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The control and enforcement of fisheries in Italy

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Executive summary and recommendations

The Italian legislation implementing the enforcement chapters of the EU fisheries control legislation encompasses Law No 96 of 4 June 2010 (Article 28), Legislative Decree No 4 of 9 January 2012 and Law No 154 of 28 July 2016 (Article 39). Also relevant are some implementing acts, such as two Ministerial Decrees of 29 February 2012 on a point system for serious infringements committed by holders of fishing licences and masters of fishing vessels.

Article 22 of Legislative Decree 4/2012 identifies the authorities responsible for:

- Inspections at sea, on landings and throughout the supply chain;
- The adoption of immediate enforcement measures and measures to ensure compliance;
- The administration of penalty points to licence holders and masters of fishing vessels;
- The management of the national register of infringements.

In practice, the Port Authorities and the Coast Guard primarily carry out surveillance and control in the fishing sector. Additionally, under Article 13 of Legislative Decree 4/2012, the head of the relevant Maritime District is the competent authority dealing with infringements, administrative sanctions and for receiving the relevant reports by the enforcement officers.

Legislative Decree 4/2012, as modified by Article 39 of Law 154/2016, points out in Article 14, § 2, what constitutes a “serious infringement” of the Common Fishery Policy (CFP) rules. It does so by recalling the relevant contraventions and administrative offences listed in Articles 7 and 10 of the same instrument. In addition to serious infringements, Articles 7 and 10 list further contraventions and administrative offences that constitute violations of fishing rules, but do not fall under the category of “serious infringement” under EU law, as implemented by Italian law.

Overall, the list of “serious infringements” embodied in Italian law includes all the categories of “serious infringements” listed in Articles 3 and 42, § 1, of Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (hereafter, the “IUU Regulation”). However, the same does not hold true with respect to the three categories of “serious infringements” listed in Article 90 of Regulation (EC) No 1224/2009 of 29 November 2009 establishing a Community control system for ensuring compliance with the rules of the CFP (hereafter, the “Control Regulation”).

It is therefore recommended that all “serious infringements” listed in the Control Regulation be considered as such in the Italian legislation.

As for the identification of infringements, the fisheries enforcement system also relies on Legislative Decree 4/2012, as modified by Article 39 of Law 154/2016. Its provisions define the immediate enforcement measures to be taken against the offenders of CFP rules under Article 43 of the IUU Regulation, the criminal penalties and the administrative measures under Article 44 of the IUU Regulation, as well as the accompanying sanctions under Article 45 of the IUU Regulation.

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However, Italian law does not make available to the enforcement authorities all the immediate enforcement measures listed in Article 43, § 1, of the IUU Regulation for serious infringements of the rules of the CFP. More importantly, these measures are not enforced immediately after the infringement took place, when the person is simply “suspected of having committed or is caught in the act while committing a serious violation” of the rules of the CFP, as explicitly required by Article 43, § 1, of the IUU Regulation and Article 91 of the Control Regulation. This means that, under Italian law, the immediate enforcement measures described in EU legislation actually lack any “preventive” character.

It is therefore recommended that all the immediate enforcement measures listed in the IUU and the Control Regulations be fully transposed as such, and not as accompanying sanctions, in the Italian implementing legislation.

Under Legislative Decree 4/2012, not all “serious infringements” of the rules of the CFP are punished with criminal penalties. In particular, while all violations of the rules of the CFP are punished with an administrative fine, only seven types of infringements are punished with criminal penalties under Italian law. In the large majority of cases, infractions are punished with a fine from 2,000 to 12,000 euros. In certain cases, the amounts of the administrative fine are doubled: when the wrongful acts have concerned bluefin tuna (*Thunnus thynnus*) or swordfish (*Xiphias gladius*) fisheries. The most significant new element among the amendments set forth through Article 39 of Law 154/2016 is the decriminalisation of any act consisting of holding, landing, transshipping, transporting and commercialising juvenile fish. These amendments were probably included in Italian to comply with the requirements of the Control Regulation, which encourages Member States to preferably use administrative sanctions to deal with infringements of the rules of the CFP.

It is therefore recommended that the Italian legislator reconsiders whether a higher number of serious infringements under the IUU and Control Regulations deserve to be sanctioned with criminal penalties.

In the Italian fisheries legislation, fines are set between a fixed minimum and a fixed maximum. The latter, however, may not necessarily correspond to “at least five times” or, in case of recidivism within five years, “at least eight times the value of the fishery products obtained by committing the serious infringement”, as required under Article 44 § 2 of the IUU Regulation. Moreover, there is no mention of the repetition of the infringements and its sanctioning consequences. Furthermore, Italian fisheries law does not transpose the EU requirement consisting of “*taking into account the value of the prejudice to the fishing resources and the marine environment concerned*”. This could be done by assessing the value of the prejudice on an equitable basis and providing always a minimum amount of fine in addition to the value of the fisheries products obtained illegally by the offender. Any movement within the range between the minimum and the maximum sanctions would fall under the discretion of the competent authority sanctioning the offence, with the assistance of technical experts and on a case-by-case basis.

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It is therefore recommended that, where appropriate, the maximum monetary sanctions be based on the value of the fishery products obtained by committing the serious infringement.

Italian case law has shown that the applicability of the recent environmental criminal law provisions to IUU fishing activities allows for a better protection of the fishery resources. Environmental criminal law was applied in cases involving illegal fishing with explosives, for example. In fact, the new criminal legal framework in Italy for protecting the environment strengthens the fight against IUU fishing, when the wrongful conducts are potentially conducive to “environmental pollution” or “environmental disasters”.

It is therefore recommended that, whenever appropriate, criminal sanctions for “environmental pollution” or “environmental disasters” be applied also in cases of violations of the fisheries legislation.

As regards the transparency of the system, no data on inspections, infringements and sanctions are available to the public without a specific request for access to documents and information. The data reported in this study were transmitted to the consultant by the General Command of the Port Authorities and the Finance Guard upon specific request based on Italian Legislative Decree No 97 of 25 May 2016.¹ There is no distinction in the information provided between inspections made in Italian coastal waters, the high seas or the exclusive economic zone of other States, in particular as regards Italian fishing activities along West African States.

It is therefore recommended that information on the number of inspections, infringements and sanctions be available on a regular basis without specific request and be complemented by sufficient details, for example on the level of the sanctions or on the nature of the inspections.

The Advisory Opinion of the International Tribunal for the Law of the Sea (hereafter, “ITLOS”) of 2 April 2015 on the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) pointed out that the EU is under an obligation to ensure that vessels flying the flag of its Member States comply with the obligations arising from the fishing arrangements it has concluded with third States and is consequently liable for a failure to do so. Suspected cases of Italian fishing vessels operating illegally in the waters of third countries have been recently reported in the medias and Italian and EU competent authorities have the duty to ensure that there is a proper follow-up to these cases.

It is therefore recommended that serious consideration be given by Italian and EU competent authorities to suspected cases of illegal fishing conducted by Italian vessels in the waters of third countries.

¹ The officials of the General Command of the Port Authorities and the Finance Guard were mostly helpful in addressing the requests by the consultant and in clarifying the information provided.

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Any assessment concerning the present EU fisheries control system should today take note of the proposal of Regulation for fisheries control submitted to the European Parliament and the Council by the European Commission in May 2018. Although, according to the terms of reference provided to the consultant, the present study is necessarily based on the “current” EU legislation, and not the “proposed” legislation, the following considerations of the European Commission cannot be ignored: *“the current EU fisheries control system was designed prior to the reformed CFP and, as such, it is not fully coherent with it. In addition, the system reflects control strategies, methodologies and challenges of more than 10 years ago, and it is not equipped to effectively address current and future needs in terms of fisheries data and fleet control, to match the constant evolution of fishing practices and techniques and to take advantage of modern and more cost-effective control technologies and data exchange systems. The current system also does not reflect new and modern Union policies recently adopted, such as the plastic strategy, the digital single market strategy, and the international ocean governance.”*²

Evaluations carried out within the European Commission’s regulatory fitness and performance (REFIT) programme,³ a special report of the European Court of Auditors⁴ and a Resolution by the European Parliament⁵ have all shown that the EU fisheries control system, as it stands at the time of the present study, has deficiencies and is overall not fit for purpose.

The proposal for a revised EU Fisheries Control System is not likely to be adopted before 2020 and will enter into force two years after its adoption (in 2022 at the earliest).

It is therefore recommended that the Italian competent authorities actively participate in the revision process of the current EU fisheries control legislation and proactively consider what further implementing steps for the new rules will be required in Italian legislation.

² COM (2018) 368 final of 30 May 2018, 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 p.1.

³ European Union documents COM (2017) 192 final and SWD (2017) 134 final.

⁴ European Court of Auditors, Special Report No 08/2017, *EU fisheries controls: more efforts needed*.

⁵ European Parliament resolution of 25 October 2016 on how to make fisheries controls in Europe uniform.

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Introduction

There is a strong link between the IUU Regulation and the Control Regulation. The IUU Regulation was adopted before the Control Regulation, pending the revision of the control system established under a previous regulation: *“In order to properly address the internal dimension of IUU fishing, it is vital for the Community to adopt the necessary measures to improve compliance with the rules of the common fisheries policy. Pending the revision of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, provisions to this end should be inserted in this Regulation.”*⁶

Both the IUU Regulation and the Control Regulation were to enter into force from 1st January 2010. They have been adopted by the Council in the form of a regulation and formally have the same legal status.⁷ Not only do they share the same scope, but they are also committed to the same objective. Considering the subject matter and the circumstances leading to their adoption, it can be affirmed that there is no hierarchy between the two instruments, which are intended to be complementary and do not present any remarkable contradictions. Consequently, there is no hierarchy among the various measures and sanctions listed in the texts of the two regulations. In other words, both regulations and their sanctions are complementary.

On 17 October 2007, the European Commission presented its *“Proposal for a new strategy for the Community to prevent, deter and eliminate illegal, unreported and unregulated fishing to the Council of Ministers, the European Parliament, the European Economic and Social Committee and the Committee of the Regions”* (hereafter, the “Proposal”). The document envisaged a policy against IUU fishing capable of encompassing fishing activities occurring both within and beyond EU waters.

With regards specifically to EU waters, the Proposal unmistakably highlighted that illegal operators were taking advantage of the weaknesses of the control and sanction systems then in place by harvesting fisheries products in contravention of the CFP and by selling the “black fish” on the EU market. The Proposal recognised as a major challenge the need to improve the level of compliance with the rules of the CFP within EU waters and by EU operators within and outside EU waters. The European Commission documented that the implementation of the legal framework existing when the Proposal was presented had been undermined, inter alia, by the non-compliant behaviour of Member States, by the insufficient level of the penalties imposed for serious infringements of fisheries laws at the national level, and by the large degree of impunity enjoyed by EU operators engaging in or supporting IUU fishing.

As a result, the Proposal included a set of measures specifically designed to address failures by Member States to ensure compliance with the applicable rules by their fishing fleets.

⁶ Preamble of the IUU Regulation, §8.

⁷ According to Article 288 of the Treaty on the Functioning of the European Union, *“a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States”*.

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The need to lay down stricter rules for EU fishing vessels and nationals became even more evident when the European Court of Auditors issued its special report No 7/2007.⁸ According to this document, not only had national inspection systems proven incapable of preventing infringements of the rules of the CFP, but also they failed to ensure effective detection of violations and consistent follow up action. Moreover, penalties imposed in Member States had proven to have little deterrent effect on EU fishing vessels and nationals engaging in or supporting IUU fishing.

With the view to ensuring the effective application of the rules of the CFP, both the IUU Regulation and the Control Regulation are basically grounded on the principle that sanctions must remove any economic benefit that may result from IUU fishing and have a sufficient deterrent effect on any potential offender. The thrust of the measures and sanctions to be adopted by Member States in conformity with the EU regime, therefore, is to punish illegal operators to the extent that they will not be able to profit from their activities anymore. The provisions on sanctions are to be implemented by Member States and do not interfere with the sanctioning systems in third countries.⁹

Given the broad scope of what constitutes IUU fishing under EU law, identifying fishing vessels engaged in IUU fishing is preliminary to the application of any measures and sanctions. Articles 3 and 42 of the IUU Regulation, complemented by Article 90 of the Control Regulation, which address “serious infringements”, specify on what basis a fishing vessel is considered to be engaged in IUU fishing.

The IUU Regulation establishes a system comprising three types of consequences arising from infringements, namely immediate enforcement measures, sanctions for serious infringements and accompanying sanctions. Under Article 43 of the IUU Regulation, where the transgressor is caught in the act of committing a serious infringement, Member States are required to start a full investigation of the infringement and take immediate enforcement measures, including the seizure of fishing gear and the suspension of the authorisation to fish. Article 44 of the IUU Regulation requires Member States, in the case of a serious infringement, to impose a maximum administrative sanction of at least five times the value of the fishery products obtained by committing the infringement and eight times the value of the fishery products in case of a repeated infringement within a five year period.¹⁰ Also, or alternatively, Member States may use effective, proportionate and dissuasive criminal sanctions. Pursuant to Article 45 of the IUU Regulation, a number of additional sanctions, called “accompanying sanctions”, may follow the other sanctions provided for by Chapter IX of the IUU Regulation at the discretion of the Member State. The suspension or withdrawal of the authorisation to fish is included among the accompanying sanctions. Unlike accompanying sanctions, sanctions for serious infringements are mandatory. Thus, on the basis of Articles 43 and 45 of the IUU Regulation, Member States shall suspend the

⁸ Official Journal of the European Union No C 317 of 28 December 2007. The Special Report was purportedly published when the European Commission was preparing to revise the EU control system with the submission of its Proposal.

⁹ See European Commission, Handbook on the practical application of Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (The IUU Regulation), Official Journal of the European Union No L 286 of 29 October 2008.

¹⁰ The value of the prejudice to the fishing resources and the marine environment will also be taken into account.

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authorisation to fish as an immediate enforcement measure and may subsequently suspend or withdraw the said authorisation as an accompanying sanction.

Both the IUU Regulation and the Control Regulation offer tools to deter the use of illegal fishing gears. Some of these are found in Chapter IX of the IUU Regulation and are available in case of serious infringements committed by EU fishing vessels or nationals, as indicated by Article 41§ 2 of the IUU Regulation. Should a fishing vessel be caught using an illegal gear, the national authorities would be compelled to start a full investigation of the infringement. In the meantime, they would have to take immediate enforcement measures that depend on the gravity of the infringement and are listed in Article 43 § 1.

Pursuant to the Control Regulation, the suspension or the withdrawal of the fishing authorisation by Member States can be the result of the application of the “point system for serious infringements”.¹¹ The point system can ultimately lead to the suspension or the permanent withdrawal of the fishing licence of EU nationals carrying out IUU fishing. Additionally, Member States shall establish a point system under which the master of a vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the CFP committed by him. The task to ensure the functioning of the point system is entrusted to the Member States.

Finally, Member States are under the obligation to enter in a “national register” all infringements of the rules of the CFP committed by vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned under the above-mentioned point systems.¹²

Under Article 92 § 5 of the Control Regulation, detailed rules for the application of the point system had to be adopted at the EU level according to a procedure involving the European Commission assisted by the Committee for Fisheries and Aquaculture.¹³ Accordingly, the rules in question have been laid down in the Control Regulation Implementing Regulation and the Annexes thereof. For the purpose of this study, Annex XXX and Annex XXXVII of the Control Regulation Implementing Regulation are particularly relevant, as they detail the “Points to be assigned for serious infringements” by Member States and the “List of minimum information to form the basis for 5 yearly report on the application of the Control Regulation”, respectively.¹⁴

Overall, based on the IUU Regulation and the Control Regulation as summarised above, the EU legal framework for fisheries control and enforcement, compared to the previous one, has the potential to provide Member States with a number of powerful tools to tackle IUU fishing practices in respect of both natural and legal persons. After almost a decade of implementation, the effectiveness of the measures and sanctions in the IUU and Control Regulations is to be tested

¹¹ Article 92 of the Control Regulation.

¹² Article 93 of the Control Regulation. Infringements committed by fishing vessels flying the flag of a Member State, as well as infringements by their nationals prosecuted in other Member States have to be entered by the flag Member State in its national register of infringements, upon notification of the definitive ruling by the Member State having jurisdiction on the case.

¹³ Article 30 of Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the CFP.

¹⁴For detailed rules for implementing the IUU Regulation, see Commission Regulation (EC) No 1010/2009 of 22 October 2009.

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against the primary responsibility of Member States to implement those tools and proficiently deter IUU fishing. Nevertheless, as mentioned in the executive summary of this study, it should not be forgotten that the current EU system for fisheries control and enforcement is undergoing a substantial revision and probably will be amended soon.

1 The Italian legal framework for fisheries control and enforcement

The particular case of Italy shows how difficult it has been for certain Member States to properly implement the EU fisheries regulations. In the past, amongst all the EU technical measures on fisheries and all the requirements relating to their implementation, the restriction and subsequent prohibition of driftnets are those that have created the most problems for Italy.

In Italy, fishers of certain localities traditionally used driftnets of a certain length, in some cases longer than 20 km, called *spadare*. Before the adoption of the relevant EU restrictions,¹⁵ the Italian regulatory policy on driftnets was quite wavering, to say the least, and the situation has not greatly changed after the adoption of the EU driftnets restrictions.

In 2008, the European Commission brought a case before the European Court of Justice (hereafter, the “ECJ”) against Italy (case C-249/08), alleging lack of control on the compliance with the EU provisions on driftnets and lack of adequate sanctions against those responsible for violations of the rules on the use and detention on board of driftnets. The case was settled in a judgment of 29 October 2009. The ECJ found that Italy had failed to fulfil its obligations under Regulation (EEC) No 2241/87 and Regulation (EEC) No 2847/93 by not adopting appropriate measures for the control, inspection and surveillance of fishing activities. The ECJ also declared that Italy had failed to comply with the provisions governing the detention on board and the use of driftnets and had not complied with its obligation to ensure that appropriate measures, in particular dissuasive sanctions, were taken against those responsible for infringements of EC legislation. The ECJ noted that the use and the detention on board by Italian fishers of illegal driftnets was a frequent, common and widespread practice.

In fact, a detailed picture about the use of and the fight against illegal driftnets in Italy had also been provided in a report prepared by the Italian Coast Guard on the activities carried out to tackle the use of such driftnets in the 2005-2009 period, i.e. during the five-year period preceding the ECJ judgment and the adoption of the IUU Regulation and the Control Regulation (hereafter, the “2005-2009 report”).¹⁶ This document emphasised that controls over the use of driftnets during the years 2005-2009 were the main priority for the Italian Coast Guard in the overall control of

¹⁵ In 1992, Regulation (EEC) No 345/92 laying down technical measures for the conservation of fishery resources, prohibited the use of driftnets longer than 2.5 km. Further measures on driftnets were subsequently adopted by means of Regulation No 894/97 and Regulation (EC) No 1239/98. The first stated that no fishing vessel could keep on board, or use for fishing, one or more driftnets whose individual or total length was more than 2.5 km. The second definitely banned the use of all driftnets for catching tunas, billfish, sharks, dolphinfishes, sea bream, sauries and cephalopods by 1st January 2002 in all waters falling within the jurisdiction of Member States, as well as outside those waters, with the exception of the Baltic Sea. Regulation No 812/2004, adopted in 30 April 2004, extended the ban to the Baltic Sea as from 1st January 2008.

¹⁶ Comando Generale del Corpo delle Capitanerie di porto, L'attività di contrasto alle reti derivanti illegali – Quinquennio 2005-2009.

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fisheries. Implicitly, this was an acknowledgment of the fact that, in Italy, IUU fishing mostly identified with driftnet fishing.

The latest report issued by the Italian Coast Guard before the entry into force of the new EU rules on fisheries control and enforcement emphasised, inter alia, that transgressors were well organised and, as a consequence of the controls carried out by the Italian authorities, had sometimes chosen new ports, including ports in other countries, to continue their activities away from the control of the Italian Coast Guard.¹⁷ It was highlighted that, when fishing gear illegally used was seized, it could happen that this gear was returned to the fishers because of the lack of warehouses to stock it. Overall, the phenomenon of illegal driftnets, although tackled by a strong action of control and repression in the years immediately preceding the two new EU regulations, was still in place and took different forms, also due to its very profitable character.

The Italian legislation then in place was deficient. The 2005-2009 report rightly pointed out that Italian Law No 101 of 6 June 2008¹⁸ establishing sanctions for illegal fishing prohibited the detention (and not only the use, as it was before) of illegal fishing gears, modifying for this purpose Article 15 of Law No 963 of 14 July 1965 on maritime fishing. However, Article 26 of Law No 963 of 1965, relating to accessory sanctions, had not been modified accordingly. It followed that the accessory sanction of confiscation of illegal fishing gears could not be applied if such gear was simply detained (for example, on board a vessel or on the dock of a fishing port) without being actually used. The consequence of this deficiency was that detained driftnets were not seized or, if seized, had later to be returned to the transgressors (ready to be used again by them).¹⁹

The 2005-2009 report also stressed that the sanctions set forth under Italian legislation, as applied in that five-year period, were devoid of a significant deterrent effect. While Law No 101 of 2008 doubled the amount of monetary sanctions already in place, such sanctions had proven to be still not sufficient to deprive offenders of the economic benefits arising out of their infringements. In conclusion, the 2005-2009 report provided evidence of some improved efficiency in terms of controls carried out by the Italian authorities in waters falling under the Italian jurisdiction²⁰ and, on the high seas, on vessels flying the Italian flag in the years immediately prior the entry into force of the two new EU regulations. However, it also documented the ongoing use of driftnets and emphasised the persistent insufficiency and lack of clarity of some aspects of the Italian legislation.

¹⁷ The Tunisian port of Biserte, for instance, is one of these ports.

¹⁸ This law amended Law No 963 of 14 July 1965.

¹⁹ All this was duly noted in the 2005-2009 report (translated hereafter for ease of reference): *"It is of paramount importance to put forth an amendment of Article 27 of Law 963/1965 that, unfortunately, has not been amended by Law Decree 59/2008 (and by subsequent Law 101/2008 converting the law decree into law) and made particularly complex the seizure of illegal fishing gear simply 'detained'. Although it is true that the concept of 'use' has been extended to all those actions which are instrumental to fishing activities, it is difficult to prove that the detention on board of illegal gear is directly instrumental to their use".* After the ECJ judgment, Law No 217 of 15 December 2011 has modified the relevant legislation. In particular, Article 13 of Law 217/2011, entitled *"Adeguamento alla sentenza della Corte di giustizia delle Comunità europee del 29 ottobre 2009, resa nella causa C-249/08"* inserted the relevant modification in Article 27, § 1, (b) of Law 963/1965: *"al comma 1, lettera b), dopo le parole: "apparecchi di pesca usati" sono inserite le seguenti: "ovvero detenuti"*.

²⁰ Also now, waters falling under Italian jurisdiction for fishing purposes are limited to the territorial sea, as Italy has not established an exclusive economic zone.

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As of today,²¹ after almost a decade of implementation of the EU regulations, fishing vessels using *spadare* keep appearing both along and further away from the Italian coast. For example, control activities carried out at sea (with both vessels and aircraft) and on land by the Italian authorities around the Aeolian Islands this year have led to the seizure of a considerable quantity of illegal fishing gear.²² Patrol boats CP 322 and CP 2203 of the Italian Coast Guard (based in Lipari Island) have seized 28,000 meters of *spadare* in the stretch of sea north of the said islands.

The Italian General Command of the Port Authorities has set the fight against the use of illegal fishing gear and, in general, against IUU fishing as a priority, stating that assiduous controls will take place over the next months. However, the appearance of fishing vessels using *spadare* is a sign of the still profitable character of this illegal activity.

In light of the above, discussion on whether Italy abides by the EU legislation on fisheries control and enforcement is necessary, first, to evaluate the current Italian legislation implementing the IUU Regulation and the Control Regulation and, second, to investigate what is happening in practice in terms of infringements detected and sanctions administered against the offenders by the Italian authorities.

In this study, Chapter 1 and related sub-chapters elaborate on the contents of the current Italian legal framework on fisheries control and enforcement. Chapters 2 and 3 shed light on what is happening in practice, in terms of data relating to inspections, infringements and sanctions, as well as by illustrating some recent cases of IUU fishing on which Italian courts have exercised their criminal jurisdiction. Chapter 4 addresses the question of IUU fishing conducted by Italian vessels in the exclusive economic zone of other States, particularly West African States. Chapter 5 assesses the transparency of the status of control and enforcement activities conducted by the Italian authorities against the violations of the relevant EU legislation. Chapter 6 highlights the proposed changes to the current EU fisheries control system. Eventually, Chapter 7 sums up the conclusions.

As regards the rules in force today, following the adoption of the new EU Control Regulation in 2009, Law No 96 of 4 June 2010 delegated to the Italian Government the re-organisation of the Italian legislation on fisheries and aquaculture. The Government was empowered to compile a single legislative text on fisheries within 18 months from the entry into force of Law 96/2010. Accordingly, Legislative Decree No 4 of 9 January 2012 (so called *Testo unico sulla pesca*) is deemed to have transposed the most recent EU legislation into Italian law. Lately, this instrument has been modified by Article 39 of Law No 154 of 28 July 2016 as regards the system of sanctions against offenders.

Legislative Decree 4/2012, as modified by Article 39 of Law 154/2016, implements the sanctioning system of the IUU and Control Regulations.

²¹ Information collected on 20 July 2018 from the General Command of the Port Authorities.

²² Control activities were carried out by the Maritime District of Milazzo, instructed by the Maritime Direction of Catania with the support of the personnel of the Maritime Circumlocution Office of Lipari.

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In Italy, the **fishing licence** authorises to carry out professional fishing activities and is released to the owner of a vessel duly registered in the registers of the fishing enterprises by the Ministry of Agricultural, Food and Forestry Policy, General Direction of Maritime Fisheries and Aquaculture (hereafter, “MAFFP-GDMFA”), management unit PEMAC III.²³

The document authorises professional fishing activities only with the gear indicated on it. The document is valid for a period of 8 years from its release, but takes effect only after the payment of the licence fee, and is renewable upon request. Pending the renewal of the fishing licence by the central administration, the Coast Guard is competent for issuing a provisional licence.

All data concerning the vessel’s owner or charterer and the vessel itself are entered into an electronic fishing licences database that should allow the control of the Italian fishing fleet in real time. In addition to professional fishing licences, specific licences for vessels operating in aquaculture facilities or serving at their premises as support units are also issued.

Pending the review of the fishing license, the vessel’s registration office can issue a provisional certificate.

1.1 The competent authorities

In accordance with Article 28 of Law 96/2010, Article 22 of Legislative Decree 4/2012 allocates the functions of surveillance and control on IUU fishing activities carried out by vessels flying the Italian flag (irrespective of which waters they may be sailing in or the port they are), vessels of other Member States, as well as vessels belonging to non-EU States when they are operating in Italian waters. It identifies the MAFFP-GDMFA as the competent authority under Article 5 of the Control Regulation, which is entrusted with the coordination of all control activities.

In order to carry out the functions invested in it, the MAFFP-GDMFA runs the General Command of the Port Authorities, acting as the National Fisheries Control Centre (hereafter, “NFCC”). The role of the NFCC is to monitor fisheries effort and the associated economic activities.²⁴

Italy appointed the General Command of the Port Authorities at the “head of the control chain” and, in order for it to carry out its work, provided it with the software required to help it locating vessels in real time by means of blue boxes and AIS (Automatic Identification Systems), as required under the Control Regulation.²⁵

The control of fishing activities, the placing on the market and handling of the products thereof, as well as the detection of the relevant infringements are the responsibility of the civil and military personnel of the central and peripheral maritime authority, the Finance Guard, the “Carabinieri” Corps, public security officers and sworn agents appointed by regional, provincial and municipal administrations.²⁶ The latter are nominated for the specific purpose of fisheries control and are

²³ Legislative Decree No 153 of 26 May 2004.

²⁴ See Article 2 of Presidential Decree No 424 of 9 November 1998. The NFCC came into effect with Commission Regulation (EC) No 1489/97 of 29 July 1997 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 as regards satellite-based vessel monitoring systems.

²⁵ Presidential Decree No 424/1998.

²⁶ Article 22 of Legislative Decree 4/2012.

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paid by the relevant administrations. They must comply with the requirements set out in public security laws and their nomination follows the positive opinion of the head of the relevant Maritime District (*Compartimento marittimo*). Sworn agents are also entrusted with surveillance functions under Article 55, last paragraph, of the Italian Code of Criminal Procedure (“Functions of the criminal police”), according to which criminal police officers, even on their own initiative, must collect evidence of any infringement, prevent it from being used for further infringements, investigate the offenders, secure all means of evidence and gather any other element that can be required for the application of the criminal law.

The authorities identified in Article 22 of Legislative Decree 4/2012 can access at any time vessels, floating docks and platforms, fishery factories, storage and sale establishments, as well as all means of transport used for fishery products, with the view to ascertaining compliance with fisheries legislation.²⁷ Article 23 of Legislative Decree 4/2012 further provides that, within the criminal proceedings initiated for fisheries crimes under Italian law, the relevant public administrations may decide to take out proceedings as a civil party against the offenders.

Additionally, Legislative Decree 4/2012 allows the relevant authorities to derogate from national regulations in order to ensure a better compliance with the rules of the CFP. First, it is provided that, after having heard the Central Consultative Commission on Maritime Fisheries (*Commissione consultiva centrale per la pesca marittima*),²⁸ the MAFFP may decide to regulate fishing by way of derogation from national regulations, in accordance with EU rules, in order to bring it into line with the progress of scientific knowledge and technological applications, as well as to support its development in particular zones or fishing sectors.²⁹ Secondly, the MAFFP may also decide, by decree, to suspend or restrict fishing activities in accordance with Council Regulation (CE) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the CFP.³⁰

In practice, primarily the Port Authorities and the Coast Guard carry out the surveillance and control functions in the fishing sector. Additionally, under Article 13 of Legislative Decree 4/2012, the head of the relevant Maritime District is the competent authority as regards the management of infringements, which connect, with the role of administrator of sanctions, including the management of relevant reports provided by the responsible officers.³¹

1.2 Determination of what constitutes a “serious infringement”

Legislative Decree 4/2012, as modified by Article 39 of Law 154/2016, defines in Article 14, § 2, what constitutes a “serious infringement” of CFP rules. It does so by recalling the relevant contraventions and administrative offences listed in Articles 7 and 10 of the same instrument.³² In addition to serious infringements, Articles 7 and 10 list further contraventions and administrative

²⁷ Article 22, § 7.

²⁸ This organ has been established by Article 3 of Legislative Decree No 154 of 26 May 2004. It is nominated every three years by the MAFFP and chaired by the Minister of Agricultural and Forestry Policy. It is composed of the Director-General for Fisheries and Agriculture and members belonging to Ministries and national institutions with a specific expertise in the field of fisheries.

²⁹ Article 24, § 1.

³⁰ Article 24, § 2.

³¹ Article 17 of Law No 689 of 24 November 1981 requires that the agent who detected an infringement file a report providing evidence of all notifications or objections sent to the offender to the peripheral office entrusted with the competence related to the subject matter (in this case, the Maritime District).

³² Under Italian law, “contraventions” (*contravvenzioni*) are crimes which constitute minor infractions as opposed to delicts, while “administrative offences” (*illeciti amministrativi*) designate unlawful acts which are punished with administrative monetary sanctions.

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offences that constitute violations of fishing rules without reaching the degree of “serious infringement” under EU law as implemented in Italian law.

First, under Article 7, § 1, as modified in 2016, the following contraventions constitute “serious infringements” of the rules of the CFP:

(a) fishing, holding, transshipping, disembarking, transporting and commercialising species for which catch is forbidden at any stage of growth, in violation of the current legislation; and

(e) fishing in waters subject to the competence of a regional fisheries management organisation (hereafter, “RFMO”) without complying with the relevant management and conservation measures and without flying the flag of a State that is a member to that organisation.³³

The prohibitions listed in Article 7, § 1(a), do not include scientific fishing and other activities explicitly authorised by international, European and national law. In any case, commercialisation of products derived from these activities remains forbidden and retaining and transporting the relevant catch is allowed only for scientific purposes.

Secondly, under Article 10, § 1, as modified in 2016, the following administrative offences constitute “serious infringements” of CFP rules:

(a) fishing from vessels registered under Article 146 of the [Italian] Code of Navigation without a valid fishing licence or authorisation;³⁴

(b) fishing within areas and during periods forbidden by European and national law;

(d) directly fishing for fish stocks for which catch has been suspended in order to allow their recovery or repopulation;

(g) directly fishing for a fish stock for which a fixed quota has been established without having been granted the quota or after the relevant quota has been exhausted;

(h) using fishing gear that is forbidden by European and national law or that is not expressly allowed, or placing fixed or mobile fishing devices without the necessary authorisation or at odds with it;

(n) falsifying, concealing or omitting the markings, identity or identification marks of the fishing unit or, where applicable, of the fishing gear;³⁵

³³ In the case of Italy, the relevant RFMO for the conservation and management of fisheries resources is the General Fisheries Commission for the Mediterranean (hereafter, “GFCM”), established under the provisions of Article XIV of the FAO Constitution. The main objective of the GFCM is to ensure the conservation and the sustainable use, at the biological, social, economic and environmental level, of living marine resources, as well as the sustainable development of aquaculture in the Mediterranean and in the Black Sea (GFCM area of application). The GFCM is currently composed of 24 members (23 Member States and the EU) and 3 Cooperating non-parties (Bosnia and Herzegovina, Georgia and Ukraine). Unless there are formal objections, the recommendations of the GFCM become compulsory for each individual member once they have been notified. Where there is an objection, the recommendation does not become effective for the member that has lodged the objection.

³⁴ Article 146 of the Italian Code of Navigation regulates the entry of vessels and buoyant structures within the appropriate national registries.

³⁵ The latest part of sub-paragraph (n), relating to unlawful acts concerning the identification of fishing gear, has been introduced in 2016. In its previous formulation, Article 7, § 1(n), of Legislative Decree 4/2012 only concerned falsifying, concealing or omitting acts relating to fishing units.

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(o) violating the obligations provided for by the European and national legislation relating to the registration and declaration of data on catches and landings, including data to be transmitted through the satellite-based vessel monitoring system;

(p) violating the obligations provided for by the European and national legislation relating to the registration and declaration of data on catches and landings of species belonging to a stock subject to multiannual plans or harvested away from Mediterranean waters;

(q) transshipping or participating in joint fishing operations with vessels identified as having engaged in IUU fishing according to the IUU Regulation, in particular those included in the EU list of vessels engaged in IUU or in the IUU vessel lists issued by RFMOs, or providing any assistance or supply to those vessels;

(r) using a fishing vessel that is without nationality and, therefore, is to be considered stateless under international law;

(s) hiding, tampering with or disposing of evidence in the context of an investigation carried out by fishing inspectors, surveillance and control authorities and observers in the exercise of their functions, in accordance with the applicable European and national rules;

(t) hindering any activity undertaken by fishing inspectors, surveillance and control authorities and observers in the exercise of their functions, in accordance with the applicable European and national rules; and

(aa) violating European and national prescriptions on the landing obligation.

Thirdly, under Article 10, § 2, with the exception of those species that are subject to the landing obligation under the applicable European and national rules, serious infringements of the rules of the CFP can be:

(a) taking on board, landing or transshipping fish species that are undersized for conservation purposes, in contravention to the applicable law; and

(b) transporting, commercialising and managing fish species that are undersized for conservation purposes, in contravention to the applicable law.

Lastly, under Article 10, § 4, any act of transporting and commercialising undersized species for the purpose of direct human consumption following incidental catches or by-catches is also a serious infringement of the rules of the CFP.

Overall, the list of “serious infringements” embodied in Italian law includes all the categories of “serious infringements” mentioned in Articles 3 and 42, § 1, of the IUU Regulation. However, the same does not hold true as regards the three categories of “serious infringements” listed in Article 90 of the Control Regulation, namely:

(a) the non-transmission of a landing declaration or a sales note when the landing of the catch has taken place in the port of a third country;

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(b) the manipulation of an engine with the aim of increasing its power beyond the maximum continuous engine power according to the engine certificate; and

(c) the failure to land any species subject to a quota caught during a fishing operation, unless such landing would be contrary to obligations provided for in the rules of the CFP in fisheries or fishing zones where such rules apply.

The first two categories of serious infringements have not been transposed into Italian law as “serious infringements” – or they have not been transposed at all.

First, Legislative Decree 4/2012, as modified in 2016, actually lists in Article 10, § 1(l), the infringement described under Article 90, § 1(b), of the Control Regulation among the administrative offences against the CFP, but it does not consider it as a “serious infringement” according to Article 14. As a consequence, “*any manipulation, replacement, alteration and modification of the engine of a fishing vessel with the aim of increasing its power beyond the maximum continuous engine power according to the engine certificate*”,³⁶ when detected by the Italian authorities, does not imply the application of the points system.

Second, the “serious infringement” described under Article 90, § 1(a), of the Control Regulation does not appear in the Italian legislation. Actually, it does not even appear in the list of infractions as a non-serious infringement.

It can be concluded that the lists of “serious infringements” under the IUU Regulation and the Control Regulation have not received the same level of transposition into Italian Law.

1.3 Enforcement measures

Like the identification of infringements, the fisheries enforcement system relies on Legislative Decree 4/2012, as modified by Article 39 of Law 154/2016. Its provisions define:

- the immediate enforcement measures to be taken against the offenders of the rules of the CFP under Article 43 of the IUU Regulation;
- the criminal penalties and the administrative measures under Article 44 of the IUU Regulation;
- the accompanying sanctions under Article 45 of the IUU Regulation.

1.3.1. Immediate enforcement measures

According to Article 43, § 1, of the IUU Regulation, immediate enforcement measures against persons suspected of having committed or caught in the act while committing a serious violation of the CFP rules include, in particular:

(a) the immediate cessation of fishing activities;

³⁶ Wording of Article 10, § 1(l), of Legislative Decree 4/2012.

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- (b) the rerouting to port of the fishing vessel;
- (c) the rerouting of the transport vehicle to another location for inspection;
- (d) the ordering of a bond;
- (e) the seizure of fishing gear, catches or fisheries products;
- (f) the temporary immobilisation of the fishing vessel or transport vehicle concerned;
- (g) the suspension of the authorisation to fish.

Article 91 of the Control Regulation pursues, in more general terms, the same objective.

Overall, Italian law has literally transposed the provisions of letters (e) and (g) above, by providing the seizure of fishing gear and catches and the suspension of the authorisation to fish for the majority of the infractions described in sub-Chapter 1.2. However, not all “serious infringements” are punished with immediate enforcement measures, as required under EU law. In fact, the violation of European and national prescriptions on the landing obligation foreseen in Article 10, § 1(aa), of Legislative Decree 4/2012 does not imply any seizure and the serious infringements described in Article 10, § 1(n), (o), (r), and (aa) of Legislative Decree 4/2012 do not lead any suspension of the authorisation to fish.

Italian law, therefore, does not make available to the enforcement authorities all the immediate enforcement measures listed in Article 43, § 1, of the IUU Regulation for serious infringements of the rules of the CFP. In particular, no provision of Italian law offers the possibility for immediate cessation of fishing activities or the use of measures such as the rerouting to port of the fishing vessel, the rerouting of the transport vehicle for inspection, the ordering of bonds and the temporary immobilisation of the fishing vessel or transport vehicle concerned.

More importantly, Italian law considers the enforcement measures just detailed as “accompanying sanctions” in cases of actual conviction of the offenders, as if such measures were the transposition of Article 45 of the IUU Regulation. Therefore, these measures are not enforced immediately after the infringement took place, when the person is simply “*suspected of having committed or is caught in the act while committing a serious violation*” of the CFP rules, as explicitly required by Article 43, § 1, of the IUU Regulation and Article 91 of the Control Regulation. This means that, in the case of implementation into Italian law, immediate enforcement measures envisaged in EU legislation are not sufficiently dissuasive in nature.

1.3.2. Criminal penalties

According to Article 44 of the IUU Regulation, once held liable for serious infringements of the rules of the CFP, offenders shall be punished by effective, proportionate and dissuasive administrative sanctions and also, or alternatively, by criminal sanctions.

Articles 89 and 90 of the Control Regulation contain the same language.

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Under Legislative Decree 4/2012, not all “serious infringements” of the CFP rules are punished with criminal penalties. However, according to EU law, any consideration on the kind of sanction to be imposed on the offenders falls within the discretion of the Member State, provided that the chosen sanction is sufficiently effective, proportionate and dissuasive.³⁷

In particular, only seven types of infringements of the rules of the CFP are punished with criminal penalties under Italian law, namely:

- fishing, holding, transshipping, disembarking, transporting and commercialising species for which catch is forbidden at any stage of growth, in violation of the current legislation (a “serious infringement” under Italian law), is punished with a prison sentence from 2 months to 2 years or a fine from 2,000 to 12,000 euros;
- harming marine biological resources with explosives, electric energy or toxic substances capable of numbing, stunning or killing fish and other aquatic organisms is punished with a prison sentence from 2 months to 2 years or a fine from 2,000 to 12,000 euros;
- collecting, transporting or commercialising fish and other aquatic organisms that have been numbed, stunned or killed with the modalities referred to above is punished with a prison sentence from 2 months to 2 years or a fine from 2,000 to 12,000 euros;
- fishing in waters subject to the sovereignty of other States without complying with the zones, periods and modalities established by international agreements or authorisations issued by the coastal States is punished with a prison sentence from 2 months to 2 years or a fine from 2,000 to 12,000 euros (foreign vessels fishing in Italian waters are subject to the same prohibition and subsequent sanction);
- fishing in waters subject to the competence of an RFMO without complying with the relevant management and conservation measures and without flying the flag of a State that is a member to that organisation (a “serious infringement” under Italian law) is punished with a prison sentence from 2 months to 2 years or a fine from 2,000 to 12,000 euros;
- subtracting or removing aquatic organisms that are subject to someone else’s fishing activity exercised with fixed or mobile fishing gear, both through direct actions or by fishing in violation of the rules on distance, is punished with the arrest from 1 month to 1 year or a fine from 1,000 to 6,000 euros;

³⁷ Article 90 § 2 and 5 of the Control Regulation.

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- subtracting or removing aquatic organisms in spaces that are not open for free use and are reserved to fisheries establishments or aquaculture and, in any case, detaining, transporting and commercialising those organisms is punished with a prison sentence from 1 month to 1 year or a fine from 1,000 to 6,000 euros.

As recalled above, if the criminal proceedings initiated for fisheries crimes under Italian law, the relevant public administrations may decide to engage proceedings as a civil party against the offenders.³⁸

1.3.3. Administrative measures

All infractions of the rules of the CFP listed in Legislative Decree 4/2012 can be punished with an administrative fine. In the large majority of cases, infringements are punished with a fine from 2,000 to 12,000 euros, unless the case is of such severity that it can be considered a crime under Italian law.³⁹

The amount of several administrative fines is doubled if the unlawful acts involve bluefin tuna (*Thunnus thynnus*) or swordfish (*Xiphias gladius*):

- when these species have been harvested using vessels registered under Article 146 of the [Italian] Code of Navigation without a valid fishing licence or authorisation;
- when these species have been harvested within areas and during periods closed by European and national laws, as well as when they are found detained, transported and commercialised after being harvested in areas and during periods closed by European and national laws;
- when these species have been harvested where fishing activities have been temporarily suspended in order to allow their recovery or repopulation;
- when these species have been harvested in a larger amount than the one authorised, for each species, by European and national laws;
- when these species have been by-caught in larger amounts than the ones allowed, for each species, by European and national laws;

³⁸ Article 23 of Legislative Decree 4/2012.

³⁹ According to the principle *ne bis in idem*, the offender cannot be convicted in criminal proceedings after having paid the correspondent administrative fine for the same fact.

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- when these species have been harvested in stocks for which a fixed quota has been established, without the quota having been granted or after the relevant quota has been exhausted;
- when these species have been harvested using a fishing gear that is prohibited by European and national laws or that is not expressly allowed, or by placing fixed or mobile fishing devices without the necessary authorisation or at odds with it;
- when these species have been harvested in violation of the obligations provided for by European and national legislations relating to the registration and declaration of data on catches and landings of species belonging to a stock subject to multiannual plans or harvested away from Mediterranean waters;
- when these species are the object of actions of transshipping or participating in joint fishing operations with vessels identified as having engaged in IUU fishing according to the IUU Regulation, in particular those included in the EU list of vessels engaged in IUU or in the IUU vessel lists issued by RFMOs, or providing any assistance or supply to those vessels;
- when these species have been harvested in violation of obligations established by European and national laws relating to species belonging to stocks subject to multiannual plans, except for what is provided for under letter p);⁴⁰ and
- when these species have been commercialised after illegally caught according to the IUU Regulation, without prejudice to the rules concerning the disposal of seized assets by the competent Authorities.

The amount of the administrative fine is lower for certain infractions, namely:

- subtracting or removing aquatic organisms that are subject to someone else's fishing activity exercised with fixed or mobile fishing gear, both through direct actions or by fishing in violation of the rules on distance, is punished with a fine from 1,000 to 6,000 euros;
- subtracting or removing aquatic organisms in spaces that are not open for free use and are reserved to fisheries establishments or aquaculture and, in any case, detaining,

⁴⁰ As recalled above, Article 10, § 1, (p) of Legislative Decree 4/2012 concerns the obligations provided for by the European and national legislation relating to the registration and declaration of data on catches and landings of species belonging to a stock subject to multiannual plans or harvested away from Mediterranean waters.

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transporting and commercialising those organisms is punished with a fine from 1,000 to 6,000 euros.

As recalled above, both the latter infractions can also be alternatively punished with a criminal sanction of 1 to 12 months of prison.

With the same administrative fine (1,000 to 6,000 euros), Italian law punishes the violations of the obligations contained in European and Italian regulations relating to the registration and declaration of data on catches and landings, including data to be transmitted through satellite-based vessel monitoring system. Though considered “serious infringements” by Legislative Decree 4/2012, such violations are not punished by criminal sanctions.

Violations of the obligations contained in European and national regulations relating to labelling, traceability and information to the final consumer, as regards all fisheries and aquaculture products in all phases of production, processing and distribution, from the harvesting to the retail level, are punished with an administrative fine from 750 to 4,500 euros. On this issue, the relevant inspection competence, previously belonging to the Regions, has been allocated in 2016 to the Port Authorities (*Compartimenti marittimi*).

In the remaining cases, relating to the exploitation of undersized species, administrative fines vary according to the volume of fish (in kilograms) that has been caught illegally. For example, the “serious infringement” consisting of transporting, selling and managing undersized fish species may vary from 1,000 to 75,000 euros, depending on the volume of illegal catches which can vary from less than 5 kg to more than 150 kg.⁴¹ Additionally, in all these cases, the commercial activity can be suspended from a minimum of 5 to a maximum of 10 working days.

In all cases of violations involving undersized species, the amount of the administrative fines is doubled when the unlawful acts have involved bluefin tuna (*Thunnus thynnus*) or swordfish (*Xiphias gladius*).

Lastly, conducting commercial fishing at sea without being registered in the maritime fishers registry is punished with an administrative fine between 2,000 and 6,000 euros.

As regards recreational fishing, Article 11 of Legislative Decree 4/2012 establishes only administrative sanctions in case of violations of the relevant rules. The amendments adopted in 2016 foresee, in some cases, that the amount of the fine is doubled in case of infringements involving bluefin tuna (*Thunnus thynnus*) or swordfish (*Xiphias gladius*). Additionally, the same amendments have led to the inclusion of a special sanction for the buyers of fisheries products illegally caught by recreational fishers: the suspension of the commercial activity from a minimum of 5 to a maximum of 10 working days.

According to the IUU Regulation, Member States shall impose a maximum administrative sanction of at least five times the value of the fishery products obtained by committing the serious infringement. In case of a repeated serious infringement within a five-year period, they shall

⁴¹ In all cases of sanctions based on the total volume of unlawful catch, Legislative Decree 4/2012 provides for a reduction in favor of the offender equal to 10% of the detected volume.

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impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement. For all cases, national sanctions should take into account the value of the prejudice to the fishing resources and the marine environment concerned.⁴²

There is no corresponding wording in Legislative Decree 4/2012. Sanctions are fixed between a fixed minimum and a fixed maximum. Considering that illegal catches of fish are likely to have a high value, the latter may not necessarily correspond to “*at least five times*” or, in case of recidivism within five years, “*at least eight times the value of the fishery products obtained by committing the serious infringement*”, as required under EU law. Moreover, there is no mention of the repetition of the infringement and of its sanctioning consequences. Italian fisheries law does not transpose either the EU requirement to take “*into account the value of the prejudice to the fishing resources and the marine environment concerned*”.

1.3.4. Accompanying sanctions

According to Article 45 of the IUU Regulation, the criminal and administrative sanctions administered for infringements of the rules of the CFP may be accompanied by other sanctions and measures, in particular:

1. the sequestration of the fishing vessel involved in the infringement;
2. the temporary immobilisation of the fishing vessel;
3. the confiscation of prohibited fishing gear, catches or fishery products;
4. the suspension or withdrawal of authorisation to fish;
5. the reduction or withdrawal of fishing rights;
6. the temporary or permanent exclusion from the right to obtain new fishing rights;
7. the temporary or permanent ban on access to public assistance or subsidies;
8. the suspension or withdrawal of the status of approved economic operator granted pursuant to Article 16 § 3.

Legislative Decree 4/2012 always foresees, as accompanying sanctions for all kinds of infringements, the confiscation of catches and fishery products and the confiscation of the fishing gear used to commit the infringement. A fishing gear that is prohibited under current legislation is destroyed, and the offender pays all the expenses related to the custody and the destruction.

In certain cases the Italian legislation envisages, as an accompanying sanction, the obligation to restore the natural habitat or infrastructure damaged by the offender.

⁴² Article 44 §2 of the IUU Regulation.

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The amendments introduced in 2016 have added additional accompanying sanctions for certain infringements (which do not always correspond to the “serious infringements” identified by Italian law), namely:

- the suspension of the certificate of membership to the fishers registry from 15 to 30 days and, in case of repetition of offences, from 30 days to 3 months when violations are committed using vessels not expressly authorised to carry out professional maritime fishing;
- the suspension of the fishing licence from 3 to 6 months and, in case of repetition of offences, the withdrawal of the licence when violations concern bluefin tuna (*Thunnus thynnus*) and swordfish (*Xiphias gladius*);
- the suspension of the fishing licence from 3 to 6 months and, in case of repetition of offences, the withdrawal of the licence when violations are committed using driftnets.

In no case Italian law envisages the sequestration of the fishing vessel involved in the infringement, nor its temporary immobilisation, as listed in Article 45 of the IUU Regulation. However, such accompanying sanctions may happen as a practical consequence of other accompanying measures adopted under Italian law.

1.4 The penalty point system

Article 92 of the Control Regulation establishes a point system for serious infringements, both for the holders of the fishing licences and the masters of the vessels involved in IUU fishing activities.

Article 125 of the Control Regulation Implementing Regulation details the operation of the system. Article 126 of the same instrument refers to its Annex XXX for the number of points to be assigned to the holder of the fishing licence of the vessel concerned.

Article 14 § 3 of Legislative Decree 4/2012 sets up the penalty point system for serious infringements of the CFP in Italy. It provides that serious infringements entail the assignment of points, even where no order of injunction⁴³ has been issued.⁴⁴ The amendments adopted since 2016 have enlarged the scope of the penalty point system to professional underwater fishing.⁴⁵

Modalities, terms and procedures for the assignment of points are to be adopted by a decree of the MAFFP, while the GDMFA is the competent authority for the withdrawal of fishing licences.⁴⁶

According to the information provided to the consultant by the relevant authorities, the General Command of the Port Authorities has set up a digital platform to collect all the data transmitted by

⁴³ An order of injunction is a measure that anticipates the conviction of the offender.

⁴⁴ § 3.

⁴⁵ § 5.

⁴⁶ § 4.

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the territorial offices who have the competence to assign penalty points to the licence holder and the master.

For each “serious infringement” identified in Legislative Decree 4/2012, Italian authorities assign a certain number of points. In all cases, the points indicated are assigned both to the holder of the fishing licence and the master of the vessel involved:

- fishing, holding, transshipping, disembarking, transporting and selling species for which catch is forbidden at any stage of growth, in violation of the current legislation **7 points**;⁴⁷
- fishing in waters subject to the competence of an RFMO without complying with the relevant management and conservation measures and without flying the flag of a State that is a member of that organisation: **5 points**;⁴⁸
- fishing from vessels registered under Article 146 of the [Italian] Code of Navigation without a valid fishing licence or authorisation : **7 points**;⁴⁹
- fishing within areas and during periods closed under European and national laws: **7 points**;⁵⁰
- directly fishing for stocks for which fishing has been suspended in order to allow their recovery or repopulation: **7 points**;⁵¹
- directly fishing for a fish stock for which a fixed quota has been established without having been granted the quota or after the relevant quota has been exhausted: **6 points**;⁵²
- using a fishing gear that is prohibited by European and national laws or that is not expressly allowed, or placing fixed or mobile fishing devices without the necessary authorisation or at odds with it: **4 points**;⁵³
- falsifying, concealing or omitting the markings, identity or identification marks of the fishing unit or, where applicable, of the fishing gear: **5 points**;⁵⁴

⁴⁷ Article 7, § 1, (a).

⁴⁸ Article 7, § 1, (e).

⁴⁹ Article 10, § 1, (a).

⁵⁰ Article 10, § 1, (b).

⁵¹ Article 10, § 1, (d).

⁵² Article 10, § 1, (g).

⁵³ Article 10, § 1, (h).

⁵⁴ Article 10, § 1, (n).

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- violating the obligations in the European and national regulations relating to the registration and declaration of data on catches and landings, including data to be transmitted through satellite-based vessel monitoring system: **3 points**;⁵⁵
- violating the obligations in the European and national regulations relating to the registration and declaration of data on catches and landings of species belonging to a stock subject to multiannual plans or harvested away from Mediterranean waters : **3 points**;⁵⁶
- transshipping or participating in joint fishing operations with vessels identified as having engaged in IUU fishing according to the IUU Regulation, in particular those included in the EU list of vessels engaged in IUU or in the IUU vessel lists issued by RFMOs, or providing any assistance or supply to those vessels: **7 points**;⁵⁷
- using a fishing vessel that is without nationality and, therefore, is to be considered stateless under international law: **7 points**;⁵⁸
- hiding, tampering with or disposing of evidence in the context of an investigation carried out by fishing inspectors, surveillance and control authorities and observers in the exercise of their functions, in accordance with the applicable European and national regulations: **5 points**;⁵⁹
- obstructing any activity undertaken by fishing inspectors, surveillance and control authorities and observers in the exercise of their functions, in accordance with the applicable European and national regulations: **7 points**;⁶⁰
- violating European and national regulations on the landing obligation: **3 points**;⁶¹
- taking on board, landing or transshipping fish species that are undersized for conservation purposes, in contravention to the applicable law: **5 points**;⁶²

⁵⁵ Article 10, § 1, (o).

⁵⁶ Article 10, § 1, (p).

⁵⁷ Article 10, § 1, (q).

⁵⁸ Article 10, § 1, (r).

⁵⁹ Article 10, § 1, (s).

⁶⁰ Article 10, § 1, (t).

⁶¹ Article 10, § 1, (aa).

⁶² Article 10, § 2, (a).

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- transporting, commercialising and managing fish species that are undersized for conservation purposes, in contravention to the applicable law: **5 points**,⁶³ and
- transporting and commercialising undersized species for the purpose of direct human consumption following incidental catches or by-catches: **5 points**.⁶⁴

The number of points referred to in Legislative Decree 4/2012 corresponds, for each type of infringement, to the number of points indicated in Annex XXX to the Control Regulation Implementing Regulation, with the exception of the 3 points administered for a serious infringement of the rules related to the landing obligation: under EU legislation, 5 penalty points should be given in this case.

Additionally, Article 21 of Legislative Decree 4/2012 establishes “disciplinary sanctions” against maritime personnel involved in IUU fishing activities. It provides that, if persons belonging to the maritime personnel commit the infringements listed above, disciplinary sanctions shall apply in conformity with the requirements of Articles 1249 et seq. of the Italian Code of Navigation.⁶⁵

1.4.1. The penalty point system for licence holders

In accordance with Article 14, § 4, of Legislative Decree 4/2012, on 29 February 2012 the MAFFP adopted two Decrees on the assignment of points to the licence holder and to the master.⁶⁶

As regards the first category of operators, the relevant MAFFP Decree establishes that within 30 days from the date of the notification indicating the points assigned to the offender, the latter may lodge an appeal with the head of the competent department and ask to be heard. Either when the assignment of points is found justified or when the case is dismissed, a substantiated decision is issued by the head of the department and notified both to the offender and to the authority that detected the infraction.⁶⁷ The same procedure applies for the suspension⁶⁸ or the withdrawal⁶⁹ of the licence.

In case of withdrawal, the register office of the vessel shall implement the withdrawal in the shortest possible time and, in any case, within a maximum of 10 days from the date of notification of the withdrawal.⁷⁰

⁶³ Article 10, § 2, (b).

⁶⁴ Article 10, § 4.

⁶⁵ The quoted provisions of the Code of Navigation identify the authorities responsible for each category of maritime personnel, entrusted with the enforcement of the disciplinary sanctions.

⁶⁶ The two decrees were published on the Official Journal of the Italian Republic No 103 of 4 May 2012.

⁶⁷ Article 2.

⁶⁸ Article 3.

⁶⁹ Article 4.

⁷⁰ Article 4, § 4.

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All measures relating to the assignment of points, suspension and withdrawal of the fishing licence may be challenged before a judge under Article 22 of Law No 689 of 23 November 1981.⁷¹

In cases where, after the date of the infringement, the vessel is sold, transferred or otherwise changes ownership, Article 6 states that the licence holder is bound to timely provide to the new owner the certificate containing the number of points assigned, which is issued by the competent maritime authority where the vessel is registered.

When the licence is permanently suspended or withdrawn, the relevant vessel is identified as a “vessel without licence” in the national register of fishing licences and in the Fleet Register of the European Commission.⁷² The GDMFA is the authority entrusted for updating the national register and for transmitting all data to the European Commission.⁷³

Article 16 of Legislative Decree 4/2012 regulates the suspension and the permanent withdrawal of the fishing licence. In particular, it provides that, for the licence holder:

- a total number of **18 points or more** entails the **suspension of the fishing licence for a period of 2 months**;
- a total number of **36 points or more** entails the **suspension of the fishing licence for a period of 4 months**;
- a total number of **54 points or more** entails the **suspension of the fishing licence for a period of 8 months**; and
- a total number of **72 points or more** entails the **suspension of the fishing licence for a period of 1 year**.

The accumulation of **90 points** entails the **permanent withdrawal of the fishing licence**.⁷⁴

This is a correct implementation of Article 92, § 2, of the Control Regulation, which foresees the automatic suspension of the fishing licence once the same thresholds are reached (2 months, 4 months, 8 months, 1 year or permanent withdrawal).

If fishing is carried out during the suspension or after the permanent withdrawal of the fishing licence, Article 17 of Legislative Decree 4/2012 provides that the competent authorities adopt the immediate enforcement measures that are considered the most appropriate among those listed in Article 43 of the IUU Regulation. It is worth recalling that, due to the inaccurate Italian implementation of EU law, such measures are not adopted against persons who are suspected of

⁷¹ Article 5.

⁷² Article 7, § 1.

⁷³ Article 7, § 2.

⁷⁴ Article 16, § 3, of Legislative Decree 4/2012.

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having committed, or caught committing a serious infringement (as explicitly required under Article 43, § 1, of the IUU Regulation and Article 91 of the Control Regulation). The measures only apply against persons who have been already convicted for serious violations. Fishing without a valid licence may therefore be considered as the only case where even “suspects” are punished with an immediate enforcement measures identified in EU law.

The holder of the fishing licence is entitled to lodge a request for the cancellation of the points assigned with the head of the Maritime District of the register office of the vessel. After the assessment of evidence, the authority issues an order that, in case of cancellation, is notified to the licence holder, the GDMFA and the NFCC; in case of dismissal, only to the licence holder.

Once it has received the relevant notification, the NFCC updates the national register of infringements.

Article 18 § 2 of Legislative Decree 4/2012 establishes that, when the number of points assigned is higher than two, then two points can be cancelled under certain conditions, namely:

- after the infraction has been detected, the vessel starts using a vessel monitoring system or, in any case, registers and transmits electronically the data relating to the fishing logbook, the declaration of transshipment and the declaration of landing even when it is not obliged to do so;
- after the points have been assigned, the licence holder volunteers to participate in a scientific campaign aimed at improving the selective capacity of the fishing gear;
- the licence holder is a member of a producers organisation and accepts a fishing plan adopted by the organisation for the year following the assignment of points that entails a reduction of 10% of the fishing opportunities for the licence holder; or
- the licence holder participates in a fishing activity within a programme on ecological labelling aimed at certifying and promoting labels for fishery products obtained through a responsible management of marine fishing and focused on the sustainable use of fishery resources.

It is up to the licence holder to provide evidence of the conditions listed above.

The same provision establishes that, for each 3-year period following the date of the last serious infringement, the licence holder can avail himself of one of the options listed above for reducing the number of points assigned to him. In any case, the reduction cannot entail the cancellation of all points assigned to the same licence.

If no serious infringement further to the one entailing the assignment of points is committed in the following 3-year period, all points assigned to the fishing licence holder are deleted.

1.4.2. The penalty point system for masters

Article 19 of Legislative Decree 4/2012 creates a penalty point system for the masters of fishing vessels within the Italian legal framework. As recalled above, a serious infringement always entails

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the assignment of points to the master of the vessel, even when no order of injunction has been issued.

The MAFFP Decree of 29 February 2012 sets up modalities, terms and procedures for the assignment of points to masters. It provides that control authorities notify the master of the vessel of the relevant detection and the consequent assignment of points and, with no delay, transmit copies of both documents to the head of the competent Maritime District.⁷⁵

Article 20 of Legislative Decree 4/2012 provides that the assignment of points entails the following consequences for the masters:

- (a) after reaching a number of **18 points or more**, the **suspension from the functions of master for 15 days** from the date of notification of the assignment of points;
- (b) after reaching a number of **54 points or more**, the **suspension from the functions of master for 30 days** from the date of notification of the assignment of points; and
- (c) after reaching a number of **90 points or more**, the **suspension from the functions of master for 2 months** from the date of notification of the assignment of points.

The MAFFP Decree of 29 February 2012 establishes that, if the number of points assigned entails the suspension from functions, the control authority notifies to the master the corresponding period of suspension. Within 30 days from such notification, the master may lodge an appeal with the head of the competent department and ask to be heard. Either when the assignment of points and the possible suspension from the functions are found justified or the case is dismissed, a substantiated decision is issued by the head of the department and notified both to the master and to the authority which detected the infraction.⁷⁶ In any case, the suspension from functions is noted in the crew list (*ruolo di equipaggio*) and applies with effect from such note.

All measures relating to the assignment of points and suspension from functions may be challenged by the master before a judge.⁷⁷ If the assignment of points is cancelled, the master shall transmit copy of the judicial decision to the head of the competent Maritime District. The latter, within 30 days from the date of such communication, shall order the deletion of points and transmit the data to the NFCC and to the register office of the master for the appropriate entries.⁷⁸

In order to obtain the cancellation of the points assigned to him, the master is entitled to lodge a complaint to the head of the competent Maritime District. After the assessment, the latter issues an order that, in case of cancellation, is notified to the master, the NFCC and the register office of the master; and, in case of dismissal, only to the master.⁷⁹

⁷⁵ The competent Maritime District is, *ratione loci*, the one competent for the area where the serious infringement has been committed. When violations are detected beyond Italian territorial waters, the competent Maritime District is the one where the register office of the vessel is located.

⁷⁶ Article 2.

⁷⁷ Article 22 of Law No 689 of 23 November 1981.

⁷⁸ Article 3.

⁷⁹ Article 4.

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Article 20, § 3, of Legislative Decree 4/2012 establishes that, in case no further serious infringement is committed within 3 years following the last detection of an infringement, all points assigned to the master are deleted.

1.5 The national register of infringements

Article 93 of the Control Regulation provides that Member States shall enter in a “*national register of infringements*” all violations of the rules of the CFP committed by vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned. Infringements of fishing vessels flying their flag or by their nationals prosecuted in other Member States shall also be entered by Member States in their national register on infringements, upon notification of the definitive ruling by the Member State having jurisdiction.

In Italy, according to Article 15 of Legislative Decree 4/2012, the national register of infringements is maintained by the NFCC, located in the General Command of the Port Authorities, and is digital in nature. Data is kept in the register for a minimum of three years.

2 What is happening in practice?

The last publicly available information on the Italian fishing fleet composition and operating areas is contained in the report submitted by Italy (PEMAC III management unit) to the European Commission,⁸⁰ It is dated from 24 July 2017 and portrays the situation of the Italian fishing fleet as in 2016:

This table shows that 12,286 Italian vessels operate in Mediterranean waters and 9 Italian vessels – namely, 8 trawlers and 1 purse seine vessel – in FAO areas 34.3 (Atlantic, East Central) and 51.7 (Indian Ocean, West), as follows:

⁸⁰ Article 22 of Regulation (EU) No 1380/2013 of 11 December 2013 on the CFP.

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Source: PEMAC III, *Relazione annuale Italia 2016 – Art. 22 Reg. 1380/2013*, p. 4-5.

The information provided by the General Command of the Port Authorities depicts the general status of the enforcement activities in Italy as regards IUU fishing. The information is presented according to the main situations and locations where infractions were detected (i.e., at sea, at landing facilities, at logistic platforms and wholesale warehouses, at airports, at fish markets, in supermarkets and in the retail industry, in food service facilities, on the road and in fish factories), the type of offender (i.e., licence holder, non-professional fisher, driver, wholesaler, logistic operator, trader, dealer, street vendor, leisure boater, food chain operator, caterer, etc.) and the type of violation. It also provides a list of types and numbers of fishing gears that have been seized.

The data collected does not aim to give a comprehensive picture of the Italian fisheries infringements since the adoption of the IUU and Control Regulations, but a snapshot of the situation **from 1st January 2018 to date**.

The last 5-year report referred to in Article 118, § 1, of the Control Regulation, to be filled in by Italy with the data defined in Annex XXXVII to the Control Regulation Implementing Regulation, covers the years 2010-2014.⁸¹ It reported the following data:

Number of serious infringements detected:

2010: not available;

2011: not available;

2012: **403**;

2013: **578**;

2014: **538**.

Number of occasions where penalty points have been assigned to the licence holder:

2010: 0;

2011: 0;

2012: **135**;

⁸¹ The first two years covered in the report (2010 and 2011) inevitably lack data, as the relevant national legislation was not yet in force.

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2013: **403**;

2014: **404**.

The next 5-year report, covering the period 2015-2019, is not yet available. However, the General Command of the Port Authorities has provided information on the penalty points assigned in the first nine months of 2018 to licence holders and masters. Moreover, the national register of infringements may give a good insight of the current status of control and enforcement activities in the fishery sector.

2.1. Data on inspections

In the period considered (1st January– 25 September 2018), control authorities have carried out inspections that led to **3,312 administrative sanctions** and **296 criminal sanctions**. Inspections have covered the entire fishery-market chain, from boarding vessels at sea to controls in port facilities, wholesale warehouses, restaurants and markets; and checks of carriers both at sea and on land.

Controls at sea have led to the higher number of sanctions (1,229 administrative sanctions and 131 criminal sanctions), followed by inspections in food service facilities (534 administrative sanctions and 33 criminal sanctions), inspections on the road (409 administrative sanctions and 62 criminal sanctions), inspections at landing facilities (402 administrative sanctions and 18 criminal sanctions) and inspections in fish factories (254 administrative sanctions and 9 criminal sanctions).

Other inspections, leading to a lower number of sanctions, were carried out in logistic platforms and wholesale warehouses (66 administrative sanctions and 5 criminal sanctions), fish markets (43 administrative sanctions and 8 criminal sanctions), supermarkets and retail industry (63 administrative sanctions), airports (1 administrative sanction) and “other places” (187 administrative sanctions and 15 criminal sanctions).

Inspections at sea have led to a low amount of catch confiscated, compared to inspections carried out elsewhere. Out of 184,106.76 kilograms of fishery products confiscated in the period considered, 73,728.20 kilograms were confiscated on the road, 49,842.53 kilograms at logistic facilities and wholesale warehouses, 17,940.61 kilograms in landing facilities, 13,705.75 in food services facilities, 10,650.52 kilograms in fish factories, and lower amounts in “other places”. The total catch confiscated at sea in the period considered is 8,740.43 kilograms.

Nevertheless, out of the total number of seizures ordered by the control authorities in the period considered (2,424), inspections at sea have led to the highest number of seizures (745), followed by seizures enforced in food service facilities (497), on the road (427), in landing facilities (260), in fish factories (213), and in “other places” in lower amounts.

Moreover, inspections at sea have definitely led to the highest number of seized fishing gear (4,313 out of 4,938), followed by inspections in landing facilities (609 seizures) and in other places, mostly on the road. The fishing gears seized by the authorities in the period considered amounts to 257,537 meters of illegal nets and devices.

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2.2. Data on infringements

The national register of infringements managed by the General Command of Port Authorities lists a total of **3,608 infringements** detected in the period considered. The large majority (1,144) corresponds to violations of rules relating to the labelling and traceability of fisheries products. Illegal fishing by licence holders has been detected in 408 cases; illegal fishing by non-professional operators (recreational fishers) remains high (429 cases). Other violations encompassed fishing for undersized fish stocks (202 cases); lack of documents and authorisations (186); fishing with trawlers (65 cases); fishing within marine protected areas (48 cases); fishing with driftnets (20 cases); and hiding, tampering with or disposing of evidence in the context of an investigation carried out by inspectors (17 cases). Violations relating to the safety of navigation and maritime work amount to 203 and 172 cases, respectively. The remaining number of violations relate, inter alia, to sanitary frauds, infringements of health and sanitary standards, contraventions to vessel-monitoring system rules and logbooks, and unauthorised plants.

The national register of infringement does not distinguish between “serious infringements” and other infringements, and it does not register exactly the violations according to the types of infringements identified by Legislative Decree 4/2012. As a result, it is difficult for the reader to find out what the number of serious infringements detected in the period considered is. Such number should be included in the next 5-years report, to be submitted by Italy in accordance with Annex XXXVII to the Control Regulation Implementing Regulation.

2.3. Data on sanctions

The monetary sanctions applied in the period considered represent a total of **7,968,921.95 euros**. A large amount has been collected after carrying out inspections at sea (2,822,251.05 euros), followed by inspections on the road (1,356,316.00 euros), in food service facilities (1,280,361.60 euros), at landing facilities (1,046,706.80 euros), in fish factories (472,501.17 euros), and in “other places” in lower amounts.

A total of **23 vessels have been seized** in the period considered. Half of them were seized after inspections at sea (12). Few of them were seized after inspections carried out in ports (3), in fish markets (3) and in other places. It is worth nothing that, out of the total, 9 vessels belonged to non-professional operators (recreational fisheries operators).

Sanctions included **business shut down in 4 cases** (restaurants and small markets).

According to the information provided for the period considered, **points have been assigned to masters of vessels in 264 cases and to licence holders in 268 cases**. According to the clarification provided by Port Authorities officers, the slight difference in numbers can be explained with the fact that, in sporadic cases, the violation could not be traced back to both the master and the licence holder, but only to the latter.

1291 penalty points have been administered to masters of fishing vessels in 264 cases. **Masters have been suspended from their functions in 7 cases**.

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1301 penalty points have been assigned to licence holders in 268 cases. Fishing licences have been suspended in 18 cases. Violations involving bluefin tuna and swordfish species have led to the assignments of points in 5 cases. Illegal fishing practices involving the use of driftnets have led to the assignment of points in 4 cases.

In addition, for the period between 1st January and 25th September 2018, 744 penalty points assigned to masters, relating to 104 infringements, were cancelled by the Italian authorities. For the licence holders, the number of points cancelled is 836 in 113 different cases. All these points were not necessarily assigned in 2018. Their cancellation is the outcome of a process launched by the licence holder or the master to delete them.

3. Overview of cases

The most significant new element among the amendments included through Article 39 of Law 154/2016 is the **decriminalisation** of any act consisting of holding, landing, transshipping, transporting and commercialising undersized fish species (so-called *novellame*, i.e. juvenile fish, in Italian). As seen above, the amended provisions now establish higher monetary sanctions, between 1,000 and 75,000 euros (doubled when the violation involves Bluefin tuna or swordfish species), and accompanying sanctions, identified depending on the severity of the wrongful conduct and the volume of the illegal catch. Prior to the said amendments, however, fishing for undersized species was punished as a crime, with a possible prison sentence of 2 to 24 months or a fine from 2,000 to 12,000 euros.

The 2016 amendments have increased the amount of the fines also as regards recreational fishing committed in violation of conservation rules.

Thus, on the one hand, the amended legislation punishes with higher fines all the infringements already laid down in Legislative Decree 4/2012; on the other hand, it has decriminalised certain conducts, now punished only with fines.

In certain cases, administrative sanctions are complemented by accompanying sanctions, such as the suspension of the certificate of membership to the fishers registry, the suspension of the fishing licence from 3 to 6 months and, when offences are repeated, the withdrawal of the licence. These accompanying sanctions are the most feared by professional fishers.

After the decriminalisation of several unlawful fishing practices by the Italian legislator, the Italian Court of Cassation has judged accordingly. In several instances, it stated that conducts that were previously punished as crimes now shall be considered as administrative offences.⁸²

Therefore, it would seem that, after 2016, transgressors are exempted from criminal liability, but the picture is more complex and deserves a look into case law.

In the context of fisheries control and enforcement, it seems worth mentioning two recent cases that, for the first time in Italy, have led to the qualification of illegal fishing as an “environmental

⁸² See, for instance, Court of Cassation (criminal division), Section VII, judgment No 15348 of 15 July 2016, and Section III, judgments No 35571 of 30 May 2017 and No 8546 of 10 January 2018.

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crime". This qualification may have profound impacts on the prosecution of illegal fishing activities by the Italian authorities.

In fact, the current Italian legal framework on crimes against the environment has been strengthened with the adoption of Law No 68 of 22 May 2015. This instrument has introduced a new Title in the Criminal Code (*Titolo VI-bis, Dei delitti contro l'ambiente*), which aimed at addressing the difficulties encountered by the authorities within the previous legal framework in the fight against environmental crimes, as well as strengthening the relating system of sanctions. Law 68/2015 has implemented in Italian law Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law.

Two crimes envisaged today in the Italian Criminal Code may be relevant in the context of fisheries:

- "environmental pollution" (*inquinamento ambientale*), which punishes with an imprisonment from 2 to 6 years and a fine from 10,000 to 100,000 euros whoever unlawfully causes a significant and measurable damage or deterioration to:
 - waters or air, or significant or wide portions of soil or subsoil;
 - ecosystems, biodiversity, flora and fauna.⁸³

- "environmental disaster" (*disastro ambientale*), which punishes with an imprisonment from 5 to 15 years whoever unlawfully causes, alternatively:
 - an irreversible damage to the equilibrium of an ecosystem;
 - a damage to the equilibrium of an ecosystem whose elimination is particularly costly and can be undertaken only through exceptional measures;
 - an offence to public safety, because the fact is of particular relevance in terms of extension of the damage it has entailed, its harmful effect or the number of people affected or exposed to danger.⁸⁴

In both cases, the sentence is increased by up to one-third if the damage occurs in a protected natural area, a zone subject to landscape, environmental, historic, artistic, architectural or archaeological restriction, or if it concerns endangered animal or plant species.

Among the most important consequences of Law 68/2015, authorities have been permitted to make use of particularly effective investigation means, such as interceptions of conversations and

⁸³ Article 452-bis of the Italian Criminal Code.

⁸⁴ Article 452-quater of the Italian Criminal Code. In both cases, the term "unlawfully" adds a certain degree of ambiguity and uncertainty in the identification of what constitutes a crime.

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communications, which were previously unavailable to them due to the almost exclusively administrative character of environmental law infractions.

In addition to the new criminal law provisions, the Italian legal framework against environmental crimes may rely on the contribution of special consultants that, according to Article 359 of the Italian Criminal Code of Procedure, shall assist the public prosecutor during the investigations.

According to the information provided to the consultant by the Italian Finance Guard, the new criminal law framework on environmental crimes and the work of scientific experts as “auxiliary police officers” have led to successful results in at least two cases relating to fisheries crimes.

3.1. The “Poseydon” operation

Since July 2015, the Finance Guard of Taranto (*Sezione Operativa Navale*) and the local Port Authority have jointly carried out investigations on the illegal production, holding and deployment of explosives, as well as on the occurrences of environmental pollution and environmental disasters deriving from their use in illegal fishing operations.

Technical investigations⁸⁵ have allowed the identification of two criminal organisations committed to doing business with explosives for fishing purposes, causing severe damages to marine ecosystems. The two criminal groups had specialised in the recovering of munitions dumps from the waters of the Gulf of Taranto and their reuse in illegal fishing and within the local criminal business.⁸⁶

Investigations started after a series of reports by citizens who had heard several loud explosions at sea. The police authorities collected a significant amount of evidence. It allowed the prosecution of 14 offenders which were for the first time in Italy charged for environmental pollution and environmental disaster involving fishing activities. The links to environmental pollution were due to the significant and measurable alteration of a rich and complex ecosystem such as the *Mar Piccolo di Taranto*⁸⁷ and its biodiversity. This was certified in the technical study provided to the public prosecutor by the National Research Centre – Institute for the Coastal and Marine Environment of Taranto.

All offenders were convicted on 14 September 2017; convictions varied between 2 years and 6 years and 10 months of imprisonment.⁸⁸

As it may be recalled, according to the national fisheries legal framework,⁸⁹ harming marine biological resources with explosives is punished with a prison sentence from 2 months to 2 years or a fine from 2,000 to 12,000 euros. Therefore, the new criminal legal framework definitely strengthens the fight against IUU fishing, when the illegal activities are potentially conducive to environmental pollution or environmental disasters, as defined above.

⁸⁵ Video interceptions and phone tapping, in conformity with Articles 266 et seq. of the Italian Code of Criminal Procedure.

⁸⁶ Explosives were also deployed for robberies and acts of intimidation.

⁸⁷ *Mar Piccolo di Taranto* is connected to the Gulf of Taranto and is listed as a Site of Community Importance under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

⁸⁸ Judge for the preliminary hearing of Taranto, abbreviated procedure.

⁸⁹ Legislative Decree 4/2012.

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3.2. The “Deserto blu” operation

Along the coasts of the Province of Taranto, since 2015, a new illegal fishing practice had begun, consisting of collecting holothurians (*Holothuria (Holothuria) tubulosa*), so-called “sea cucumbers”, known for their filtering capacities and highly demanded in China in the pharmaceutical, cosmetics and food sectors, with a fishing gear called *ferrochiaro*.

A remarkably well-organised entrepreneurial system of supply chain had been set up in the city of Taranto. This included a complex chain of operators with differing functions which the criminal organisation controlled during all phases of the production cycle: harvesting, peeling and boiling stages, as well as the export of the products to China, and mainly in Hong Kong, where holothurians were marketed illegally at the price of 200 to 600 US dollars per kilogram.

The exceptionally high profitability of this fishing activity had led many illegal operators from Taranto (usually fishing for sea urchins and date mussels) to undertake the new business with very low risks, due to the fact that, at that time, the marine species in question was left unprotected by both national and international legislation. Hence, in two years, holothurians had almost disappeared along the coasts of the Province of Taranto, pushing the poachers to extend their activities to the Provinces of Lecce, Brindisi and Bari.

Following investigations by the Finance Guard of Taranto (*Sezione Operativa Navale*) and the Public Security Commissariat of Manduria, the public prosecutor of Taranto issued preventive seizure orders for 21,519 kilograms of fish products and three warehouses. The judge of Taranto subsequently confirmed the orders and convicted all the offenders of conspiracy to commit environmental pollution and environmental disaster under Articles 452-bis and 452-quater of the Italian Criminal Code.

Since the entry into force of Law 68/2015, the Court of Cassation has judged 25 cases of “environmental pollution” and 11 cases of “environmental disasters”. These low figures over a three-year period highlight the difficulty for the authorities to build their case, as it requires specific technical skills.

Among the 25 cases on environmental pollution judged so far by the Court of Cassation, three relate to the two aforementioned cases.

The “Deserto blu” operation has led to two interventions of the Court of Cassation.⁹⁰ After a significant seizure of almost 5,000 tons of holothurians, the offenders had indeed resorted to the Court of Cassation arguing, inter alia, that the judges of the merits had acted in substitution of the legislator, as the law did not prohibit fishing for holothurians. The Court rejected this argument, on the basis that legal activities carried out with illegal means such as the ones used to catch the sea cucumbers may engage the criminal liability of their perpetrators.

In the context of the “Poseydon” operation, the Court of Cassation had the opportunity to highlight the importance of technical and scientific support (in that case provided by the National Research

⁹⁰ Court of Cassation (criminal division), Section III, judgments No 18934 and No 18937 of 15 March 2017.

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Center) for assessing the actual damage to and deterioration of ecosystems in judicial cases relating to environmental crimes.⁹¹

It can be concluded that the applicability of environmental criminal law in cases of IUU fishing activities allows for a wider protection of the fishery resources and, more broadly, of the marine fauna. In fact, even in the absence of specific prohibitions by the fisheries legislation, case law may intervene using the flexible notions of “environmental pollution” and “environmental disaster” to protect the marine ecosystem and may also provide the control authorities with more powerful tools to be used during the investigations.

In turn, case law on this matter may serve as a “sounding board” for the public. Firstly, it contributes to enhancing common awareness on the severe consequences of certain fishing practices on the environment and on the local economy. Secondly, it acts as a deterrent against illegal practices, as it implies the criminal liability (and the consequent conviction) of the perpetrators. Thirdly, it may ultimately lead to the adoption of specific fisheries legislation, filling the possible legal gaps, as the holothurians case has demonstrated. In fact, after the judgments following the “Deserto blu” operation, the MAFFP has adopted a Decree that bans the fishing for these species until 31 December 2019, with a view to allowing their recovery.⁹²

4. The case of Italian trawlers fishing off West Africa

Based on the latest report transmitted by the Italian authorities to the European Commission, in 2016 there were eight Italian trawlers operating off the coasts of West African States.

The same year, the European Commission sent a formal notice to Italy in accordance with Article 258 of the Treaty on the Functioning of the European Union⁹³ concerning fishing activities of Italian-flagged vessels in the waters under the jurisdiction of Guinea-Bissau and Gambia.⁹⁴ No public information is available on further developments in this regard.

Under Italian law, fishing in waters subject to the sovereignty of other States without complying with those zones, periods and modalities established by international agreements or authorisations issued by the interested States is punished with **prison from 2 months to 2 years or a fine from 2,000 to 12,000 euros** (foreign vessels fishing in Italian waters are subject to the same prohibition and consequent sanction).

Hence, illegal fishing activities by Italian trawlers off the coasts of West African States, if any, are to be punished with criminal sanctions, without nevertheless being considered a “serious infringement” by Legislative Decree 4/2012.

If the unlawful activities have involved stocks of bluefin tuna (*Thunnus thynnus*) or swordfish (*Xiphias gladius*) harvested away from Mediterranean waters, the level of the fines is doubled.

⁹¹ Court of Cassation (criminal division), Section III, judgment No 30171 of 24 May 2017.

⁹² Ministerial Decree No 156 of 27 February 2018.

⁹³ “If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union”.

⁹⁴ Infringement number 20152167, 8 December 2016.

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Violating the obligations provided for by the European and national legislation relating to the registration and declaration of data on catches and landings of species belonging to a stock harvested away from Mediterranean waters entails the assignment of 3 points for the licence holder and master. In addition, fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State entails the assignment of 7 points.

It is worth noting that one of the questions answered by ITLOS in its Advisory Opinion of 2 April 2015 on the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) was on the responsibility of an international organisation for wrongful acts committed by its Member States,⁹⁵ with specific reference to violations of the fishing licences granted by a coastal State within the framework of an agreement with the international organisation. It is easy to identify the EU as implicitly involved, since this organisation has been granted by its Member States the exclusive competence to enter into international agreements with third countries in the field of fisheries and has in fact concluded several fishing agreements, including with the West African States members of the SRFC.

Relying also on Article 6, § 1, of Annex I (Participation by international organizations) of the United Nations Convention on the Law of the Sea (Montego Bay, 1982), the ITLOS linked liability to competence as follows: *“The liability of an international organization for wrongful acts is linked to its competence. [...] It follows that an international organization which in a matter of its competence undertakes an obligation, in respect of which compliance depends on the conduct of its member State, may be held liable if a member State fails to comply with such obligation and the organization did not meet its obligation of “due diligence”.*⁹⁶

The ITLOS found that the international organisation is under an obligation to ensure that vessels flying the flag of its Member States comply with the obligations arising from the arrangements it has concluded and is consequently liable for a failure to do so: *“The Tribunal holds that in cases where an international organization, in the exercise of its exclusive competence in fisheries matters, concludes a fisheries access agreement with an SRFC Member State, which provides for access by vessels flying the flag of its Member States to fish in the exclusive economic zone of that State, the obligations of the flag State become the obligations of the international organization. The international organization, as the only contracting party to the fisheries access agreement with the SRFC Member State, must therefore ensure that vessels flying the flag of a Member State comply with the fisheries laws and regulations of the SRFC Member State and do not conduct IUU fishing activities within the exclusive economic zone of that State.*

Accordingly, only the international organization may be held liable for any breach of its obligations arising from the fisheries access agreement, and not its member States. Therefore, if the international organization does not meet its “due diligence” obligations, the SRFC Member States may hold the international organization liable for the violation of their fisheries laws and regulations by a vessel flying the flag of a member State of that organization and fishing in the exclusive

⁹⁵ The question, asked by the SRFC, was the following: “Where a fishing licence is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?”.

⁹⁶ Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4, at p. 49, § 168.

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*economic zones of the SRFC Member States within the framework of a fisheries access agreement between that organization and such Member States.*⁹⁷

Here the exclusive competence of the organisation to conclude fisheries agreements has the consequence to channel the liability of the organisation itself. However, since also the Member States should be under an obligation to ensure that vessels flying their flag do not engage in IUU fishing, it is not clear why the 2015 Advisory Opinion seems to exclude the concurrent responsibility of such States. The uncertain aspects of the allocation of competences between an international organisation (in practice, only the EU so far) and its Member States should not play to the prejudice of non-Member States.

In the explanatory memorandum for a new draft EU Regulation on the sustainable management of external fishing fleets, the European Commission pointed out that *“ITLOS stresses the liability of the Union, and not its Member States, for any breach of the fisheries access agreements it has with coastal States”*.⁹⁸

Following interinstitutional negotiations, the European Parliament has recently revised the system of issuing and managing fishing authorisations, with the view to improve monitoring and transparency of the EU external fishing fleet. The new legislation has replaced Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, and covers all EU vessels fishing outside EU waters, as well as third-country vessels fishing in EU waters. It entered into force in January 2018.

5. Transparency of the Italian fisheries control and enforcement system

Currently, no data on inspections, infringements and sanctions is available to the public. Likewise, the national register of infringements is not published.⁹⁹

The data collected for this study have been obtained upon a specific request of the consultant, who exercised her right of access to information and documents under the Italian Legislative Decree No 97 of 25 May 2016.

The General Command of the Port Authorities have provided the information in writings, via e-mail, without allowing direct access to the relevant documents. The officers contacted have provided extracts of the points assigned and of the national register of infringements picturing the period 1st January 2018 – 25 September 2018.

As there is no indication of the areas where the inspections have been carried out, it is not possible to know if the geographic coverage of such inspections is sufficiently broad or limited to particular areas of the Mediterranean Sea and fleet segments.

⁹⁷ *Ibid.*, at p. 51, § 172 and 173.

⁹⁸ European Union document COM (2015) 636 final of 10 December 2015, p. 3.

⁹⁹ Article 93 of the Control Regulation does not itself require that such register be publicly accessible.

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No official data was provided for the activities of Italian vessels fishing off the coasts of Western Africa.

6. Forthcoming amendments to the present EU fisheries control system

Although not being the subject of the present study according to the relevant terms of reference, it should nevertheless be noted that the present EU fisheries control system is undergoing a substantial revision and is likely to be amended. The 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*¹⁰⁰ is one of the legislative initiatives foreseen for adoption in the next four years. As declared in its title, the proposal will introduce changes to both the IUU Regulation and the Control Regulation, including their complementary system of sanctions.

The explanatory memorandum to the proposal highlights that there was a common agreement among stakeholders on the need to revise the EU fisheries control system. In fact, contributions and feedbacks received highlighted deficiencies in the implementation of the Control Regulation, as well as in some of its provisions. The same document accompanying the proposal states that the legislative work of the Commission has focused on the following major issues:

- alignment with the CFP;
- the lack of harmonisation between Member States on the implementation of the rules;
- complexity of the legislative framework and lack of clarity of some provisions regarding the sanctioning system;
- data availability, quality and sharing between Member States;
- the control of small-scale vessels and of the landing obligation,
- Synergies with other legislations, in particular the IUU Regulation and environmental and food law.¹⁰¹

Among different goals, the proposal states the following: *“To ensure a faster, effective and more dissuasive response to the serious infringements, administrative proceedings against such serious infringements should be introduced by Member States without prejudice to existing criminal proceedings. Setting standardized minimum levels of fines and improving the point system which may lead to the suspension or withdrawal of fishing licences or of the right to command a vessel, will also increase the deterrent effect of the sanctioning systems of all Member States and prevent recidivism.”*¹⁰²

In particular, the proposal includes new provisions on sanctions in the Control Regulation, namely: Articles 89a (*Sanctions*), 91a (*Sanctions for serious infringements*), 91b (*Accompanying sanctions*), 92a (*Liability of legal persons*), 92b (*Obligation to notify definitive ruling*).¹⁰³ Moreover, existing Articles 82, 85, 90, 91 and 92 of the Control Regulation are proposed to be amended.

¹⁰⁰ European Union document COM (2018) 368 final of 30 May 2018.

¹⁰¹ *Ibid.*, p. 4.

¹⁰² Preambular § 51 of the proposal.

¹⁰³ See also Annexes III and IV.

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The projected amendments concerning the enforcement chapter of the Control Regulation include:

- a new list of infringements of the CFP rules, which should be qualified as serious by nature (without applying any criteria);
- a new detailed and exhaustive list of criteria to qualify as serious certain other infringements of the CFP rules;
- a system of mandatory administrative sanctions and minimum levels of fines for serious infringements of the CFP rules;
- clearer immediate enforcement measures (or preventive measures) to be taken by Member States in case of serious infringements;
- clarification that points should be assigned to both the fishing licence holder and the master in the case these entities are different;
- clarification that the proceedings and assignment of points in case of serious infringement can be done by the coastal Member State, but have to be systematically enforced by the flag Member State;
- clarification that points systematically apply in addition to the main sanction(s) in case of serious infringements (with few derogations when the infringement is not committed by a fishing licence holder or a master, e.g. recreational fisheries);
- provisions to ensure that Member States better use and exchange data on infringements and sanctions.

The proposed revision of the IUU Regulation includes a new provision, Article 42a (*Proceedings in case of serious infringements*); the amendment of existing Articles 42 and 43; and the deletion – as they are considered obsolete – of Articles 44 to 47. Cross references are introduced to ensure alignment with the new provisions on proceedings and enforcement, including sanctions, of the Control Regulation.

The implementing capacity of Italy and the other EU Member States will have soon to be measured against this further improved legal system.

7. Conclusions

This study has examined the current legal framework for fisheries control and enforcement in Italy. It has identified a number of incorrect implementation cases of the relevant EU legislation into Italian law, demonstrating that Italy could better implement the letter and the spirit of the enforcement chapters of the IUU Regulation and, in particular, of the Control Regulation.

An evaluation of the level of implementation cannot lead today to clear-cut conclusions. On the one hand, the lack or insufficient transposition of some CFP rules shows that more efforts are needed towards full compliance with EU requirements under the CFP. On the other hand, the number of controls effected and sanctions imposed, as well as the use by courts of newly adopted environmental criminal law provisions, lead to the belief that the fight against IUU fishing practices is taken seriously by Italian enforcement and judiciary authorities.

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Yet, at the normative level, the Italian control and enforcement system could be more precise, thus highlighting the need for further efforts to be made by this Member State to align with the EU requirements.

In practice, the existence of non-official reports on the impacts of the IUU fishing activities by Italian vessels that still go unpunished requires that Italy improve control and surveillance operations and demonstrate an actual decrease of IUU fishing activities by Italian vessels both in Mediterranean waters and off the coasts of West African States.

The most significant element of the 2016 Italian legislative reform on fisheries control and enforcement has been the decriminalisation of certain unlawful conducts that were previously punished as crimes. This new system could not be a sufficient deterrent for criminal organisations committed to illegal fishing, for two reasons: first, as a result of the decriminalisation, the members of these organisations are no longer compelled to defend themselves in criminal proceedings; second, these organisations, compared to an individual fisher, can easily pay the monetary sanctions and continue to fish illegally, as the benefits of continuing to fish illegally far outweigh the amount of the sanctions.

It is a matter of fact that IUU fishing can easily become an “organised” illegal activity and should consequently be punished with adequate criminal sanctions. It is not just a matter of resource management. The United Nations Office on Drugs and Crime has highlighted that *“criminal activities in the fisheries sector are often regarded as synonymous with illegal fishing, which many States do not view or prosecute as criminal offences, but rather as a fisheries management concern, attracting low and usually administrative penalties. Organized criminal organizations thus engage in fisheries crime with relative impunity due both to low risk and high profits and uncoordinated, ineffective domestic and cross-border law enforcement efforts.”*¹⁰⁴

While some steps to improve the present situation could be done already now, any further assessment of the Italian fisheries legislation will be soon to be measured against the imminent reform of the relevant EU legislation.

¹⁰⁴ United Nations Office on Drugs and Crime (UNODC), Fisheries Crime – Bringing into Light the Perfect Storm of Illegal Activities in the Fishing Sector (UNODC official website).

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Elisabeth Druel
Lawyer/Juriste
+32 (0) 2808 4328
edruel@clientearth.org
www.clientearth.org

Jennifer Reeves
Fisheries Project Lead
+32 (0) 2808 4319
jreeves@clientearth.org
www.clientearth.org

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Brussels
Rue du Trône 60
5ème étage

London
274 Richmond Road
London

Warsaw
ul. Żurawia 45
00-680 Warszawa

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1050 Bruxelles
Belgique

E8 3QW
UK

Polska

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