

# CFFA

*Coalition for Fair Fisheries Arrangements, Chaussée de Waterloo 244, 1060 Brussels*

# CAPE

July 25th 2019

Mr Aguiar Machado  
Director-General  
Directorate-General for Maritime Affairs and Fisheries

Dear Mr Aguiar Machado,

Greetings from CFFA!

Last February, our organization lodged a complaint denouncing the failure by Italian authorities to adopt measures to monitor their vessels operating in Sierra Leone waters and, where relevant, to sanction them when operating illegally. This complaint was registered as CHAP (2019) 00315.

In that complaint, we provided your DG with various facts and evidence that we had gathered in particular from professionals of the small-scale sector in Sierra Leone and we had cross-checked with VMS or AIS data from <http://globalfishingwatch.org>. We provided thus you with information showing that Italian trawlers carried out fishing activities in Sierra Leone waters without complying with provisions of the authorizations delivered by that country, including the prohibition to fish in the inshore zone reserved for artisanal fishing, the need to request permission for transshipments at sea and the prohibition to catch octopus and cuttlefish in zones where they are coming to spawn. We provided your DG with the names of these vessels and their home port.

On March 1st, we had a meeting at the Commission with Mrs Tankink, Ms Hill, and Mr Spezzani to discuss the case. We provided them with further details on informations that were mentioned in our complaint.

Very recently, we have received a letter signed by Ms Tankink, dated 5 July on this case. Five months after lodging the complaint, we expected to get some news about any follow-up, *i.e.* that the information contained in this complaint was confirmed and then an infringement procedure was launched in accordance with Article 258 TFUE or, on the contrary, that DG MARE in cooperation with Italy checked that the fishing activity carried out by the vessels in question complied with the applicable rules.

Nothing of that! Your letter requests our organization to provide again further information about the infringements and, this time, very precise information as if it should be for us to inquire about all factual elements of the violations committed by these vessels.

At this stage, we do not have more information to provide to you. This said, what we have already provided is more than enough for the Commission to inquire about the activity of these vessels in Sierra Leone. As Guardian of the Treaty and in cooperation with Italy, the Commission has the duty and the means to check where and what the vessels in question were fishing. In particular, these vessels are subject to VMS and log-book obligations and you can check the relevant data, what our organization cannot.

As it is well known, and was confirmed by the International Tribunal for the Law of the Sea in its advisory opinion rendered on 2 April 2015 in case No 21 *Sub-Regional Fisheries Commission*, the primary responsibility for taking the necessary measures to prevent, deter and eliminate illegal fishing in coastal waters rests with the coastal State (point 106). However, it does not release other States from their own obligations and the flag State is under the due diligence obligation to take all necessary measures to ensure compliance to applicable rules and prevent illegal fishing.

As you also know, that opinion was requested by States from West-Africa, which are members of this Sub-Regional Fisheries Commission, because one of them arrested two vessels flying the flag of an UE Member State (it is not said which Member State, but it could be Italy...) and were fined. The vessels were released after partial payment of the fines under the commitment that they would pay the balance due in a fixed time, what they did not do... The West-African State concerned contacted the Commission, which declared that it was not competent to solve the issue.

In its advisory opinion, considering the exclusive competence in fisheries matters exercised by the EU, the Tribunal replied that the international organization concerned (*i.e.* the EU) might be held liable for any breach of its obligations when it does not meet its “due diligence” obligations (point 172).

**In this context, our organization does not understand the delay of your services to act promptly against the suspected frauds committed by these Italian vessels.**

**Our organization hopes that you will use all the means provided by the Treaty to inquire about the failure of Italian authorities to control the activity of the vessels flying their flag, and to sanction them as appropriate.**

Sincerely Yours

A handwritten signature in black ink, appearing to be 'Béatrice Gorez', enclosed in a light gray rectangular box. The signature is stylized and cursive.

Béatrice Gorez  
CFFA Coordinator