

Preliminary input on market-related aspects of the revision of the Fisheries Control Regulation (lot & traceability Rules)

Background

On 9 January 2024, the new Fisheries Control Regulation¹ entered into force². Some provisions are immediately implementable, while other provisions will enter into force after 6 months, two years, four years, or in 2029/2030.

Under the new Article 56a on “composition of lots of certain fishery and aquaculture products”, new rules are provided on what constitutes a lot and the composition, including mixing of lots after the first sale. These new rules are applicable on 10 January 2026.

Under Article 58 on “traceability”, operators must record and make available traceability information in a digital way to the next operator in the supply chain. It covers all stages of production, processing and distribution. For fresh and frozen products, the rules will be applicable two years after entry into force. For prepared and preserved products, it will be in 5 years, following the adoption of delegated act on the basis of the results of a feasibility study on the traceability information, systems and procedures for FAPs under Chapter 16 (1604 and 1605 of CN) . For algae products, also by five years following the adoption of a delegated act setting traceability information .

MARE D4 delivered a presentation on the revised EU Control regulation including on the new rules for lot composition and traceability of fishery and aquaculture products at the 6 February 2024 Inter-AC meeting. Previously, MARE D4 delivered a presentation at the EUMOFA Talk “Digitalisation of the fisheries sector and full traceability of fishery and aquaculture products: achievements and remaining challenges” on 25 January 2024. The presentation is available online: <https://eumofa.eu/eumofa-talk-digitalisation-of-the-fisheries-sector-traceability>.

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302842

² Following the publication of the legislative proposal in May 2018, on 5 November 2018, the MAC adopted advice about the revision: <https://marketac.eu/eu-fisheries-control-system/>.

Under the Work Programme of Year 8 (2023-2024), the MAC committed to provide advice to the European Commission and Member States on the market-related aspects of the new Fisheries Control Regulation.

1. **Exchange of views with MARE D4 at 2 April 2024 meeting:** Ms Anne Le Goff Gautrais (MARE D4) expressed availability to deliver a preliminary presentation about the new rules on lot composition and traceability at the 2 April 2024 meeting, followed by a more comprehensive exchange at the 4 June 2024 meeting. To adequately prepare for the meeting, the DG MARE representative expressed willingness to receive questions from the members in advance.

What questions would you like to put forward on the issues of lot composition and traceability rules?

Disclaimer: This represents the position of the concerned service of the European Commission but may not necessarily represent the opinion of the Commission. Only the European Court of Justice has jurisdiction to give preliminary rulings concerning the validity and interpretation of acts of the institutions of the EU pursuant to Article 267 of the Treaty.

FRUCOM: General remark: It is a well-known fact that a large majority (more than 2/3) of the FAP (fishery and aquaculture products) consumed in the EU is coming from Third Countries – the impact and implementation towards FAP imported in the EU is therefore of capital importance!

- 1) Can the EU impose digital traceability on third countries? Obviously not for the catch certificates, for which the Regulation foresees that paper versions will always be accepted, even if it will then be up to the EU importer to input the data into the CATCH system. What about general traceability requirements?

D4 reply: No, the rules on traceability set in the Control Regulation and its latest amendment do NOT apply to operators established in third countries. However, those rules apply to importers established in the EU and importing FAPs to the Union market.

- 2) For the moment, in case there is a problem with a FAP product imported into the EU, the whole consignment of the product by one health certificate must be recalled / removed from the EU market.

When the new Regulation will be applicable, is a given health certificate is covering several lots of the same product and the importer will be required to organize a downward traceability by lot towards his customers (which implies a considerable additional administrative burden), will then, in case of a problem, the recall / removal of the market be limited to the particular lot in which the problem has been found, or will it continue to be for the whole consignment covered by the health certificate – as it is the case for the moment?

D4 Reply:

The Fisheries Control Regulation does not include rules on recall /removal from the market for food safety, animal health or public health reasons of consignment of several lots of the same FAP at time of import. Such rules are set under EU food law system which DG SANTE is responsible for. (see. Rules of import of food and feed and on official controls). FRUCOM may wish to enquire with DG SANTE on the impact of having smaller lots or consignments with FAP of a single origin and species in the case of a recall.

- 3) There is a legal / technical problem with regards to the definition of “placing on the market”, in which two conflicting definitions exist that both are legally applicable to the present Regulation. This matter has already been brought up to the Commission by FRUCOM, which has forwarded it to its legal department. We found it useful to share the email with other MAC members.

D4 Reply: The definition of “placing on the market” set out in Article 5 point (f) of the CMO Regulation will apply together with the corresponding Articles 56a and 58 of amended Control Regulation as from **10 January 2026**. (See; Chapeau of Article 4 of the amended Fisheries Control Regulation which refers to Article 5 of the CMO Regulation)

EuroCommerce:

1. How will the new rules on lot composition impact small-scale operators in the fisheries and aquaculture sector (e.g., Sea Bream and Sea Bass Mediterranean producers)?

D4 Reply: Rules set out in Article 56a apply equally directly to all operators -small and big -to ensure a level playing field. We consider that the rules on traceability for lot of FAPs allow small producers to valorise their products and to market their production underlying their origin. Consumers can be assured that the origin of the product that is indicated is accurate.

2. What measures are being taken to ensure seamless integration of digital traceability systems across different stages of production and distribution?

D4 Reply: This is up to each operator in the supply chain to choose the traceability system adapted to its business, his suppliers and clients as long as he/she complies with the rules set out in Article 58. Buyers of FAPs should make sure that they receive traceability information in a **digital** way so that they can further pass the information in a **digital** way to their clients. The co-legislators have given two years to the sector of fresh and frozen FAPs to adapt their traceability systems to the revised requirements and their digitalization.

3. How will the transition to digital traceability systems be facilitated for operators who may face technological or resource constraints?

D4 Reply: There are already on the market place many different commercial solutions and systems at different prices that will allow each operator to choose the most adapted traceability system for his business chain.

If the data to be transmitted from one operator to another is as follows:

- a) the identification number of the lot;
- b) in the case of products that are not imported into the Union:
 - i. for all fishery products included in the lot, the unique identification number(s) of the tide or the unique identification number(s) of the fishing day, or
 - ii. for all aquaculture products included in the lot, the name and registration number of the producer or from the aquaculture production unit;
- c) in the case of imported products:
 - i. for all fishery products included in the lot, the IMO number or, if not applicable, another unique identifier of the catching vessel(s), if applicable, and the certificate number(s) or the catch certificates submitted in accordance with Regulation (EC) No 1005/2008, if any, or
 - ii. for all aquaculture products included in the lot, the name and, where available, the number registration of the aquaculture production unit;
- d) the FAO 3-alpha code of the species and the scientific name;
- e) the relevant geographical area or areas in the case of fishery products caught at sea, or the catch or production area in the case of fishery products caught in fresh water and products of aquaculture, as set out in Article 38(1) of Regulation (EU) No 1379/2013;
- f) in the case of fishery products, the category of fishing gear set out in the first column of the Annex III to Regulation (EU) No 1379/2013;

- g) the catch date(s) of the fishery products or the collection date(s) of the of aquaculture:
- h) the quantities, expressed in kilograms of net weight or, where appropriate, the number of;

All data must be carried forward or when there is a mixture of data, is it sufficient that the operator who has carried out the mixing has it (except for those that are part of the consumer information according to Regulation 1379/2013)?

For example: If operator A buys 2 lots of hake with 2 tide numbers, he mixes them up and puts a new batch on it. Is it necessary to transmit the two tide numbers to operator B or is it sufficient for it to transmit the new batch and those data that must appear in the consumer information according to Regulation 1379/2013?

D4 Reply: In accordance with paragraph 6 of Article 58, the whole information concerning a lot of chapter 3 FAPs, shall be made available in a **digital** way to the operator to whom the lot is supplied. This includes the unique fishing trip identification number for each of the 2 lots. The information is not limited to the information required under Article 35 of the CMO Regulation.

Paragraph 5 provides:

5. After placing on the market, the batches of fishery or aquaculture products covered by the chapter 3 of the combined nomenclature may be grouped with other lots or separated **only if** the lot resulting from the grouping or the lots resulting from the separation meet the following conditions:

- a) the traceability information referred to in Article 58(5) is provided for the new or new lots created;
- b) that the operator responsible for the placing on the market of the new lot(s) created retains and may provide the information regarding the composition of the new batch or batches created, in particular the information relating to each of the lots of fishery or aquaculture products they contain and the quantities of fishery or aquaculture products from each of the lots that make up the new one or new lots.

When it says it is provided, it means that the mixing operator must keep the information in case someone (e.g. authority) requests it

D4 reply : YES . In the chapeau of paragraph 5 of Article 58, it refers to “**only if**”. Indeed after the placing on the market, each operator mixing or splitting lots of Chapter 3 FAPs shall keep the information of the initial lot(s) with their corresponding share /quantity

used to create the new lot(s). He/she keeps this information for the case in particular of a request from an MS competent authority.

Facilitate and preserve (for how long?) **D4 reply:** see below reply on record keeping

Paragraph 6 provides:

The operators of all phases of production, processing and distribution, from the capture or collection up to the retail stage, shall ensure that, in respect of each batch of fishery products or aquaculture falling within Chapter 3 of the combined nomenclature, the information set out in paragraph 5:

- a) is kept in a register, and
- b) is made, in a digital form, available to the operator to whom the product of fishing or aquaculture and, upon request, made available to the competent authorities.

What digital means (we need examples)

D4 Reply: The revised CR is not prescriptive as to the digital means that operators may choose. But we consider that a pdf copy of paper document is not a digital format as the traceability data set cannot transmit in an automated way and pass to the next operator.

On request... How long does the operator have to provide such information?

D4 Reply: Article 58 of revised CR does not provide for a minimum period for keeping the traceability information of lots of FAPs.

However Article 58(12) (a) empowers COM to adopt additional rules on the “ *minimum technical requirements for the recording and transmission of the information referred to in paragraph 5 pursuant to paragraph 6*”. The Commission may consider setting a minimum time for keeping records of traceability information for FAPs, if deemed necessary.

In the implementing rules of the General Food law (CIR 931/2011 – Article 3(3)), FBOs shall updated the traceability information of the lot of food on a daily basis and keep it at least until it can be reasonably assumed that the food has been consumed.

Oceana: When do we expect the framework contract to be released? Is D4 or A4 leading?

D4 Reply: COM intends to use a Framework Contract for services to deliver on the study on feasible traceability systems and procedures , including minimum information for lots of preserved and prepared FAPs that the co-legislators mandated (Article58 (9)). MARE

D4 is the lead unit on this study. The intention is to kick start the study by end of 2024 following the selection of an offer.

FEDEPESCA: We understand that this new definition will change the national regulations with respect to the current concept of lot, what deadlines are in place for this to happen?

D4 Reply: The new and simplified definition of ‘lot’ as set out in Article 4 Point (20) of the amended CR will apply directly when the concerned rules will apply – i.e. by 10 January 2026. It is a Regulation, thus it is directly applicable at national level.

The prescriptive part of current definition of lot set in article 4 (20) will in future, be covered by paragraph 2 of Article 56a.

In short, nothing much will change concerning the composition of lots of fresh and frozen FAPs at first sale but we consider that the rules are simply clearer.

ADEPALE: *(This response is without prejudice to additional contributions that may be raised by our member companies in the future as practical issues arise).*

Article 56a - Composition of consignments of certain fishery and aquaculture products

Paragraph	Question
Point 1 - <i>Fishery and aquaculture products caught or harvested are divided into batches before they are placed on the market</i>	<p>Can we clarify the concept of "marketing" and in particular how it works when it comes to:</p> <ul style="list-style-type: none"> - of an EU catch or harvest - a catch in a third country or by a third-country vessel, or a harvest in a third country: in the latter case, does the concept of marketing relate to the marketing in the third country or to the first introduction on the EU market? <p>D4 Reply: Definitions of <i>placing on the market</i> " and <i>"making available on the market"</i> as set out in Article 5 of the CMO regulation , apply to the rules set out the revised Control Regulation in particular article 56a and 58.</p>
Point 2a - <i>fishery products of the same species, with the same product presentation and originating from the same geographical area and from the same fishing vessel or group of vessels;</i>	<p>In the case of some fisheries such as shrimp, several species can be caught in mixtures and it is not necessarily possible to be able to sort them for batching: in this case, is it possible to designate the species by the genus name (e.g. <i>Penaeus</i> spp.)?</p> <p>D4 Reply: How are the current rules on catch reporting (rules concerning the fishing logbook, landing declaration, sales note) and the current definition of a lot in Regulation 1224/2009 complied with?</p> <p>The lot should have the FAO alpha 3 code of the species in the given lot.</p>
Point 2b - <i>aquaculture products of the same species, with the same product presentation and from the same aquaculture production unit.</i>	<p>What is the definition of an aquaculture production unit? The batches supplied by primary producers in producing countries are made up of crops from several growing areas. Does the concept of an aquaculture production unit cover a set of tanks belonging to a single farm or to a group of farms belonging to a farmer? This precision has an immediate impact on batch size and practical implementation in batch building at harvest time.</p>

	<p>D4 Reply: There is no definition of “aquaculture production unit” set in the revised Control Regulation. However in Regulation 2016/4209 (Animal Health Law) the term “aquaculture establishment” is used and rules for registration of aquaculture establishments are set. Furthermore, in accordance with the EU rules on Hygiene of food (Regulation 853/2004), all food producing establishments shall be registered and have a registered number.</p>
<p>Point 5 - <i>After placing on the market, a consignment of fishery or aquaculture products falling within Chapter 3 of the Combined Nomenclature may be merged with another consignment or split only if the consignment created by merger or the consignments created by division meet the following conditions: (...)</i></p>	<p>How to interpret the notion of batch merging? The definition of batch described in point 2. Does it remain strictly applicable after it has been placed on the market?</p> <p>Is it still possible to:</p> <p>i) merge batches from different species;</p> <p>D4 Reply: yes, lots of FAP falling within Chapter 3 may be merged as long as the 2 conditions set in Article 56(5) are fulfilled.</p> <p>ii) merging fishing batches with aquaculture batches?</p> <p>D4 Reply: yes, lots of Fishery products may be merged with lots of aquaculture products falling within Chapter 3 may be merged as long as the 2 conditions set in Article 56(5) are fulfilled.</p> <p>D4 Reply;</p> <ul style="list-style-type: none"> - Paragraph 5 of Article 56a, refers to ‘lot’ and not to consignment. - Paragraph 5 concerns lot of chapter 3 FAPs only, merged and split.

UMF:

- The UMF points to the lack of clarity of the concept of " minimum set of information" in Article 58(4a). In accordance with current practice, the UMF proposes to define this " minimum set of information" as the information listed in Article 35 of the CMO Regulation.

D4 Reply: Article 58 (5) set the minimum set of information for a lot of FAP of Chapter 3 of Combined Nomenclature. This information covers some of the mandatory information to consumer requested under Article 35 of CMO Regulation but includes also other information such as the unique fishing trip identification number, date(s) of catch or quantities that are not required to be on the mandatory information for consumer.

- The UMF would like to question the European Commission on whether it plans to renew the definitions of catch dates and fishing zone in the revised regulation.

D4 Reply : We are not sure we understood rightly your question.

There is no definition of “catch date” nor of “fishing zone” in the Control Regulation.

Are you referring to the provisions in Article 67 (9) of CIR 404/2011 which give the possibility to include several days or one period of time?

In Article 58 of the revised Control regulation, this concept of several days is already included. The amended Article 58 (5) (g) refers to “date(s) of the catches for fishery products” in plural, which means that it is acceptable to have several dates for catches. Concerning the “fishing zone” , Article 58 (5)(e) refers to the relevant geographical area , by cross referring to the catch or production area as set in Article 38(1) of the CMO regulation.

Conxemar:

- 1) There is a great deal of confusion on the part of operators regarding the meaning of digital transmission. Is the literal transmission of the mandatory requirements printed on a label, affixed to the batch itself, ruled out?
- 2) Is a QR code or similar or a chip required for electronic transmission?
- 3) Can the QR code or similar be transmitted on commercial documentation, e.g. an invoice or delivery note?

D4 Reply to Q1: One needs to differentiate between the traceability information of lots to be transmitted to the next operator in the supply chain, and the labelling/marketing of a lot which could be via a barcode, QR code or similar and allows the lot to be identified and linked to a particular traceability information of a given lot.

For the transmission for the traceability information for lot of Chapter 3 FAPs , Article 58(12)(a) empowers the Commission to adopt additional rules on the “*minimum technical requirements for the recording and transmission of the information referred to in paragraph 5 pursuant to paragraph 6*”.

For the marking of lots, Article 58(12)(b) empowers the Commission to adopt detailed rules for affixing mandatory information for a lot on the lot itself, as it is currently set out in Article 67(5) of CIR 404/2011

D4 Reply to Q2 and Q3: it seems indeed possible , depending of the traceability system used.

4) Is e-mail transmission considered digital transmission?

D4 Reply to Q4: No, digital transmission is different from 'electronic transmission of a pdf document or an email.

Articles 66 and 67 of CIR 404/2011 can be reviewed to check what needs to be kept, updated or repealed in the context of the empowerment given to the Commission for a delegated act under paragraph 12 of Article 58.