



COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**On the implementation of Council Regulation (EC) No 104/2000 on the common
organisation of the markets in fishery and aquaculture products**

{SEC(2006) 1218}

1. INTRODUCTION

Article 41 of Council Regulation (EC) No 104/2000¹ provides that the Commission shall submit to the Council and the Parliament a report on the implementation of this Regulation by 31 December 2005. The present report is based upon stocktaking of the application of the common organisation of the markets (hereinafter "the CMO"). Moreover, the Commission services organised consultations by way of questionnaires and received responses from 22 Member States and 3 stakeholders.

Pursuant to Article 32 of the Treaty, fishery products fall under "agricultural products" and, therefore, are subject to the principles of the common agricultural policy. The Council of Ministers adopted a first market organisation in fishery products by way of Regulation (EEC) No 2142/70².

The CMO was the first component of the Common Fisheries Policy (hereinafter "the CFP"). Ever since, it has become one of the CFP pillars. Like the agricultural market organisations, its legal basis is Article 37 of the Treaty. The CMO was created to achieve the objectives laid down in Article 33 of the Treaty in the fishery sector, in particular to provide market stability and to guarantee a fair income for producers.

The current CMO laid down in Regulation 104/2000 has moved away from a mere intervention system and now lays more emphasis on sustainability-supportive fishing and marketing activities. The CMO is run on the basis of 23 implementing Regulations (see Annex 1). The 2003 Act of Accession introduced sprat and dolphin-fish and added new marketing sizes for Baltic herring.

2. MARKETING STANDARDS

The common marketing standards are essential for the proper functioning of the internal market and the intervention mechanisms. They were last amended by way of Commission Regulation (EC) No 790/2005³ in order to include sprat.

The standards have also contributed to increase the quality of products. Article 6(1) of Council Regulation (EC) No 2406/96⁴ excludes products of freshness category B from financial compensation for withdrawals. A Commission staff working paper on the application of this Article⁵ confirmed that the improvement of product quality was mainly related to the decrease in landings of category B products.

The standards apply to the first sale of fishery products, which is regulated by the Member States, with different situations prevailing therein. The first sale is organised through mandatory auctions in 8 Member States and direct sales to buyers in 12 Member States. There are non-mandatory auctions in 2 Member States and a mixed

¹ OJ L 17, 21.1.2000, p. 22. Regulation as last amended by the 2003 Act of Accession.

² OJ L 236, 27.10.1970, p. 5.

³ OJ L 132, 26.5.2005, p. 15.

⁴ OJ L 334, 23.12.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 790/2005 (OJ L 132, 26.5.2005, p. 15).

⁵ SEC(2001) 1764, 7.11.2001.

system involving auctions and direct sales in 6 Member States. Although auctions may facilitate control and traceability operations, direct sales may be more suitable for fish destined to processing and aquaculture products.

The grading for freshness is relatively simple, easy to use and adapted to major groups of species. Certain European electronic fish auctions also apply the Quality Index Method (QIM), a more detailed grading system for individual species. QIM is suitable to auctions offering a limited number of species. Nevertheless, it is more complex and thus more difficult to apply when grading numerous products.

The marketing sizes are generally expressed by weight. In parallel, Council Regulation (EC) No 850/98⁶ lays down minimum biological sizes in length. Although marketing sizes are not intended for the protection of fisheries resources, they must not conflict with conservation measures. The application of marketing and biological sizes is not always easy. In certain species, a given length may correspond to different weights. This may be due to seasonal variations in weight. In those species bearing both marketing and biological sizes, there might be occurrences of compliance with the former but not with the latter and vice-versa. Moreover, marketing and biological sizes do not apply to the same species.

The Commission services carried out 15 inspection missions in the Member States in 2004 and 2005 to evaluate compliance with marketing standards. The observance of marketing standards varies significantly with the Member States. The implementation depends largely on the volumes of landings: in coastal fisheries with reduced amounts, fish is usually sorted using traditional practices. The application of the standards improves where producer organisations (POs) are involved in controls performed in single points like auctions. With the refinement of applicable conservation measures, the relationship between marketing standards and minimum biological sizes is an issue which may need to be revisited.

16 Member States have reported controls of compliance with marketing standards. 4 new Member States have already conducted checks in their territories. Infringements were detected in 9 Member States.

As for products from third countries, certain Member States have reported problems of application of the standards during customs supervision. In addition, some Member States detected considerable quantities of imported frozen fish below the minimum marketing sizes. The reason is that the standards do not apply to products in frozen state.

With regard to canned sardines, on 23 October 2002 the WTO Dispute Settlement Body ruled in favour of Peru in the case *Peru vs. European Communities* (WT/DS231). The Community was bound to bring Council Regulation (EEC) No 2136/89⁷ into conformity with the WTO Agreement on Technical Barriers to Trade and the *Codex Alimentarius* standard STAN94. Commission Regulation (EC) No 1181/2003⁸ introduced new trade

⁶ OJ L 125, 27.4.1998, p. 1. Regulation as last amended by Council Regulation (EC) No 1568/2005 (OJ L 252, 28.9.2005, p. 2)

⁷ OJ L 212, 22.7.89, p. 79. Regulation as amended by Commission Regulation (EC) No 1181/2003 (OJ L 165, 3.7.2003, p. 17).

⁸ OJ L 165, 3.7.2003, p. 17.

descriptions for 20 sardine-type species and maintained the name “sardines” for the species *Sardina pilchardus*. Ever since, only few instances of canned sprat marketed under the name “sardines” and not properly labelled were detected in some Central and Northern Member States.

3. CONSUMER INFORMATION

Commission Regulation (EC) No 2065/2001⁹ has generally enhanced the consumer awareness about fishery products although with differences between Member States. The main issues of interest in some Member States are the origin of fish and the method of production. In other Member States, consumers are more concerned about other aspects such as quality, price and whether fish was caught in a sustainable manner.

The number of species included in the national lists of commercial designations varies significantly with the Member States. So far the designations did not have a negative impact on the circulation of fishery products across the Community. The Commission services are currently preparing a database gathering all the national designations.

Nine Member States have modified their lists. The number of modifications varied from 1 to 12 and the species added ranged from a few to 164. Practically no species was removed from the lists. 8 Member States issued provisional designations which in most cases resulted in definitive designations.

In 2002 and 2003, the implementation by Member States of the Regulation gave rise to many questions about their correct interpretation. Furthermore, the transitory arrangements foreseen in the Regulation were not limited in time. Since 2004, however, the implementation by Member States has not triggered any specific complains.

13 Member States have conducted checks of compliance with traceability, including four new Member States. As a result, 8 Member States detected a number of infringements. The requirements most commonly missing or wrongly indicated are the catch area, in particular the country of origin of farmed products, and the production method as well as the scientific name for traceability purposes.

4. PRODUCER ORGANISATIONS

4.1. Recognition of producer organisations

In 2005 there were 203 POs recognised in 16 Member States¹⁰ (see also Annex 2). Spain, France, Italy, Germany and the UK account for 74% of the total number. The constitution of 6 POs in the new Member States is worth noting. 5 POs have members from other Member States in Denmark (1), Spain (2) and the Netherlands (2). Some POs stopped their activities in Spain (2), France (1), Portugal, Sweden (1) and the UK (2). This was mainly due to decreased landings, reduced membership and lack of revenues.

⁹ OJ L 278, 23.10.2001, p. 6.

¹⁰ OJ C 293, 25.11.2005, p. 15.

86% of POs are devoted to the catch sector. 28 POs deal with aquaculture activities in 7 Member States, 86% of which are situated in Spain, France and Italy. Furthermore, 9 associations of national POs are established in 3 Member States (4 in France, 3 in Germany and 2 in Italy).

The operation of POs has contributed to the sustainable use of resources and the improvement of marketing conditions. The involvement of POs in intervention and fisheries management varies with the Member States. As regards affiliation, more than 50% of the fishermen belong to POs in 10 Member States. Membership ranges between 12% and 23% in 3 Member States. As for aquaculture producers, the percentage is higher than 75% in 5 Member States and smaller than 10% in two Member States.

8 Member States carried out checks on the conditions for recognition. As a result, 2 Member States withdrew the recognition of 12 POs. 3 Member States report checks on the activities of POs with members from other Member States.

In 2003, the Dutch Competition Authority (NMa) detected a competition issue in the North-Sea shrimp sector and imposed fines on 8 Dutch wholesalers and 8 POs from the Netherlands, Germany and Denmark for violation of Dutch and European competition laws. The NMa found that the parties concerned entered into prohibited agreement with each other. This case has shown the importance of the relation between competition and common market organisations. POs are exempted from competition rules as long as their activities remain within the bounds of the tasks entrusted by the CMO.

In order to stimulate cross-border co-operation between POs, Commission Regulation (EC) No 1767/2004¹¹ introduced the recognition of associations of POs from different Member States. The associations have the same tasks and obligations than POs with the exception of operational programmes and extension of rules. In 2005 one association of POs comprising 2 Dutch and 6 German POs was recognised in Germany.

Aids for the establishment of POs are available under the Financial Instrument for Fisheries Guidance (see Council Regulation (EC) No 2792/1999¹², the FIFG Regulation). The continuation of these aids for 2007-2013 under the European Fisheries Fund (EFF) is currently being discussed.

4.2. Extension of rules

Four Member States applied the extension of PO's rules to non-member producers. 2 applications were accepted in Belgium, 2 in Spain, 7 in France and one in Italy. The extensions affected 12 species in Belgium, 3 in Spain, 3 in France and one in Italy. The percentage of non-members affected varied from less than 10% in Belgium to 53% in France. The duration ranged between 3 and 12 months. No extension was granted to aquaculture products.

The measures most frequently extended were catch restriction as well as ban on landings and first sale. The observance of certain withdrawal prices was also applied in Belgium and Italy. Non-members were made liable for fees related to extension of rules

¹¹ OJ L 315, 14.10.2004, p. 28.

¹² OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Council Regulation (EC) No 485/2005 (OJ L 81, 30.03.2005, p. 1)

only in Belgium. On the other hand, despite an extension of withdrawal rules, no Member State granted compensation to non-members for products which could not be marketed.

4.3. Operational programmes

The operational programmes have contributed to improve the organisation of POs' activities and their financial returns. Yet there are factors outside the control of POs which may affect their production and marketing possibilities, i.e. climatic and biological fluctuations, conservation measures.

There are indications that POs found it difficult to anticipate their production and marketing activities. This is due to the unpredictability of fishing activities and related problems to match supply with market demand. The first year of application of the programmes, some POs encountered problems with procedural deadlines and targets. Certain Member States also experienced difficulties to ensure the application of the programmes and to implement payment arrangements.

10 Member States carried out checks on the operational programmes. Failures to draw up and implement programmes were detected in 6 and 2 Member States, respectively.

The operational programmes provide POs with anticipatory instruments and thus more responsibilities in the management of fishing and marketing operations. They also allow national authorities to follow-up the fisheries activities of the POs all along the year. Available information shows that operational programmes have been working in a satisfactory manner. The POs very seldom revised the programmes in spite of the bad market situation and increased withdrawals for certain products during 2001-2004. In order to play a more effective role on the markets, the programmes should focus more on measures to spread out supplies throughout the fishing year and the establishment of links between producers and downstream stages of the marketing chain.

The European Agriculture Guidance and Guarantee Fund (EAGGF) provides for aids for the preparation of operational programmes. Annex 3 shows the evolution of these expenses. The aid is limited to 5 years in order to enable the gradual adaptation of POs to fulfil their obligations. Only one Member State made use of the additional aids contemplated in the FIFG Regulation.

4.4. Quality improvement plans

Only 3 Member States granted specific recognition to POs which submitted quality improvement plans: 2 POs in Spain (aquaculture sector), one in France and one in Italy (both in the catch sector). On one occasion one Member State withdrew recognition due to the fact that the affected PO stopped its activities.

There is financial support for the preparation of such plans under the FIFG Regulation. The continuation of this aid under the EFF for 2007-2013 is currently being discussed.

5. INTERBRANCH ORGANISATIONS

In 2005 there were only 4 organisations recognised in 3 Member States: 2 in Spain (catch and aquaculture sectors), one in France (aquaculture) and one in Italy (catch and

aquaculture). The reasons for this low number are not entirely clear and may be due to poor co-operation between the different sub-sectors of the value chain. The extension of rules to non-members has not been applied yet.

6. PRICES AND INTERVENTION

6.1. Prices

The **guide prices** are intended to reflect the market situation for relevant species. In order to play a stabilising role on the markets, they should broadly follow market trends while remaining below the market prices with the necessary safety margin to take account of price fluctuations. Annex 4 shows the evolution of market prices and guide prices during 2001-2004. In certain Member States, however, there are important differences between the guide prices and the market prices for a few species. The guide prices also contribute to prevent excessive price variations from one fishing year to the next.

The market for white fish experienced considerable price drops in 2002 and 2003. This is a paradoxical situation given the steady decrease in Community catches of these species and the establishment of recovery plans. A possible explanation is that Community landings would not be able to provide the processing industry with regular supplies in appropriate quantities and sizes.

Prices for many important commercial species have not followed production cost trends in recent years. For a number of whitefish species, for example, average first-sale prices stagnated or even decreased between 2000 and the first half of 2005 (see Annex 5).

The increasing share of imports on the EU market for fish and the development of aquaculture are often blamed for stagnating or falling fish prices. However, there is no evidence for that. Actually, the contribution to reducing fishers' income is probably less important than other factors, such as the concentration of sales in big distribution chains and greater competition between fish and other food products, putting considerable pressure on wholesalers to cut their prices and profit margins. This reverberates all along the market chain but hits primary producers.

6.2. Intervention

The CMO has largely reduced the overall level of intervention. This is reflected in a moderate yearly expenditure between €9 million and €12 million for 2001-2004. These figures are significantly lower than ECU 33 million reached in the 1990s (see Annex 6). Annexes 7, 8, 9 10 and 11 show the expenses of the different intervention mechanisms. The expenditure of intervention and operational programmes is guaranteed by the EAGGF. As regards the new financial framework for 2007-2013, the European Agricultural Guarantee Fund (EAGF) laid down in Council Regulation (EC) No 1290/2005¹³ will continue to finance the expenditure relating to fisheries markets.

¹³ OJ L 209, 11.8.2005, p. 1.

The FIDES II System of electronic transmission of data between the Member States and the Commission pursuant to Commission Regulation (EC) No 80/2001¹⁴ and Commission Regulation (EC) No 2306/2002¹⁵ became fully operational in 2003. In the beginning, some Member States experienced problems with the functioning of the system but their notifications generally improved in subsequent years.

Only one Member State detected irregularities of the intervention mechanisms, in particular withdrawals. The Commission performed audits of intervention expenditures in 3 Member States in 2003, 2004 and 2005. The administration and control of the intervention in Ireland was deficient in 2002-2003. Main findings are related to insufficient monitoring over POs to ensure that they take every measure to avoid intervention and improper control over the destination of fish withdrawn from the market. There have been instances where fishing operations were carried out for the sole purpose of benefiting from intervention.

6.2.1. *Withdrawals*

The CMO has decreased the compensation for fish withdrawn from the market. Withdrawals are intended to occasional excess production which the market cannot absorb. During 2001-2004, the quantities withdrawn accounted for less than 2% of the production of pelagic species and around 1% of the production of whitefish (see Annex 12).

Yet withdrawals of white fish species with reduced Community production increased significantly in 2002 and 2003. In a context of decreasing stocks, the withdrawal of species subject to conservation measures can be questioned, in particular if the fish taken off the market is destined to destruction.

Checks on payment applications were carried out in 7 Member States. The information did not always correspond with the quantities actually withdrawn in 3 Member States.

6.2.2. *Carry-over*

The CMO has substantially increased the aid for processing and storage of products with a view to their reintroduction into the market. The carry-over operations contribute to reduce the destruction of fish and to enhance the returns of products.

The procedures for granting the aid are more complex than those concerning withdrawals. The grant of advances is related to the aid but is not linked to the value of the stored product. In certain circumstances, the possibility to withdraw fish permanently from the market could be more attractive to POs than the processing and storage of products.

Five Member States carried out checks on the eligibility of products. Occurrences of non compliance were detected in 2 Member States

¹⁴ OJ L 13, 17.1.2001, p. 3. Regulation as last amended by the 2003 Act of Accession.

¹⁵ OJ L 348, 21.12.2002, p. 94.

6.2.3. *Independent withdrawals and carry-over*

Independent interventions are intended to provide regional markets with greater stability. This mechanism gives POs more autonomy since they are in charge of the fixation of the intervention prices. The 2004 enlargement of the EU introduced sprat and dolphin fish in the list of eligible products.

Checks on payment applications were carried out in 6 Member States. The information did not always correspond with the quantities actually withdrawn in 2 Member States.

6.2.4. *Private storage*

Private storage applies to certain products frozen on board vessels. Only one Member State applied the private storage scheme in 2002 and 2004. This Member State performed checks to ensure the eligibility of products and detected some products not meeting the conditions.

6.3. **Tuna for processing**

The compensatory allowance for tuna delivered to the canning industry is the only intervention mechanism based on a direct aid to producers. It was introduced to compensate the catching sector for the disadvantages it may suffer as a result of the autonomous elimination of tariff protection on products imported for the processing industry. The CMO has reduced the level at which the mechanism is activated. Thus the expenditure has been substantially reduced (see Annex 11). The development of fish processing in tropical catch areas may have contributed to reduce the use of the allowance. The mechanism was triggered in 2001 (see Commission Regulation (EC) No 2496/2001¹⁶), 2003 (see Commission Regulation (EC) No 110/2005¹⁷) and 2004 (see Commission Regulations (EC) No 1342/2005¹⁸ and No 1343/2005¹⁹). 3 Member States have made use of the allowance so far. One Member State performed checks on the eligibility of products and detected products which did not meet the conditions.

The Community producer price is intended to reflect market realities and to contribute to prevent excessive price variations. Yet the market for tuna experiences important price fluctuations in periods of 4 or 5 years.

On 28 January 2004, the Court of First Instance delivered a judgement in cases T-142/01 and T-283/01. These cases concerned changes in PO membership and their impact on the calculation of the allowance. The Court of First Instance confirmed that, since the allowance is intended to protect the incomes of Community producers, the final beneficiaries are the producers and not the POs themselves.

¹⁶ OJ L 337, 20.12.2001, p. 25.

¹⁷ OJ L 21, 25.1.2005, p. 5.

¹⁸ OJ L 212, 17.8.2005, p. 5.

¹⁹ OJ L 212, 17.8.2005, p. 8.

7. TRADE WITH THIRD COUNTRIES

7.1. Trade Policy measures

Regulation No 104/2000 introduced tariff suspensions for certain products intended for processing. Multi-annual autonomous tariff quotas were opened for 2001-2003 (see Council Regulation (EC) No 2803/2000²⁰ and Council Regulation (EC) No 1771/2003²¹) and 2004-2006 (see Council Regulation (EC) No 379/2004²²). Annex 13 shows the evolution of the products and the volumes of the quotas applicable from 2001 to 2006. Moreover, Council Regulation (EC) No 2801/2000²³ established temporary suspensions for some products not available in the Community.

Industry claims total liberalisation for fishery products in order to enhance their competitiveness and to enable long term planning of their activities. The products covered by the current suspensions appear insufficient to satisfy the supply needs for processing. In addition, the quotas for certain products are exhausted early in the year. The procedures to modify the quotas in the event of supply shortages have proved to be rather complex and time consuming. Nevertheless, the current WTO negotiations on market access make it not convenient to change the Community tariff structure at this juncture. Upon finalisation of the negotiations, the quotas seem to be the best possible solution to improve the supply conditions of industry.

7.2. Reference prices and safeguard measures

The reference prices are intended to provide protection against imports at abnormally low prices. They are useful as indicators of import price evolution and as warning system.

The safeguard measures apply to serious market disturbances caused by imports or exports. Since the completion of the Uruguay Round, safeguard measures are governed by Council Regulation (EC) No 3285/94²⁴. Pursuant to this, safeguard measures were imposed upon imports of farmed salmon by way of Commission Regulation (EC) No 206/2005²⁵, in the meantime revoked by Commission Regulation (EC) No 627/2005²⁶.

8. CONCLUSIONS

1. The policy to reduce the levels of intervention has proved to be effective. The expenses derived from withdrawals have decreased in accordance with the objectives of Regulation No 104/2000.
2. A steady shift from wasteful withdrawals to carry-over operations can be observed. Recourse to intervention very much differs with the Member States.

²⁰ OJ L 331, 27.12.2000, p. 61.

²¹ OJ L 258, 10.10.2003, p. 1.

²² OJ L 64, 2.3.2004, p. 7.

²³ OJ L 331, 27.12.2000, p. 1.

²⁴ OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Council Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).

²⁵ OJ L 33, 5.2.2005, p. 8.

²⁶ OJ L 104, 23.4.2005, p. 4.

3. The operation of the CMO has confirmed the important role of POs. The introduction of operational programmes as a tool for balancing supply and demand has been well received by both Member States and POs.
4. The introduction of inter-branch organisations was no success. This may reflect an unsatisfactory co-operation between the different operators of the marketing chain.
5. Market prices have not followed trends in production costs in spite of the establishment of conservation measures and recovery plans for a number of species. This makes the balancing out of the objectives laid down in Article 33 of the Treaty even more complex.
6. The Community market is increasingly dependent on imports from third countries in order to satisfy the needs of consumers and processing industry.