 March 2019. Available on the MAC's website: <https://marketac.eu/wp-content/uploads/2019/04/MAC-Advice-Marketing-Standards-FRESH-28.03.2019.pdf>

² Advice adopted on 12 July 2019. Available on the MAC's website: <https://marketac.eu/wp-content/uploads/2019/07/MAC-Advice-Marketing-Standards-PROCESSED-12.07.2019.pdf>

account the impact of the COVID-19 crisis that took place after the publication of the Inception Impact Assessment.

2. European Commission’s External Evaluation Study & Staff Working Document

On November 2019, the Commission made publicly available a study by an external consultant on the evaluation of the standards³, which was followed, in the subsequent month, by a Commission Staff Working Document⁴.

The evaluation assessed the performance of the marketing standards framework according to five criteria: relevance, effectiveness, efficiency, coherence and EU added value. The MAC generally agrees with the results of the evaluation outlined in both documents, but would like to mention some differing views in relation to the main findings:

2.1 Relevance

The MAC considers that the freshness criteria is no longer relevant and should be replaced by an indication whether the product is “fit for human consumption” or “not fit for human consumption”, as per the General Food Law⁵.

The external evaluation study highlights multiple times that the freshness criteria becomes irrelevant after the first sale as “freshness deteriorates and shelf-life becomes the most important criterion for operators down the supply chain” (p. 23). The study explains that some markets, for instance Italy, do not sort fish according to the marketing standards but still grade it (p. 25). In addition, it demonstrates that there are numerous issues with compliance around the application of the freshness standards in all of the Mediterranean Sea basin. This is to be put in perspective with the fact that most contributions in the study come from Spain, Italy and France, which combined represent near 50% of the answers (p. 19). Finally, the report points out inconsistent implementation across auctions within Member States as it is “subjective” criteria (p. 29).

³ The document was prepared by Coffrey International. It is available here: <https://op.europa.eu/en/publication-detail/-/publication/9480757a-100c-11ea-8c1f-01aa75ed71a1/language-en/format-PDF/source-110372510>

⁴ Available here: https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/swd-2019-453_en.pdf

⁵ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

The Staff Working Document highlights further issues regarding freshness standards, such as that these are not applied “very rigidly” and “vary across auctions” (p. 11), plus these are “subjective”, leading to “inconsistent implementation of the standard across the auctions and Member States” (p. 14). The document’s conclusions on relevance mention that “size and freshness criteria are considered relevant to define first sale prices for fresh whole fishery products” (p. 14), which contrasts with the previously mentioned considerations.

2.2 Effectiveness

According to the evaluation, the standards may have positively affected profitability, at least indirectly, by preventing that competition takes place to the detriment of product quality. The MAC considers that higher prices for better quality on fresh products are not linked to the freshness standards, but to an inherent market mechanism valuing fresher products.

2.3 Efficiency

According to the evaluation, the enforcement costs of the standards for public authorities are marginal, and implementation costs borne by operators are marginal or null. The MAC would like to highlight that the integration of costs within the control of other aspects of the products does not mean that this control has no cost for private operators.

3. Considerations regarding the Inception Impact Assessment

The MAC welcomes the recognition that the freshness categories are outdated and need an update. The MAC does not subscribe to the presumably antagonistic perspective that is given between “consumers, retailers and NGOs) call for sustainability aspect to be better and more transparently addressed, while respondents from the fisheries sector emphasise the importance of improving the level playing field”. These two positions of increased sustainability and need for a level playing field are perfectly compatible.

3.1 Position of the MAC regarding the Policy Options Presented

In relation to the preliminary policy options considered in the Inception Impact Assessment, the MAC maintains the positions expressed in the opinion on marketing standards for fresh products and in the opinion on marketing standards for processed products.

The MAC supports “moderate reform of the marketing standards, focusing on addressing the technical issues identified in the evaluation and simplifying the standards, where possible”

for fresh products, in connection with Council Regulation (EC) No 2406/96 and Regulation (EU) 1379/2013, in order to tackle the issues outlined in the MAC's advice on fresh products. The main issue lies on the relevance of the freshness criteria, which should be reformed and adapted to provide a level playing field. The replacement of this criteria by an indication of whether the products are fit or unfit for human consumption would mean a greater harmonisation across the EU⁶. A second point would be the need to allow for a degree of flexibility in the size/weight categories to reflect the changing demands for different products and sizes.

As mentioned on the previous MAC advice on processed products, Council Regulation (EEC) No 2136/89 and Council Regulation (EEC) No 1536/92 might be updated in accordance with the requirements of today's regulations and objectives, particularly the new Common Fisheries Policy and the Treaty of Lisbon.

As remote buying and selling increases, business operators should be the ones developing a harmonised and standardised system, similar to the best practices in the agribusiness. This could take place through a guidelines document developed by stakeholders in the seafood supply chain via a standardisation organisation. Adaptation under the marketing standards framework would allow to take into account regional differences in the EU.

3.2 Considerations on the Addition of a Sustainability Component

The majority of the MAC's membership is concerned regarding the potential implications of the proposal to add a sustainability component under the marketing standards framework.

The concept of sustainability is very broad and encompasses various aspects of fishery and aquaculture products, such as sustainable fish stocks, ecosystem effects on associated species and habitats, effective management rules, the environmental footprint of seafood production and processing, labour and social conditions of workers, among others. Even the distinction between ecological sustainability and environmental sustainability can be challenging, as demonstrated by previous initiatives launched "on product environmental footprint" by the

⁶ FEDEPESCA disagrees with the proposed replacement, since it considers that the freshness criteria have a greater implication at commercial level.

Commission⁷. Despite different standardisation and benchmarking initiatives, there is still no clear agreement on the definition of the concept of social sustainability in the seafood sector. It is important to note that the CMO Regulation does not presently provide a definition of sustainability⁸. The development of a definition would be a substantial endeavour requiring proper expertise, time and resources. At the same time, marketing standards are expected to harmonise the trade of fishery and aquaculture products, meaning that these need to remain simple to be effective, and are not the right place to operationalise such a complex concept. If sustainability were to be defined, the CMO Regulation itself would be the proper place.

On the other hand, MAC members Oceana, CFFA, EJF, Européche, Good Fish Foundation and ETF disagree with the previous view and are not concerned with the addition of a sustainability component under the marketing standards framework, as there is a need to ensure that the EU market is supplied with sustainable products. These members would like to highlight that the previous MAC advice on processed products stated that “the MAC believes that clearly defined standards are necessary in the market in order to ensure that the EU market is supplied with sustainable products, that uniform and transparent criteria are applied throughout the single market, that fair competition is guaranteed and the profitability of the EU production is improved”. Therefore, these members feel that it is important to explore ways to add a sustainability component in the future framework⁹.

Oceana, CFFA, EJF, Européche, Good Fish Foundation and ETF believe that this relevance is evident from several perspectives: First, the Farm to Fork strategy sets out to achieve a

⁷ More information available here: https://ec.europa.eu/environment/eussd/smgp/ef_pilots.htm

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, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000

⁹ MSC also agrees, that there is a need to ensure that the EU market is supplied with sustainable products. In the broader context of the EU Green Deal and the Commissions Farm to Fork Strategy which is to be launched later this month, the MSC supports EU action to explore ways to improve sustainability of fishing and fish products at every step of the value chain. The MSC however takes the position that whether or not the marketing standards are an appropriate policy option for this will depend on a number of factors that will have to be thoroughly considered in the Commission’s Impact Assessment given the concerns mentioned in section 3.2 of this MAC advice. This can lead to the conclusion that there are more effective policy instruments than the marketing standards to achieve said objective.

circular economy from production to consumption, which would call for the inclusion of sustainability considerations within future marketing standards. Second, this inclusion is in line with Regulation (EU) 1379/2013 setting out in its preamble that “common marketing standards should enable the market to be supplied with sustainable products”, while facilitating fair competition and profitability of production as well as ensuring that imported products meet the same standards which apply to EU producers¹⁰. Concerning the development of a sustainability component, the MAC would like to point out, as mentioned in the evaluation study, that other policy tools are available to advance the objectives of sustainability. Even though the MAC generally supports the development of an ambitious sustainability framework, the majority of the MAC’s membership believes that these other policy tools would be more effective. It is important to note that sustainability considerations are already reflected under the Common Fisheries Policy as well as under legislation on social and safety initiatives, such as Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation. The role of voluntary standards in reinforcing these policy frameworks, already used by a large section of the seafood sector, as highlighted in the evaluation study, should also be taken into account. The MAC invites the Commission to consider standardisation initiatives undertaken by the industry operators and other stakeholders, including through CEN. It should also be underlined that these initiatives are costly and should be financed through the EMFF. These initiatives should however not result in market access barriers. In light of this, setting up basic minimum requirements would enhance the deliverables of such initiatives, could manage proliferation, and would ascertain that they are compatible with WTO rules, which the Inception Impact Assessment mentions as a prerequisite. MAC members Oceana, CFFA, EJF, Europêche, Good Fish Foundation and ETF disagree with this view, based on the previously outlined reasons.

¹⁰ 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, recitals (18) and (19).



In line with the Farm to Fork strategy, the Commission should map out the entirety of the seafood supply chain to identify sustainability issues, shortcomings and hindrances. Afterwards, the Commission could determine which policy instruments, if any, would be the most appropriate tools to overcome these. Without this prior assessment, it is difficult to conduct a meaningful impact assessment of a possible inclusion of sustainability criteria within an eventual reform of marketing standards. This fact is also highlighted in the Inception Impact Assessment, given the wide range of aspects which could be considered, and the selection of sustainability criteria and indicators, that would ultimately be made, as well as the weighting of different sustainability dimensions (if applicable). As noted, the majority of the MAC's membership has serious concerns which present clear obstacles to pursuing option 3. If however further consideration would be given to this, the MAC emphasises that it would be important to ensure a level playing field for all fishery products put on the EU market. MAC members Oceana, CFFA, EJF, Europêche, Good Fish Foundation and ETF favour policy option 3, advocating for a more ambitious approach than a technical revision, while agreeing that further analysis would be needed¹¹.

As for the possibility to provide information to consumers on sustainability under the marketing standards framework, the MAC would like to highlight that the marketing standards framework is a business to business instrument that is useful for first sales of seafood products in the EU, harmonisation of minimum quality standards and assurance of a level playing field in the market.

Lastly, the MAC remains committed to working on the topic of sustainability in the future. As an example, the MAC will reflect on the different concepts of sustainability, particularly social sustainability, under its Workshop on Ecolabels and Certification Schemes.

¹¹ MSC more specifically calls for the Impact Assessment to evaluate whether or not the marketing standards are the best policy option to achieve the sustainability objectives set in the EU Green Deal and Farm to Fork strategy, or if other policy instruments can be more effectively leveraged to achieve similar objectives.