



**EU Fish Processors and Traders Association
Association des Industries du Poisson de l'UE**

**EU Federation of National Organisations of Importers and Exporters of Fish
Comité des Organisations nationales des importateurs et exportateurs de
poisson de l'UE**

AIPCE/2011/319

Brussels, 16th December 2011

AIPCE-CEP position on mandatory information in the Commission proposal for the Common Organization of the Markets in fishery and aquaculture products

Introduction

This position on the specific labelling provisions in the proposal is a continuation of the general AIPCE-CEP position on CMO reform available at www.aipce-cep.eu.

Appropriate information to consumers enhances consumer confidence and can therefore help drive growth in the sector. We therefore **support the provision of relevant information that is delivered simply and clearly to help consumers to make informed choices.**

The current Food Information to Consumers Regulation (FIC) was designed to ensure the information that consumers need in order to make an informed choice regarding the food that they purchase.

FIC is also deemed "necessary to streamline (labelling legislation) in order to ensure easier compliance and greater clarity for stakeholders and to modernise it in order to take account of new developments in the field of food information. This Regulation will both serve the interests of the internal market by simplifying the law, ensuring legal certainty and reducing administrative burden, and benefit citizens by requiring clear, comprehensible and legible labelling of foods". (recital 9)

The **proposed additional labelling provisions of the CMO run contrary to this aim** requiring (a) additional information to be provided and (b) based on product classifications that are different to those in the FIC. Too much information can confuse rather than inform the consumer, **undermining confidence in fish and fish products** and potentially lowering fish consumption when government health messages are trying to promote it.

As a specific example of this, "date of catch" alongside "date of freezing" and "best before date" **will most certainly confuse consumers and lead to increased levels of food waste** as consumers' dispose of food in the mistaken belief that its shelf-life has expired. Again this will undermine government initiatives, in this case, to reduce levels of food waste.

Food labelling information requires traceability systems in order to ensure that the correct information is indicated on the packaging. We currently have excellent traceability systems that allow us to manage supply chains at a batch level for food safety and IUU control purposes. These additional consumer information requirements will require traceability systems that have the precision to be accurate at a pack level. **It remains to be considerably unclear that the consumer benefits of this information driving greater fish consumption will justify the huge investment necessary in systems and equipment.**

As with all legislation, labelling regulations need to be applied equally to all, and to that end specific commission guidance would be needed for any future labelling requirements in order **to ensure a level playing field across all member states.**

For the reasons mentioned above, AIPCE-CEP calls on EU policy-makers **to consider seriously our following requests:**

A. FISH, CRUSTACEANS AND MOLLUSCS: CHAPTER 03 OF THE COMBINED NOMENCLATURE

We call for withdrawing Art.42 1 D) (date of catch/harvest)

We call for withdrawing Art.42 1 E) (defrosted)

We request to amend Art. 43 (c) as follows: the name of the area where the product was caught or farmed.

E.g. North-west Atlantic and not FAO area 21, which means nothing to the consumer.

We request to keep the present names of Catch areas as listed in the Annex of EC Regulation 2065/2001 without introducing further details. The Annex of this regulation should be maintained accordingly.

B. PROCESSED FISHERY PRODUCTS: CHAPTER 16 OF THE COMBINED NOMENCLATURE

We call for withdrawing ART 42 (2).

AIPCE-CEP requests and argumentation

A. FISH, CRUSTACEANS AND MOLLUSCS/CHAPTER 03 OF THE COMBINED NOMENCLATURE

The proposal of CMO Regulation stipulates in Article 42 (1) that the products of the chapter 03, that is fresh, refrigerated and frozen fish, crustaceans and molluscs, their fillets and meat, which are marketed within the Union, irrespective of their origin may only be offered for sale to the final consumer where appropriate marking or labelling indicates:

- (a) the commercial designation of the species;
- (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;
- (d) the date of catch of fishery products or harvest of aquaculture products;
- (e) whether the product is fresh or has been defrosted;

DATE OF CATCH/HARVEST Art.42 1d)

We call for withdrawing this item.

RATIONALE:

1. Food safety guarantee for the consumer and public safety authorities already exists

Regulation 1224/2009 establishes that the traceability must be ensured with different types of information, including the catch or the production date. The number of lot tag is linked with the catch date. Regulation 178/2002 requires all food products have to assure their traceability along the food chain and Directive 89/396 requires that all the food products have to bear an indication which allows identification of the lot to which a foodstuffs belongs (Regulation 931/2011 to apply as of 1st July 2012). Therefore, the authorities are able, using the lot number and the traceability information to immediately identify any product that could represent a food safety concern.

Lot indication has been common practice in the sector from the 90ies. It has been integrated in the production process and traceability systems; changing production processes and IT systems will be costly with no increased benefit.

All these rules in place represent a clear guarantee for the consumer

2. No link to quality considerations

The date of catch is the least important quality criterion. The quality of a fishery product, both fresh and frozen, depends on how it was caught and processed; on storage, handling and sales conditions such as temperature and humidity.

3. Confusing the consumer

Indication of catch date will confuse the consumer who will have the "best before" and the catch date on the label. In addition, producers often combine inputs from various lots based on size of products and other parameters. This will result in a mixture of catch dates on the label, which renders the labelling unfeasible.

Furthermore, the combination between the catching date and the freezing date as requested by the Regulation on food information to consumers(FIC) for the unprocessed fishery products will lead to paradoxical situations. For products caught and frozen on board, the indication of a date of catch with a

range – which is possible according to art. 67, par 9 of the EU Regulation 404/2011 - would imply that also the freezing date would have been indicated through a range . However, according to FIC Regulation, the freezing date has to be indicated with day, month and year. It would be also very difficult to indicate all the single dates of catch corresponding to all the single dates of "frozen on".

In any case also the indication of a single date of freezing would have strange consequences as it would have to be the 1st date of the range . The result would be that the consumer reads 4 dates : 3 uncoded (date of catch, durability date , "frozen on" date), 1 coded (lot). Examples of frozen fish fillets are available in **Annex 1**.

4. Reducing competitiveness and innovation and increasing waste.

Indicating the catch date will seriously affect the industry. It will damage innovation. Many companies have developed innovative systems of conservation that allow prolonging the shelf life of the products maintaining high quality. Shelf life is a fundamental issue for all companies; in this way they guarantee microbiological and toxicological safety and commercial quality. There are products with a shelf life of more than 18 months. This has gained wide acceptance of the consumer since it allows purchases/storage in a more efficient way. The new proposed requirement will lead to consumers to compare fish with other products with a shorter shelf life due to less innovative technologies. It is possible as well that the retail sector would request a shorter shelf life to reduce the negative effect of this information on a less informed consumer who might not understand the reason for this difference.

As a result, the indication of a catch date is in full contradiction with the sustainable consumption. The longer is the shelf life, the smaller is waste. However, if the prime consideration is the catch date, companies will not invest in prolonging shelf life of the products.

5. Affecting the European fleet and the European processing sector.

The international dimension of our fleet or the international supplies of the European processing industry mean that many products are caught in distant waters and stored for a long time until they are put on the market.

Furthermore, a comparison between fresh fish landed by the EU fleet and fresh fish imported by air shows that the new proposed requirement is detrimental to European fleets on their national markets, or on other EU markets where they wish to deliver their products, because their dates will appear to be older compared to those of products imported by air.

DEFROSTED Art.42 1 e)

We call for withdrawing this item
--

RATIONALE:

This provision is unclear. It should only apply for those products which are defrosted just before sale and which are presented as fresh to the final consumer.

1. What is the reality of industrial processing?

The EU processors very often use frozen raw material, as freezing is one of the best ways to preserve quality and freshness of fishery products. This is true for imported raw material as well as for fisheries products originating from the EU fleet operating in distant waters.

On many occasions, the technological process involves the need of freezing and subsequent thawing: e.g. wild salmon frozen for sanitary purposes (to kill parasites), defrosted, smoked

2. Is there legislation already in place?

The Control on fishery products and Consumer Information regulations already require the indication of “defrosted” :

- the implementing Regulation on control 404/2011, Art 68, applicable to the CN 03 fishery products, establishing which processing steps are excluded from this obligation
- the new Regulation 1169/2011 on Consumer Information which follows a similar path, excluding from the obligation to indicate as “defrosted” those products for which technological, quality and safety reasons, require a freezing process applied during the production steps.

But even before these laws were adopted, presenting defrosted product as fresh was already not allowed in some countries. For example:

- in Spain, the Royal Decrees 1380/2002 and 121/2004 establish that ‘defrosted products presented as fresh to the final consumer have to be accompanied by the mention “defrosted” ‘ ,
- in Italy a Circular letter from the Health Authorities in 2007, addressed to the Control Authorities, requiring the indication “defrosted” for fish products sold as such after being freezing in order not to mislead the consumer among “fresh” and “defrosted” fish.

In conclusion the current rules contain the obligation to indicate in the traceability of the lot if it has been frozen. Same applies to labelling but with duly justified exceptions (see **Annex 2** for a compilation of these rules). Time is necessary to see these rules being implemented and assess their impact. Companies have already started to adjust packaging. A transitional period of at least 3 years is necessary and only afterwards changes should be considered.

3. What is the consequence for the EU fish processors and EU fleet of this proposal?

In the reformed CMO proposal, it is envisaged to eliminate all the existing exceptions – see 4 - without clear reasons.

The proposal by the Commission will have as a consequence a disadvantage for products caught by European vessels in international waters or in the EU waters and frozen on board and processed in Europe, over imported products elaborated from fresh raw materials.

4. Can we apply this new proposal selectively to some product lines in chapter 03?

Fresh, refrigerated, frozen and some kinds of processed products (cold smoked, dried, salted ...) are included in chapter 03 which follows classification by species. The same logic applies to them all while these are very different products.

According to the current wording of the article, most frozen and processed fishery products in chapter 03 will be labelled as defrosted. Further, many products, for example those of chapter 03-07 (smoked, dried, salted...) are neither fresh nor defrosted, therefore the provision is not applicable in practice.

CATCH AREA C) AND ART 43

For consistency between art. 43 and art. 44, it should be stated in the letter c) of art. 43 : the name of the area where the product was caught or farmed . E.g. North-west Atlantic and not FAO area 21, which means nothing to the consumer.

We would like to keep the present names of Catch areas as listed in the Annex of EC Regulation 2065/2001 without introducing further details. The Annex of this regulation should be maintained accordingly.

B. PROCESSED FISHERY PRODUCTS: CHAPTER 16 OF THE COMBINED NOMENCLATURE

The proposal stipulates in Art 42 (2) that Fishery and aquaculture products under the headings **1604 Prepared or preserved fish**; caviar and caviar substitutes; **1605 Crustaceans, molluscs** and other aquatic invertebrates, prepared or preserved which are marketed within the Union, irrespective of their origin, may only be offered for retail to the final consumer where appropriate marking or labelling indicates:

- (a) the commercial designation of the species;
- (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;

We call for withdrawing ART 42 (2).
--

RATIONALE:

1. Nature of the products:

The processed products are different in their nature; the consumer buys a processed product and not fish with an **origin/production method/catch date**, which is **one of** the components. Their essence of processed products has been recognised by the legislator in the existing labelling legislation as none requires processed products to be labelled with **species** details.

2. Confusing label:

The headings 1604 and 1605 include products with raw material of different **commercial denominations, methods of production and catch areas**. Examples would be surimi preparations of 16042005, mixtures of fish or frozen preparation for making paella, fish pastes, terrines, pâtés... composed inter alia of blending of several fishery products. This would result in an illegible label with dates and information for each ingredient composing the product. What are the consequences for the consumer when one or several ingredients change? And what are the consequences for the processors?.

At the selling point, consumers would find products showing information such as **different geographical names** e.g. Pacific, Atlantic or Indian Ocean (attached to the FAO area) in products from the same brand or the same changes of origin in the label in products from different brands, depending on the availability of the necessary fish species. These continuous changes in the information resulting from necessary adaptation to the available supply, do not represent relevant information to the consumer of processed products (those of CN Chapter 16) since it leads more to confusing labels than to better-informed consumer choices.

Consumer perception would be also affected by several factors relating to the **origin, processing establishment**, imported or distributed in its case, and the geographical name of the FAO catch area. For European industry this new requirement could be viewed as an element of loss of relevance of the reference to the EU manufacturing facility, while this involves environmental and social commitments worth keeping in mind.

As regards the proposal to include the **production method**, there is evidence of its low informative value, whilst complicating the labelling. It should be considered that many wild fish may only be caught, never farmed, therefore putting the information on every single consumer pack is irrelevant.

Furthermore, the reduced available space on the label to introduce mandatory information under current regulation as well as other relevant information needs a proper consideration.

3. No link to product's quality

The quality of the finished product depends on the quality of the raw material and on the technological process rather than on the **wild or aquaculture origin, species or area**. As an example, for prepared surimi products, the quality does not depend either on the species, or the production method but on the quality of the used raw surimi paste (gel strength, colour ...) and on the formula each company uses in its products.

What sense does the required information have for rice with seafood, the fish, shrimp and mollusc's preparation for paella, a sanmarino¹, soufflés of fish and seafood, fish in sauce, muslitos², surimi and crustaceans' salad, crab and surimi spreads, etc? How does wild or aquaculture shrimp influence the quality of a breaded product made of a mixture of shrimp, fish and surimi? Is it going to guide consumer's choice? Has a proper evaluation been conducted to check if consumers are ready to pay the much higher prices resulted from keeping separate product lines?

4. Requiring separate ingredient labelling contradicts the existing legislation

According to Directive 2000/13, art 6.6., ingredients shall be designated by their specific name. However, ingredients which belong to one of the categories listed in Annex I and are constituents of another foodstuff need only be designated by the name of that category (= "fish").

It is now going to be replaced by the new regulation 1169/2011 on Consumer Information, which follows the same logic: Annex VII part B: Designation of certain ingredients by the name of a category rather than a specific name: "ingredients which belong to one of the categories of foods listed below and are constituents of another food may be designated by the name of that category rather than the specific name, including": fish.

In addition, in case the **list of commercial designations** is to apply to processed fish products, it will require a list of commercial designations for prepared products, just as there is for canned and unprocessed fish. We consider this a disproportionate exercise for the expected outcome.

5. Reducing competitiveness and innovation and increasing waste.

For processed products made of one single fisheries ingredient, (e.g. canned tuna) the indication of **origin** of raw material may also become extremely complex. The dependence on of different sourcing (Atlantic, Pacific or Indian Oceans...) sometimes leads to mention more specific area names. This, linked to the diversity of raw material supplies coming from the direct tuna fleet landings, fish transferred by reefers, or even semi-finished product (frozen cooked loins) - which are common manufacturing practices - results in many and recurrent changes of the geographical indication of origin in the outer packaging.

This situation is particularly evident in the factories located in Europe, where supplies come from various sources such as, frozen storage facilities, bulk reefer, semi finished product (frozen cooked tuna loins) and fishing vessels.

Thus going beyond the generic indication of the geographical area (Atlantic, Indian, or Pacific Oceans) would be impossible to manage. Referring to the processing operations, each change of raw material involves a change in the whole process, especially in packaging. We estimate in an hour line downtime.

This proposed regulation would entail higher production costs and a lower storage capacity of the fish from the boat until last storage of final product. Companies having made efforts in technology and innovation will find themselves in a system where the fact that the product quality depends mainly on the process is disregarded (since the source of the raw material is privileged).

¹ Cordon Bleu with fish instead of meat.

² A frozen bread crumbed product made of various fish species and surimi

6. Questionable real scope of the proposal:

The dividing line between processed fisheries products (Chapter 16) and prepared meals (Chapters 1902 and 21) is thin.

Chapter 16 is PREPARATIONS OF MEAT, FISH OR CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES. This chapter excludes fish and crustaceans, molluscs and other invertebrates which are prepared or preserved and included in chapters 2 and 3 or in chapter 0504. Whenever the products contain a proportion superior to 20% in weight of fish or crustaceans, molluscs or mixture of these products they qualify for inclusion in this chapter. When these preparations contain two or more of the abovementioned products, they are classified under the subheading that corresponds to the component that prevails in weight.

Other chapters where fish products are present:

1902: pastas, including cooked or stuffed pastas (of meat or other substances) such as spaghetti, noodles, macaronis, tagliatelle, lasagnes, gnocchi, ravioli, cannelloni.

2103: Preparations for sauces and prepared sauces.

2104: Preparations for soups or broths; soups or broths, prepared; homogenized preparations.

If pasta is not stuffed (spaghetti with scampi), it falls under chapter 16, but if it is stuffed it falls under chapter 1902. Is preparation for bouillabaisse soup classified under chapter 16 or 21?

Example pasta with fish available in **Annex 3**.

7. Can we apply this new proposal selectively to some product lines in chapter 16?

This is not practical: inside Chapter 16, the tariff lines are not always well defined and many products are classified under "others". How does one differentiate between the tariff headings if for example conserves are mixed with other products ("others") in every subheading (see **Annex 4**)?

Finally we call on policy-makers to bear in mind the huge difficulties for food business operators to deal with labelling requirements provided for in several different pieces of legislation having different goals (see **Annex 5** – charts of regulations).

C. TRANSITIONAL PERIODS

The industry highlights that the final adopted regulation should establish transition periods³, since it could introduce new labelling requirements. As an example, we welcome Article 68(6) of Commission Implementing Regulation (EU) N° 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) N° 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy where it is stated: "*Fisheries and aquaculture products and packages labelled or marked prior to the date of entry into force of this Article which do not comply with Article 58(5) point (g) on the scientific name and point (h) of the Control Regulation and with paragraphs (1), (2) and (3) of **this Article may be marketed until such stocks have been used up***".

³ Chapter VIII. Final provisions. Article 55.-Entry into force.

D. DATABASE⁴

The FishBase system only collects fish, not molluscs. To have a common taxonomic reference is positive but the fact that the taxonomic classification is not immutable should be taken into account. These changes could affect the validity of packaging materials. As long as it is not misleading to the consumer, both the new and the previous scientific name associated to commercial name should be allowed.

Moreover, it is advisable to streamline the approach concerning the link between the scientific name and its trade name assigned. We support a dual approach. In case of using a specific scientific name (genus + species), it should be possible to use both the generic commercial name and the specific one.

⁴ Capítulo IV. Información a los consumidores. Artículo 43.