

MAC ADVICE

EU marketing standards for fishery and aquaculture products: Regulations 2136/89 and 1536/92

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Introduction and context

In accordance with the Better Regulation Package Guidelines, the European Commission launched an evaluation of the EU marketing standards to assess the extent to which these are still fit for purpose.

The current marketing standards cover some fresh and chilled products, preserved tuna and bonito and preserved sardines and sardine-like products and are mandatory requirements along the supply chain (between producers, retailers and potential intermediaries).

In its public consultation, the Commission aims to examine the **relevance, effectiveness, efficiency, coherence and the EU added** value of the current marketing standards for fishery products.

The regulatory framework under evaluation is:

- 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; and
- 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 – Chapter III – Common Marketing Standards hereafter referred to as CMO;

In June 2018 MAC established a Focus Group to formulate advice on the basis of the following specific questions:

- awareness of current regulatory framework on marketing standards
- practical implementation of current regulatory framework on marketing standards
- relevance and usefulness of marketing standards
- standards the MAC would like to see implemented and reasons why
- standards the MAC would advise to eliminate and reasons why

A total of 15 responses were received from members, representing interests at national and EU association level.

In light of these responses and with the support of a Focus Group on marketing standards issues, the MAC adopted an opinion on Marketing Standards for fresh products addressing Regulations No 2406/96 and 1379/2013. The opinion can be read here: <https://marketac.eu/wp-content/uploads/2019/04/MAC-Advice-Marketing-Standards-FRESH-28.03.2019.pdf>.

Consequently, this opinion refers to Regulations 2136/89 and 1536/92.

Considerations

The MAC notes that these standards are almost 30 years old and as such they fall under the remit of the revision carried out by the European Commission. This revision takes place for the sake of simplification, legal certainty and level playing field of these standards and to assess whether they allow achieving the objectives of the revised Common Market Organisation.

Standards the MAC would like to see implemented and reasons why

- **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;

Common marketing standards, in particular preserved tuna-bonito and sardine and sardine-type products, are useful tools to establish minimum and adequate criteria for marketing these products, whose supply chain is worldwide.

The existing standards and trade descriptions for preserved tuna and bonitos and sardines and sardine-type products were developed with the participation of EU stakeholders to ensure their adaptation to the real needs of the EU market and the EU processing industry in the late 80's and early 90's; the trade descriptions for sardines and sardine-type products were reviewed in 2003 and 2008 in regulation 2136/89, in order to align this regulation to the Codex standard STAN 94-1981 for canned sardines and sardine-type products.

These standards do not imply the application of stricter requirements than those established in B2B relationships, they ensure harmonized functioning of the common market.

- **Regulations should provide for a possibility to develop other marketing standards** in case this becomes a necessity in the market. Elaboration of such standards should involve the EU industry and pursue the level playing field among its main objectives¹.

Position of MAC

- Regulations 2136/89 and 1536/92 might be updated in accordance with the requirements of today's regulations and objectives, particularly the new CFP and the Lisbon treaty. Most of the MAC stakeholders (EU fishery and aquaculture producers, NGOs, trade unions and some fresh fish trading organisations) further call for the revision, harmonisation and simplification of these Regulations, including for fresh products, which should be refunded in a unique text for legal clarity. The common market organisation for fishery and aquaculture products should ensure a level-playing field for all fishery and aquaculture products marketed in the Union regardless of their origin and should improve the economic knowledge and understanding of the Union markets along the supply chain. . For this purpose, in line with Article 11 of Regulation 2406/96, all imported products from third countries, regardless of the method of production, should be marketed in the EU only if they are presented in packages marked with clear and legibly information including but not limited to the country of origin, scientific name and trade name. This would avoid confusion while ensuring transparency and business confidence.
- The regulations applicable to the commercialization of preserved tuna-bonito and sardines and sardines-type products are not in conflict with the corresponding CODEX standards. However, commercial names do not always correspond to the scientific name. This practice damages the interests of the fishing fleet targeting these stocks as well as the traditional canning industry, leading to unfair competition and even consumer fraud¹.

¹ In accordance with CEN procedures - <https://www.cen.eu/Pages/default.aspx>



Market Advisory Council

Therefore, the Annex of the Regulation 1536/92 might be updated accordingly, while ensuring compliance with the scientific taxonomy rules”.

- The MAC insists on the importance of ensuring a level playing field with regards to traceability information provided on a business-to-business level² by both imports and EU products. At the same time this level playing field should also be ensured with regards to social standards.³ Most of the MAC stakeholders consider therefore necessary to ensure that imported products entering the Union market comply with similar requirements and standards that Union producers have to comply with, in particular Council Directive 2017/159 on the implementation of the social partners' agreement on the ILO Work in Fishing Convention, 2007. The new consolidated Regulation should consequently include social standards and due diligence requirements for the marketing of these products. A complementary possible solution is therefore the reinforcement of inspections in order to guarantee fair competition between the operators, both EU and internationally, to create a real “level playing field”.
- Remote buying and selling may require a harmonised and standardized system, the development of which should be left to the business operators. MAC recommends unification of standards, in line with similar best practices in other sectors in agribusiness. It should be the role of the MAC to research this further and provide advice.
- European Commission should identify an optimal degree of flexibility within this regulation so to allow business operators to meet the different market demands, while keeping the highest possible level of harmonised standards that would preserve the level playing field.
- MAC believes more efforts are needed when it comes to harmonised implementation of EU regulations and supports more controls in the market.
- MAC would like to stress the importance of coherence with other EU rules (food safety, hygiene, consumer information, IUU regulation, control and conservation rules) as well as with other relevant norms and standards.

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.

The EU industry of preserved tuna and preserved sardines and sardine-type products is of the view that the above mentioned regulations are still suitable, as they are now written without changes, for these products and for the necessary current market requirements, being useful and necessary to work towards the level playing field and harmonized minimum quality standards between business operators; moreover, they do not prevent from innovation in these categories (see in Annex the Position of the EU Industry of preserved tuna and preserved sardines and sardine-type products).

² As stated in the MAC Opinion on EU Fisheries Control System, Page 4, Article 58, Traceability, 2, November 2018

³ As dictated by the EU Regulation 1379/2013 when trading in fishery products with third countries, the conditions for fair competition should be ensued, in particular through respect for sustainability and the application of social standards equivalent to those which apply to Union products.

Position of the EU Industry of preserved tuna and preserved sardines and sardine-type products

The EU industry of preserved tuna and preserved sardines and sardine-type products, that represents more than 90% of the production of these canned products inside the EU and 2/3 of the socioeconomic impact of the complete value chain, considers:

- 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;

still suitable to the necessary current market requirements as they are now written, requesting for the maintenance of the status quo.

Common marketing standards, in particular preserved tuna-bonito and sardine and sardine-type products, are useful tools to establish a minimum and adequate criterion for marketing these products, whose supply chain is worldwide.

These standards do not imply stricter requirements than those established in B2B relationships but support some minimal good practices to guarantee in a level playing field for market meanings, while accomplishing all the in-force legislation. At the same time, they include some articles allowing space for innovation to the processors and easy adaptation to the specificities of each local market, like the trade usage possibility of the name normally used in every Member State and without prejudice of the European Regulation, as the example of trade usage “Bonito del Norte” in Spain, that is clearly settled in this market for historical use, and it’s being well articulated in the own Regulation text to manage it properly. These commercial names are developed and reviewed with the participation of all the national stakeholders being competence of each member state national administration.

The existing standards and trade descriptions for preserved tuna and bonitos and sardines and sardine-type products were developed with the participation of EU stakeholders to ensure their adaptation to the real needs of the EU market and the EU processing industry. The commercial names were settled for needed species taking into account the quality of the final industrial product after the different steps of processing, like gutting, cooking, peeling or sterilization, that clearly modifies the original structure of these raw material.

The regulations applicable to the commercialization of preserved tuna-bonito and sardines and sardines-type products are aligned with the corresponding CODEX standards, which have been recently updated and have been applied without any problem and are compatible with the provisions derived from the hygiene package in terms as important as, food safety or self-control.

Some members of the fishing sector are including questions to modify regulatory provisions related to other rules where we would be happy to progress, like the fight against IUU fishing, social labour or circular economy. We are in favour of improving the work against fraudulent practices, if they exist in the market, but being nothing related to these marketing standards legislations. In case there exists any fraud in the market, that would be a sign that the regulation is correct, and therefore the solution is the reinforcement of vigilance and control of them in order to guarantee fair competition between the operators, both EU and internationally, that are selling its canned products in the EU, so as to create a real “level playing field”.

For the EU Industry of preserved tuna and preserved sardines and sardine-type products, Council Regulation (EEC) No 1536/92 and Council Regulation (EEC) No 2136/89 respectively are useful and necessary to ensure level playing field and harmonized minimum quality standards. Moreover, they do not prevent from innovation in these categories, and for that reason we want to maintain them as they are now written and respecting the current status quo, without any change.