





EUROPEAN COMMISSION

## Complaint – Infringement of EU law

Before filling in this form, please read '*How to submit a complaint to the European Commission*': [https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/)  
 All fields with \* are mandatory. Please be concise and if necessary continue on a separate page.

### 1. Identity & contact details

	Complainant*	Your representative (if applicable)
Title* Mr/Ms/Mrs	Mrs	
First name*	Béatrice	
Surname*	Gorez	
Organisation:	Coalition for Fair Fisheries Arrangements (CFFA)	
Address*	Chaussée de Waterloo 244	
Town/City *	Brussels	
Postcode*	1060	
Country*	Belgium	
Telephone	0032 2 652 52 01	
E-mail	<a href="mailto:cffa.cape@gmail.com">cffa.cape@gmail.com</a>	
Language*	English	
Should we send correspondence to you or your representative*:	X	<input type="checkbox"/>

### 2. How has EU law been infringed?\*

	Authority or body you are complaining about:
Name*	Italy – Competent national authorities for fisheries control and enforcement (General Direction of Maritime Fisheries and Aquaculture of the Ministry of Agricultural, Food and Forestry Policy and General Command of the Port Authorities in its capacity as National Fisheries Control Centre).
Address	
Town/City	
Postcode	
EU Country*	Italy
Telephone	
Mobile	
E-mail	

#### 2.1 Which national measure(s) do you think are in breach of EU law and why?\*

Failure of Italian competent authorities to adopt measures to monitor their vessels operating in the waters of Sierra Leone and, where relevant, to sanction them if they were operating illegally, in contravention of EU fisheries rules.

## 2.2 Which is the **EU law** in question?

EU law related to the Common Fisheries Policy (CFP):

### CFP Basic regulation

Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013

In particular: Articles Art. 3.g, 31.8, 36.1 and 36.3

### SMEFF

Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008, OJ L 347, 28.12.2017, p. 81–104

In particular: Articles 4 and 7

### IUU regulation

Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, OJ L 286, 29.10.2008, p. 1–32

In particular: Articles 3, 43 and 44

### Control regulation

Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343, 22.12.2009, p. 1–50

In particular: Articles 9.7, 10.2, 33 and 89 to 93

### Shark finning regulation

Council Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels, OJ L 167, 4.7.2003, p. 1–3

2.3 Describe the problem, providing facts and reasons for your complaint\* (max. 7000 characters):

The CFFA network, African Confederation of Artisanal Fisheries Professional Organizations (CAOPA), The Regional Partnership for Coastal and Marine Conservation (PRCM), Danish Living Seas and Bloom are jointly submitting this complaint against the Italian fisheries control authorities. These authorities failed to comply with their obligations under EU law to monitor and, where relevant, sanction the activities of the trawlers flying their flag in the waters of Sierra Leone. These activities should be characterised as Illegal, Unreported and Unregulated (IUU) fishing.

Our NGOs work on advocacy to advance the rights of artisanal fishers in African countries in relation to the European Union and/or ensure EU vessels engage in sustainable and legal practices wherever in the world they are fishing. This work includes making sure the EU implements its Common Fisheries Policy (CFP) in the right way, especially its external policy, when its Member States are operating in third countries' waters. In this respect, it is an obligation for Member States to adopt appropriate measures for ensuring the control, inspection and enforcement of activities carried out within the scope of the CFP, including the establishment of effective, proportionate and dissuasive penalties (Basic reg. art. 36.3) in order, notably, to fight IUU fishing (Basic Reg., Art. 36.1).<sup>1</sup>

### **Facts and evidence**

According to information that we have gathered in particular from professionals in Sierra Leone (notably fishermen organisations of the small-scale sector), and cross-checked with VMS or AIS data from <http://globalfishingwatch.org/>, we have identified six Italian trawlers that have been carrying out fishing activities in Sierra Leone these past years, with direct authorisations delivered by Sierra Leone authorities for shrimps or cephalopods, or both.<sup>2</sup> Recently, in October 2018, new authorizations have been delivered to three of them for shrimps (EIGHTEEN) and cephalopods (TWENTY and ORIONE Q).<sup>3</sup>

According to our sources and VMS/AIS data, several of the trawlers have not complied with the provisions of the authorisations delivered by Sierra Leone which are the following: 1) The prohibition to fish in the inshore zone reserved for artisanal fishing; 2) The need to request permission for transshipments at sea<sup>4</sup> and 3) The prohibition to catch octopus and cuttlefish in zones where they are coming to spawn.

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<sup>1</sup> Knowing that the primary responsibility to monitor, control and sanction its vessels and to combat IUU fishing relies on Flag States (Basic Reg. Preamble 2, Art. 3.g. See also PSMA, Preamble §3).

<sup>2</sup> These vessels are: the EIGHTEEN, the TWENTY, the MYRA Q, the IDRA Q, PEGASO Q and the ORIONE Q.

<sup>3</sup> Their homeport is Palermo and Mazzara del Vallo. The owner of the EIGHTEEN, the TWENTY, PEGASO Q and IDRA Q seems to be a company called Matteo Cosimo Vincenzo ASARO, with its headquarters in Mazzara del Vallo. A company called Italfish is mentioned in relation to the two other vessels

<sup>4</sup> Transshipments are permissible by Sierra Leone regulations (2017) but location has to be pre-notified and permission given.

These vessels also have a history of illegal operations (they have caught sharks without respecting the rule related to shark finning,<sup>5</sup> made illegal incursions in neighbouring countries waters, fished under dormant agreements, etc.), which has been documented in the past years by Greenpeace and Oceana.<sup>6</sup>

### **Legal basis for complaint**

There are several grounds to complain against the Italian competent authorities on this case.

The first of these grounds is the Regulation of the European Parliament and of the Council on the Sustainable Management of External Fishing Fleets (SMEFF Regulation). It is not known whether a fishing authorisation was delivered to these vessels by Italy, as required by Article 4 of SMEFF Regulation No 2017/2403. In any case, there is an infringement of EU law by Italy:

- If an authorisation was delivered, it was done in contravention of the binding prerequisites for issuing it (SMEFF, Preamble §14, Art. 5, 17 and 18); in addition, SMEFF Article 7 on the management of these authorisations, in particular its paragraphs 3 and 4, was not complied with;
- If no authorisation was delivered, as Italy was or should have been aware of the operations of the fishing vessels,<sup>7</sup> it has let its vessel operate without a fishing authorisation and there is therefore a direct breach of SMEFF Article 4.

Secondly, the CFP Basic Regulation No 1380/2013 in Article 31 § 8 provides that Member States shall ensure that fishing vessels flying their flag and operating outside EU waters are in a position to provide detailed and accurate documentation of all activities. According to our contacts in Sierra Leone, despite requests, Italy has never provided to Sierra Leone's authorities catch data<sup>8</sup> and never given to the Commission any information regarding these vessels activities.

Thirdly, Council Regulation No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the IUU Regulation) provides in its Article 3 that the following acts can be considered as

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<sup>5</sup> Found onboard the Eighteen. See EU Regulation 1185/2003 on shark finning.

<sup>6</sup> Shark finning see Greenpeace, "Four illegal fishing cases found in Sierra Leone in four days", April 20, 2017: <http://www.greenpeace.org/africa/en/Press-Centre-Hub/4-illegal-fishing-cases-found-Sierra-Leone/>. Oceana, "Fishing the Boundaries of Law: How the Exclusivity Clause in EU Fisheries Agreements was Undermined", Sept. 2017 <https://usa.oceana.org/publications/reports/fishing-boundaries-law-how-exclusivity-clause-eu-fisheries-agreements-was>. See also CFFA, "EU Common Fisheries Policy External Dimension: Improving sustainability through an ambitious revision of the Fishing Authorization Regulation", Sept. 2016: <https://static1.squarespace.com/static/517fe876e4b03c6b86a4b81b/t/57e3bc4d29687f9f87206a62/1474542693881/Improving+sustainability+through+an+ambitious+revision+of+the+Fishing+Authorisation+Regulation.pdf>

<sup>7</sup> According to Article 9 of Council Regulation No 1224/2009 of 20 November 2009, all EU vessels above 12 meters' length overall shall be equipped with Vessel Monitoring Systems and Member States shall operate a system to monitor the activities of vessels flying their flag wherever those vessels may be.

<sup>8</sup> Catch data have been requested by Sierra Leone's authorities 2 years ago but never been provided (Control Reg., Art. 14.6).

serious infringements of the rules of the CFP and, as a result, must be sanctioned with effective, dissuasive and proportionate sanctions:

- Fishing without a valid license, authorisation or permit issued by the flag State or the relevant coastal State;
- Not fulfilling the obligations to record and report catch or catch-related data, including data to be transmitted by satellite monitoring system;
- Fishing in a closed area or during a closed season.

Furthermore, the evidence we gathered shows that activities which could fall into the categories of serious infringements of the rules of the CFP under EU law were pursued by Italian trawlers operating in the waters of Sierra Leone and that Italian authorities failed to take action to both investigate and stop this situation. This is in clear breach of Articles 43 and 44 of the IUU Regulation, and also of Control Regulation No 1224/2009, in particular Article 9.7 which provides for the monitoring of fishing activities by means of a satellite-based system (VMS) by Member States through their Fishing Monitoring Centers (FMC); Article 10.2 concerning the use of an automatic identification system (AIS) and Article 109.5 obliging Member States to investigate in case of inconsistencies. There is also a breach of Article 33 concerning the recording of catches and fishing effort, as well as the taking of enforcement measures as provided by Title VIII of this regulation (Articles 89 to 93).

Lastly, when it comes to the international commitments taken by the EU and its Member States, which are Contracting Parties to the United Nations Convention on the Law of the Sea (UNCLOS), it is worth noting that there is an obligation of *due diligence* by EU Member States regarding vessels flying their flag in third countries waters, and a flag State can be held liable when failing to comply with this obligation (International Tribunal for the Law of the Sea (ITLOS) Advisory Opinion No21, § 129 to 140).

## **Conclusion**

From the information we have gathered, we consider that these trawlers have never been correctly monitored, controlled and sanctioned by Italy as flag State. Besides, it must be added that these big trawlers have a great impact on fishing stocks and ecosystems, causing a serious threat to the sustainability of the stocks against which they are fishing and interfering with local small-scale fishermen.

In light of the above, we respectfully urge the Commission to initiate infringement proceedings against Italy based on its failure to fulfill its obligations under:

- Articles 31.8, 36.1 and 36.3 of the CFP Basic Regulation;
- Articles 4 and 7 of the SMEFF Regulation;
- Articles 3, 43 and 44 of the IUU Regulation;
- Articles 9.7, 10.2, 33 and 89 to 93 of the Control Regulation.

We look forward to your prompt response. Please do not hesitate to contact us, should you have any questions.

2.4 Does the Country concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?

Yes, please specify below       No       I don't know

2.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights?

The Commission can only investigate such cases if the breach is due to national implementation of EU law.

Yes, please specify below       No       I don't know

### 3. Previous action taken to solve the problem\*

Have you already taken any action in the Country in question to solve the problem?\* NO

**IF YES**, was it: Administrative      Legal ?

3.1 Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

3.2 Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?\*

**IF NOT** please specify below as appropriate

Another case on the same issue is pending before a national or EU Court

No remedy is available for the problem

A remedy exists, but is too costly

Time limit for action has expired

**No legal standing (not legally entitled to bring an action before the Court) please indicate why: Only the EU Commission can launch an infringement procedure against a Member State**

No legal aid/no lawyer

I do not know which remedies are available for the problem

Other – specify

4. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:

- Petition to the European Parliament – Ref:.....
- European Commission – Ref:.....
- European Ombudsman – Ref:.....
- Other – name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)

Meetings with DG MARE and NGOs (Greenpeace, WWF) about the situation in West Africa in 2017  
Several meetings of the LDAC

5. List any supporting documents/evidence which you could – if requested – send to the Commission.

 Don't enclose any documents at this stage.

List of fishing Licenses issued by Sierra Leone  
VMS or AIS data

#### 6. Personal data\*

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

- Yes       No

 *In some cases, disclosing your identity may make it easier for us to deal with your complaint.*