

# Policy Brief

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## Illegal operations of Italian vessels in West Africa: when will the Commission get its head out of the sand? \*

Pnhom Penh, 22<sup>nd</sup> January 2024.

By Anaïd Panossian<sup>1</sup>

After repeated illegal operations by vessels of Italian origin in Africa, the author reviews the European legal framework and recommends that the European Commission be stricter with Member States when they fail to control and sanction their vessels operating in third-country waters. The Commission should also provide a better framework for reflagging.

### Introduction

Last September, the Gambian authorities reported that a vessel of **Italian origin, the TWENTY, had not complied with the provisions of the fishing authorisations** (undersized nets, no logbook, no transmission of AIS data)<sup>2</sup>. The authorities also seized shrimp cartons that had been labelled “*sustainable*” by the certification standard “Friend of the Sea” and were presumably intended for the European market<sup>3</sup>.

However, this vessel - which, according to online sources, is now reflagged to the Gambia<sup>4</sup>, still belongs to an Italian company, ASARO<sup>5</sup>, as well as other vessels, all of which are **known by the European Union for repeated illegal fishing operations** in

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\* Editor's title

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<sup>2</sup> See “Italian Trawler Arrested in The Gambia with “Sustainably Caught Shrimp” Bound for Europe”, Sea Shepherd, News, 13 September 2023. <https://www.seashepherdglobal.org/latest-news/italian-trawler-arrested-gambia/>

<sup>3</sup> Ibid.

<sup>4</sup> See website “VesselFinder”: “TWENTY”, Fishing vessel, IMO 9255220. Available at:

<https://www.vesselfinder.com/vessels/details/9255220>

<sup>5</sup> The 3 vessels involved were the EIGHTEEN, the TWENTY and the ORIONE Q, fishing shrimps and cephalopods. Their home ports are Palermo and Mazzara del Vallo. The owner appears to be a company called Matteo Cosimo Vincenzo ASARO, based in Mazzara del Vallo. A company known as Italfish is linked to the other two vessels.

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West Africa. Back in 2019, CFFA, along with other organisations, placed a complaint with the European Commission about the illegal operations of these vessels in Sierra Leone<sup>6</sup>. In 2015, some of these vessels had also been arrested in the Gambia for illegal fishing (use of non-compliant gear)<sup>7</sup>.

Since that date, and **despite months of dialogue with the Commission<sup>8</sup>, nothing has been done**. The Commission had informed us that, as part of an audit of the EU's external fleet (2019-2020), it had started a pre-litigation dialogue procedure (EU pilot) with Italy. The country provided "*convincing answers*" on the performance of its control system. We subsequently requested access to the entire document, in the name of the fundamental right of public access to documents held by Union institutions<sup>9</sup>. All we received was a heavily censored report in which we could find nothing of interest. Finally, the Commission closed our complaint. As a result, these vessels continue to fish illegally in West Africa...

### REFLAGGING: A WEAKNESS OF EU LAW

In 2013, the Sub-Regional Fisheries Commission was already concerned by the same Italian vessels and requested for an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS) on the question of the responsibilities of the flag State and the coastal State in the event of IUU fishing<sup>10</sup>. Currently, these vessels do not appear on any IUU list<sup>11</sup>.

A Sustainable Fisheries Partnership Agreement (SFPA) exists between the EU and the Gambia, giving access to tuna and hake resources for European vessels<sup>12</sup>. Under the exclusivity clause in the SFPA, **these vessels of Italian origin shall not operate in the Gambia under the flag of a Member State. But that is not a problem: they simply would have reflagged their ship to a non-EU country**. Their last registration under Italian flag dates back to February 2020, when they used to operate in Sierra Leone under direct authorisations issued by local authorities (that is possible in Sierra Leone since no SFPA is currently in force). Consulted in November 2023, the Register of fishing authorisations issued for EU vessels fishing outside EU waters

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<sup>6</sup> On 6 February 2019, CFFA, as well as other environmental and professional fishing organisations, PRCM, Bloom, Danish Living Seas and CAOPA, jointly placed a complaint 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. For more information, see PHILIPPE, Joëlle, "CSOs complaint about Italian vessels illegal activities in Sierra Leone: The European Commission is dragging its feet", CFFA-CAPE website, 6 July 2020. Available at: <https://www.cffacape.org/news-blog/csos-complaint-about-italian-vessels-activities-in-sierra-leone-the-european-commission-is-dragging-its-feet?rq=sierra%20leone>

<sup>7</sup> "Gambia, liberato uno dei due pescatori italiani arrestati", La Repubblica, News, 9 March 2015. Available in Italian at: [https://www.repubblica.it/esteri/2015/03/09/news/gambia\\_liberato\\_pescatore\\_italiano-109150676/](https://www.repubblica.it/esteri/2015/03/09/news/gambia_liberato_pescatore_italiano-109150676/)

<sup>8</sup> See chronology on the online version of this article: <https://www.cffacape.org/publications-blog/iuu-italian-vessels-west-africa-commission-address-situation>

<sup>9</sup> Under Regulation 1049/2001, requests for public access, as well as requests for review of initial refusals to disclose documents, must be dealt with promptly and, for all intent and purposes, within clear deadlines. See "Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R1049>

<sup>10</sup> See the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) of 7 March 2013: [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.21/A21\\_Request\\_SRFC.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/A21_Request_SRFC.pdf)

<sup>11</sup> The EU list of vessels engaged in IUU fishing is available at: [https://eur-lex.europa.eu/eli/reg\\_impl/2023/1471](https://eur-lex.europa.eu/eli/reg_impl/2023/1471) and RFMO lists of vessels engaged in IUU fishing are available, see for example ICCAT's, available at: <https://www.iccat.int/fr/IUUlist.html>

<sup>12</sup> For more details on the Sustainable Fisheries Partnership Agreement (SFPA) between the Gambia and the European Union, see the European Commission website, available at: [https://oceans-and-fisheries.ec.europa.eu/fisheries/international-agreements/sustainable-fisheries-partnership-agreements-sfpas/gambia\\_en](https://oceans-and-fisheries.ec.europa.eu/fisheries/international-agreements/sustainable-fisheries-partnership-agreements-sfpas/gambia_en)

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no longer lists them<sup>13</sup>. We can assume that they reflagged in the Gambia<sup>14</sup> because the tuna SFPAs were in force and they could not be included in it. **However, even if they fly the flag of another country, the owners remain Italian, and therefore European.**

**The reflagging of European vessels to countries unable or unwilling to control their fishing activities, the difficulty to obtain information on these vessels' activities and, in the event of IUU fishing, to make beneficial owners subject to penalties are a weakness in the EU law.** Although we have been sounding the alarm for years, these vessels that are repeat offenders continue to slip through the cracks because of regulatory loopholes and the inaction of the European Commission towards its Member States. This type of activity can no longer be tolerated. **In the fight against IUU fishing, the EU imposes standards on other States that it should also impose on European beneficial owners, by finding means to make them subject to sanctions.**

### A CLEAR LEGAL FRAMEWORK?

The European Union's Common Fisheries Policy (CFP) makes it possible to monitor, control and surveillance (MCS) the fishing fleets of Member States, **both inside and outside EU waters, and to avoid the landing of IUU fishing products on the EU market, regardless of the origin of the vessels and the companies that own them.** The main MCS measures are contained in the European Control Regulation<sup>15</sup>, the IUU Regulation<sup>16</sup>, the Sustainable Management of External Fishing Fleets Regulation ("SMEFF" Regulation)<sup>17</sup>, and the Regulation on the European Fisheries Control Agency (EFCA)<sup>18</sup>. The EU external fleet is also subject to the rules of the Sustainable Fisheries Partnership Agreements (SFPAs) and Regional Fisheries Management Organisations (RFMOs).

The implementation of **MCS measures is a primary responsibility of EU Member States:** they must enforce CFP rules on their vessels wherever they operate, and therefore ensure the necessary **controls and sanctions** even for vessels operating outside EU waters<sup>20</sup>.

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<sup>13</sup> All European vessels, whether they fish under SFPAs or private agreements, fall under the SMEFF regulation (see note 17), which requires of them to fish in a sustainable way. The list of these vessels is public and can be found on the European Commission website. Available at: <https://ec.europa.eu/oceans-and-fisheries/fisheries/fishing-authorisations/screen/authorisations>

<sup>14</sup> "TWENTY", Fishing vessel, IMO 9255220. <https://www.vesselfinder.com/vessels/details/9255220>

<sup>15</sup> "Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control". Available at: <https://eur-lex.europa.eu/eli/reg/2023/2842/oj>  
Former 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". Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:343:0001:0050:en:PDF>

<sup>16</sup> "Council regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing." Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02008R1005-20110309&rid=1>

<sup>17</sup> "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". Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2403>

<sup>18</sup> Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency". Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0473>

<sup>19</sup> CASILE Gabrielle, "Le suivi, le contrôle et la surveillance des activités de pêche de l'Union européenne : les faiblesses d'un système ambitieux", *Neptunus e-revue*, 29 (2023-2), 15 p. Available in French only at: <https://shs.hal.science/halshs-04148455v2>

<sup>20</sup> CFP Regulation 1380/2013, art. 1. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0022:0061:en:PDF>

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**The Commission must ensure that its Member States comply with these obligations and initiate proceedings (infringement procedure, *Pilot case*) if they fail to do so.** Therefore, it obviously applies to the activities of external fleets, which was confirmed by ITLOS Advisory Opinion No 21, issued on 2 April 2015<sup>21</sup>: In the context of a fisheries agreement concluded between a coastal State and an international organisation which has exclusive competence in fisheries matters, **the obligations of the flag State become *mutatis mutandis* the obligations of the international organisation, as a contracting party to the agreement. Only the international organisation, and not its member states, may be held liable for failing to comply with its duty under the agreement. The EU is therefore clearly responsible<sup>22</sup> in the current circumstances.**

Every year, each Member State must provide the European Commission with information on its fisheries sector. It is therefore possible to trace vessels that leave a Member State's fleet and reflag<sup>23</sup>. However, there is no obligation for a Member State to monitor a vessel that withdrew from its fleet, or to refuse to remove it from its national register, even if the vessel is reflagging to a country known to be complacent about IUU fishing<sup>24</sup>. European regulations (SMEFF, art. 6) only stipulate that a vessel that left the EU fleet can reintegrate it if it proves that it did not engage in IUU fishing during the five years preceding the request for reinstatement on the EU fleet register.

At the level of international law, only the FAO Voluntary Guidelines on Flag State Performance<sup>25</sup> require that the flag State must settle pending sanctions against a vessel (shipowner/captain) before it deregisters the vessel (§24). FAO's International Plan of Action to Prevent, Deter and Eliminate IUU fishing (IPOA-IUU) states that "*States should discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities*" (§19)<sup>26</sup>. This recommendation should be reinforced at EU level, where each Member State defines its own conditions for granting and withdrawing a flag. **A European rule should be introduced requiring Member States to refuse to deregister a vessel if it intends to reflag to a State that is pre-identified or identified as non-cooperating in the fight against IUU fishing.**

Finally, the EU has a unique tool: the **IUU Regulation**, that not only concerns external relations with the dialogue and identification procedure of non-cooperating States, but also the EU market. The regulation acts as a framework that prevents

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<sup>21</sup> ITLOS, "Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)", advisory opinion of 2 April 2015", No 21. Available at:

[https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.21/advisory\\_opinion\\_published/2015\\_21-advop-E.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf)

<sup>22</sup> PANOSSIAN Anaïd, "Rights and responsibilities of flag states and coastal states in West Africa - CFFA comments on ITLOS Advisory opinion about SRFC request", Policy Brief CFFA-CAPE, 9 June 2015. Available at:

<https://www.cffacape.org/publications-blog/2015/06/09/2015-6-9-rights-and-responsibilities-of-flag-states-and-coastal-states-in-west-africa-cffa-comments-on-itlos-advisory-opinion-about-srfc-request>

<sup>23</sup> Commission implementing decision (EU) 2022/39 f 12 January 2022 laying down rules on the format and timetables for the submission of national work plans and annual reports on data collection in the fisheries and aquaculture sectors, and repealing Implementing Decisions (EU) 2016/1701 and (EU) 2018/1283.

<sup>24</sup> "There must exist a genuine link between the State and the ship" (art. 91, UNCLOS) and "every State shall effectively exercise its jurisdiction and control [...] over ships flying its flag" (art. 94, UNCLOS) and, in terms of registration, ensure that a vessel is not involved in IUU fishing (FAO Voluntary Guidelines for Flag State Performance, §14,15,16).

<sup>25</sup> FAO, "The Voluntary Guidelines for Flag State Performance, The 2009 FAO Agreement on Port State Measures and other Instruments Combating IUU Fishing", Committee on Fisheries, 31<sup>st</sup> session, Rome, 2014. Available at:

<https://www.fao.org/3/mk052e/mk052e.pdf>

<sup>26</sup> FAO, "International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing" 2001. Available at: <https://www.fao.org/3/y1224e/y1224e.pdf>

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the importation of IUU fishing-derived products on the EU market, notably through the catch documentation scheme (CDS), guaranteeing product traceability. In addition, this regulation requires Member States to take all appropriate measures to **identify nationals supporting or engaging in IUU fishing and to take the necessary action** (art. 39). In other words, if the - allegedly "sustainable" - shrimps on the TWENTY were destined for the European market, they should not enter it and the operators should be subject to sanctions.

**However, progress is made with the new EU control regulations.** Under review since 2018<sup>27</sup>, this regulation was adopted by the Parliament on 22 October 2023<sup>28</sup> after an interinstitutional trialogue that lasted almost five years and has entered into force on 1<sup>st</sup> January 2024, following approval by the Council.

From that date, Member States will have to ensure that they have no beneficial owners in fleets operating in pre-identified countries (see amendments to article 38 of the Control Regulation<sup>29</sup>). The Parliament explicitly asked the Commission to take measures to put an end to the use of flags of convenience, and it **"calls for public access to information on the beneficial ownership of fishing vessels of all flags"**. Parliament therefore calls on the Commission to improve the identification system of vessels engaged in IUU fishing activities so that it is **possible to trace the country of origin of the vessel even if the flag state is uncertain** and to add vessels where there are **proven cases of human rights violations**<sup>30</sup>.

UNSCRUPULOUS OPERATORS FACING A POWERLESS...  
OR COMPLACENT COMMISSION?

The monitoring of ships that reflag and their beneficial owners is still widely unregulated under EU law. As a result, these vessels and activities escape more binding European rules and standards, as well as controls and sanctions. Despite the reflagging, **the interests remain European, because the owner companies are European.**

**European anti-money laundering directives**, which are currently being revised<sup>31</sup>, make Member States responsible regarding the identification of companies that

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<sup>27</sup> Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control, COM (2018) 368 final du 30.5.2018.

<sup>28</sup> "Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control". Available at: <https://eur-lex.europa.eu/eli/reg/2023/2842/oj>

<sup>29</sup> In Article 38, the following points are added: "10. The ownership, including as a beneficial owner as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council, operation or management by Union operators of fishing vessels flying the flag of such countries shall be prohibited. Union owners, including beneficial owners, of fishing vessels flying the flag of such countries shall request that those vessels be removed from the registry of such countries within two months of the publication of the list of non-cooperating third countries in accordance with Article 33 of this Regulation. Where the request cannot be made directly by the owners, including beneficial owners, they shall mandate a relevant natural or legal person empowered to act on their behalf to request such removal within the timeframe provided; (11) access to port services and the conduct of landing or transshipment operations in Union ports by fishing vessels flying the flag of such countries shall be prohibited."

<sup>30</sup> European Parliament, "Report on the implications of Chinese fishing operations on EU fisheries and the way forward", Committee on Fisheries, (2022/2148(INI)), 17 October 2023. Available at: [https://www.europarl.europa.eu/doceo/document/A-9-2023-0282\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0282_EN.html)

<sup>31</sup> "Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849", COM (2021) 423 final, Brussels, 20 July 2021. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0423>

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engage in this type of activity and the recording of information on beneficial owners in centralised registers. The Commission has access to all these national registers, which are available to the public<sup>32</sup>.

In addition, the European Regulation on the sustainable management of external fishing fleets (SMEFF Regulation) requires the European Commission to manage an electronic database of fishing authorisations, including information on the beneficial owners of operations carried out by vessels flagged in an EU Member State. **To this day, the information on beneficial owners remains confidential.**

**Nevertheless, we have serious questions about the quality of the information the Commission gathers.** Along with other NGOs, we initiated a similar procedure concerning access to information on the beneficial owners of BALTREIDS<sup>33</sup> (see box at the end of the article and the chronology), a Latvian company regularly involved in illegal fishing activities in West Africa<sup>34</sup>. We defended our request for information to the Commission on the **basis of the Aarhus Convention<sup>35</sup> and the overriding public interest in having access to this information.** Our efforts yielded no results, the Commission provided only limited information, which is already available on the Internet, something that indicates that either the inability of the Commission to obtain more information on the beneficiary owners, or an obstinacy in not providing it...

**This hinders the public's right to access information<sup>36</sup> for better participation in the decision-making process and in the name of transparency in fisheries, so much advocated by the EU itself.** Facilitating public access to the information on beneficial owners contained in this database (name, city, country of residence of the owner and of the five main beneficial owners, as well as the nature and extent of the beneficial interest held) would be a promising sign in creating transparency on beneficial owners.

The Commission's response on the Baltreids procedure makes us **wonder about the data collected in the SMEFF database and what control the Commission has over its Member States if they do not provide all the data? If this database contains no more information on these companies than that available on the Internet, how can we expect the Commission to really ensure the traceability of its ships and manage to identify the companies at risk?**

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<sup>32</sup> Art. 12, including the following information: "a) in the case of legal entities, at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held; b) in case of express trusts or similar legal arrangements, the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held, provided that a legitimate interest can be demonstrated". And the Member States can give access to additional information (art. 14).

<sup>33</sup> See Box 1 in Annex 1, as well as the chronology of exchanges with the Commission in the online version of this article. Available at: <https://www.cffacape.org/publications-blog/iuu-italian-vessels-west-africa-commission-address-situation>

<sup>34</sup> WARMERDAM, *et al.*, "Seafood industry integration in all EU Member States with a coastline", European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, 2018, p. 169-170. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/629176/IPOL\\_STU\(2018\)629176\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/629176/IPOL_STU(2018)629176_EN.pdf)

<sup>35</sup> "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters", Aarhus (Denmark), 25 June 1998. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-13&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=en)

<sup>36</sup> "Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies". Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1367>

But if the Commission holds this data, EU law requires it to be made available to the public.

IN ANY CASE, COMPLACENT TOWARDS ITS MEMBER STATES...

A 2022 audit by the European Court of Auditors on the implementation of the EU IUU policy highlighted irregularities of Member States and showed that they were not equally rigorous<sup>37</sup>. Between 2015 and 2020, the Commission has opened 34 "EU Pilot" cases in order to address the identified weaknesses through dialogue. Nevertheless, between 2015 and 2021, the Commission initiated 11 infringement procedure against Member States for failings relating to the effective application of the landing obligation, the control of their fisheries or external fleets, the application of an effective system of sanctions in the event of serious infringements or the control of catch registration and weighing systems.

Of all Member States, Italy has the highest number of "EU Pilot" procedures underway or completed (all policies combined)<sup>38</sup>. In addition, in 2021 the country was the subject of an infringement procedure in maritime affairs and fisheries<sup>39</sup>, even though it had already been convicted in 2009 for failing to impose sanctions that were not sufficiently effective, proportionate, and dissuasive<sup>40</sup>.

A close look at the statistics shows that Member States are subject to less infringement procedures under maritime affairs and fisheries policy than under other policies<sup>41</sup>. **Sanctioning Member States as well as operators for proven and repeated infringements or failings is the key to effective implementation of the CFP, the EU contributes to its ambitions of sustainable fishing and zero tolerance regarding IUU fishing.**

## Our recommendations

The Commission should...

1. Pursue legal actions against Member States for failure to comply with their obligation to implement CFP regulations and **pay particular attention to Member States whose fleets repeatedly infringe rules.**
2. Facilitate **public access to beneficial owner information** (which could be limited to the name, country of residence and nationality of beneficial owners, and the nature and extent of beneficial interest) when the public interest overrides the disclosure of such information: for example, in cases of documented involvement of IUU fishing, bribery or money laundering. That would align the implementation of the SMEFF Regulation with:

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<sup>37</sup> European Court of Auditors, "Special report 20/2022: EU action to combat illegal fishing – Control systems in place but weakened by uneven checks and sanctions by Member States", European Union, 2022, Available at : [https://www.eca.europa.eu/Lists/ECADocuments/SR22\\_20/SR\\_Illegal\\_fishing\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR22_20/SR_Illegal_fishing_EN.pdf)

<sup>38</sup> European Commission, "Annual Report on monitoring the application of EU law", 2022: [https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law\\_en](https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law_en)

<sup>39</sup> *Ibid.*

<sup>40</sup> See ECJ, 29 oct. 2009, Commission v Italy, Case C-249/08.

<sup>41</sup> European Commission, "Annual Report on monitoring the application of EU law", 2022, *op. cit.*

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- regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents;
  - regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; and
  - the 5<sup>th</sup> EU Anti-Money Laundering Directive, providing that Member States must set up public registers of the beneficial owners of companies (with conditions).
3. Reinforce the monitoring of the implementation of IUU Regulation by Member States, notably **those identified in the European Court of Auditors report and those for which there is reason to believe that they do not effectively apply the regulation** and allowing IUU-fishing products to enter the EU market.
  4. Ensure that Member States effectively sanction their nationals involved in IUU-fishing activities in application of Article 39 of the IUU Regulation.
  5. Devise a regulatory measure providing a framework that prohibits vessel reflagging from an EU Member State to a pre-identified country as non-compliant with IUU Regulations.

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Phnom Penh, 22<sup>nd</sup> January 2024