

Mr Virginijus Sinkevičius
Commissioner for Environment and Oceans
European Commission

Brussels, 1 July 2020

Dear Mr Commissioner,

On 6 February 2019, [our organisation CFFA, as well as other environmental and professional fishing organisations, PRCM, Bloom, Danish Living Seas and CAOPA](#), jointly lodged a [complaint](#) (reference CHAP (2019) 00315) to the **European Commission for alleged failure by Italian authorities to adopt measures to monitor their vessels in the waters of Sierra Leone** and, where relevant, to sanction them if they were operating illegally in contravention of EU fisheries rules.

Our complaint was based on information gathered in particular from small-scale fishermen organisations and cross-checked with VMS or AIS data from [Global Fishing Watch](#). We mentioned in the complaint that Italian trawlers had not complied with the provisions of the authorisations delivered by the authorities of Sierra Leone and providing that: 1) fishing was prohibited in the inshore zone reserved for artisanal fishing, 2) transshipment could not take place without prior agreement and 3) fishing for octopus and cuttlefish was prohibited in spawning areas. We also mentioned the EU rules which were, to our opinion, infringed: regulation n° 2017/2403 on the sustainable management of external fishing fleets (SMEFF regulation), the CFP basic regulation n° 1380/2013, the IUU regulation n° 1005/2008 and the control regulation n° 1224/2009.

The [first formal reaction we got from the Commission](#) was a [letter from DG MARE](#) dated 5 July 2019 (ref. Ares (2019) 4296206) and **asking us to provide the Commission with additional clarifications and supporting evidence**. We were surprised by the content of this request because it appeared as if it was for our organisations to inquire about factual elements of the violations committed by these vessels. We considered that we had already given enough elements about the infringements of the Italian vessels concerned so that the Commission could inquire about the activity of the Italian vessels in Sierra Leone waters. In addition, on 1st March 2019, we had a meeting with three people of DG MARE to whom we had provided further information.

For that reason, we replied to DG Mare with a [letter](#) on 25 July 2019 (ref. Ares (2019) 4870769), that **it is the duty of the Commission, as Guardian of the Treaty, to carry out the relevant inquiries**. Indeed, regulation n° 1224/2009 provides in Article 9 (1) that “*Member States shall operate a satellite-based vessel monitoring system for effective monitoring of fishing activities of the fishing vessels flying their flag wherever those vessels may be and of fishing activities in the Member States’ waters*”? The Commission has therefore the relevant tools to make the necessary checks and it has the duty to perform them.

The next reaction we got from the Commission was, five months later, a letter from DG MARE dated 9 December 2019 (see copy enclosed n° 1, ref. Ares (2019) 7556443) saying inter alia that **our complaint had been integrated in an EU Pilot case launched on 29 November in the context of an audit carried**

out by DG MARE. In that letter, DG MARE also said that it was in our interest to take legal advice on the means of redress available at national level. Considering the purpose of our organisation and considering the specificities of the complaint concerning Italian vessels fishing in Sierra Leone waters, we do not understand which redress we could look for at national level.

This reaction confirmed to us that we were right when lodging our complaint. We then expected to swiftly receive some news about the measures taken by the Commission so that, first, Italy fulfils its obligations as Member State and, second, its fishing vessels fishing in Sierra Leone as well as in waters of other African States comply with the applicable rules. **We expected to get soon such news since the relevant deadlines for the audits, as laid down in article 102 of regulation n° 1224/2009, are not so long.** As the EU Pilot case was launched on 29 November 2019 and could have not been launched before DG MARE got valuable indications from the audit, this means that DG MARE started this audit a couple of months before November 2019. In accordance with article 102 (4), the Commission should have established an action plan with Italy at least in the beginning of 2020.

At the beginning of February 2020, that is one year after lodging the complaint, we received a very formal and short letter from DG MARE saying only that the Commission was not in a position to come to a decision (see enclosed letter n° 2, ref. Ares (2020) 829868). Now, end of June 2020, almost again 5 months later, we have not received anything new from the Commission.

Given the above, we have the impression that the Commission (DG MARE) is dragging its feet regarding our complaint.

We draw your attention to the fact that this complaint was lodged in a very specific context. As we reminded DG MARE in our [letter of 25 July 2019](#), in 2013, the Sub-Regional Fisheries Commission (SRFC), which is an intergovernmental organisation regrouping seven States from West-Africa, including Sierra Leone, requested an advisory opinion to the International Tribunal for the Law of the Sea (ITLOS) on the obligations of the flag State when a vessel is fishing illegally in the waters under jurisdiction of a third country and on the obligations of an intergovernmental organisation when the Parties to that organisation have transferred their competence in fisheries matters to it ([ITLOS, case n° 21](#)). In the opinion delivered on 2 April 2015, the Tribunal replied that **the obligations of the flag States become those of the international organisation, which may be held liable for any breach of its obligations.**

The ITLOS opinion was requested after one member of the SRFC arrested two vessels flying the flag of an EU member State. These two vessels were fined and were released after partial payment under the condition that they would pay the balance in a set fixed timeframe, which they did not do. The West-African State concerned contacted the Commission, which declared that it was not competent to solve the issue. One can easily imagine how astonished the West-African State was when it received that reply.

We do not know which African State and which EU flag State were involved in the facts that led the SRFC to request from ITLOS an advisory opinion. Anyway, it does not matter whether the coastal State was Sierra Leone or not and the flag State Italy or not. It is the same context of illegal fishing.

The behaviour of the Italian vessels mentioned in our complaint could have a negative impact on the relationship between the EU and these African countries. This situation cannot go on as “business as usual”. The credibility of the EU towards the African States and their small-scale fishing sectors is at stake.

There are no grounds on which the Commission should delay any action that it must take, as Guardian of the Treaty, against Italy which fails to fulfil its obligations as an EU Member State. We cannot envisage that an audit is put forth with the effect to delay action against a Member State which fails to fulfil its obligations.

Our organisation will not stand idle by while the concerned fleet is not properly monitored by its EU flag State. Since our complaint was filed almost 17 months ago, we urge the Commission to act. **Should the Commission not inform us of any concrete follow-up to our complaint within one month, we are ready to refer the case to the European Ombudsman.**

Yours sincerely,



Beatrice Gorez
Coordinator