



## Questions & Answers

### Webinar ILO C.188 Webinar<sup>1</sup>

19 November 2020

*This list of Q&A has been drafted by Europêche and ETF.*

#### Scope

- 1. Does the ILO C.188 Work in Fishing Convention mainly focus on fishers who work on fishing vessels over 24 meters in length? How about fishers on small vessels?**

ILO C.188 Work in Fishing Convention covers fishers on all fishing vessels engaged in commercial fishing, regardless the size of the vessel. There may be additional or more detailed provisions for vessels of 24 meters in length and over or operating at sea for more than 3 days.

Only recreational or subsistence fishers are not covered by the convention.

(Article 2 of ILO C.188 Work in Fishing Convention)

- 2. Are share fishers covered by EU Directive 2017/159?**

Yes, if they are employed share fishers. If the fishers are self-employed share fishers, they are covered if they work on a fishing vessel with one or more employed fishers.

EU Directive 2017/159 applies to:

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<sup>1</sup> The Webinar on ratification and implementation of the ILO Convention 188 was organised by the European Sea Fisheries Social Partners Europêche and ETF in the framework of the EU funded project "Pillars of the Sea 2". A recording of the webinar is available at <https://youtu.be/oiEd6QYWG4M>

1. All fishermen working in any capacity under a contract of employment or in an employment relationship on all fishing vessels engaged in commercial fishing;
2. All other fishermen who are present on the same vessel with fishermen referred to in (a) in order to ensure the protection of the overall safety and health.

(Article 2 of the annex to Council Directive (EU) 2017/159)

**3. Are the Directive contents extended as a requirement of fishers/fisheries/workers providing seafood/importing to the EU?**

The application of the Directive has to be read in line with Articles 52 of the TEU and 33 of the TFEU that define the territorial scope of application of EU law. In line with these provisions, the Directive applies within the EU territory. However, EU Member States are obliged to implement the directive (Article 2 of the social partners' agreement) with regards to "fishing vessels engaged in commercial fishing" a notion which concerns both vessels flying its flag but also vessels not flying its flag when in the scope of territorial application of EU law. If there is no such link between the EU and the vessel, the EU Council Directive (EU) 2017/159 does not apply.

## **Working and rest hours**

**4. Are share fishers included in the crew list and records of work/rest?**

See also Q&A 2.

Under ILO C.188 Work in Fishing Convention all fishers are covered, except fishers involved in subsistence and recreational fishing.

**5. How can one register hours of rest on board?**

This has proven to be a challenging issue. There is no specific requirement in the Convention to keep a record of rest hours, but a record of hours of rest or other relevant documentation will help the fishing vessel owner to demonstrate compliance to a flag state or port state inspector.

**6. Is an hour spent on board a fishing vessel considered a working hour?**

Not every hour on board can be considered as working hours. Fishers have time off to sleep, eat, watch a movie, etc. These hours are considered as hours of rest. This difference in type of hours spent on board can be clearly defined, for example via working schedules, and via the reporting of working hours.

**7. Are EU Member States of the European Union requiring fishing vessels to record working hours after the 2017 Directive. What is the state of the matter at European Union level? States signatories to Convention 188 must ensure that ships docking at their port, other than their flag, comply with the time registration?**

The ILO C.188 does not refer to working hours and therefore does not explicitly exclude hours of work, but requires from Member States to adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that: (a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and (b) fishers are given regular periods of rest of sufficient length to ensure safety and health. See ILO C.188 article 13.

In addition, EU Council Directive (EU) 2017/159 has to be applied in harmony with other EU acquis, namely the Working Time Directive (WTD) 2003/88/EC, that is mentioned in Article 11 (1) of the Work in Fishing Directive (EU Council Directive (EU) 2017/159). Articles 3 to 6 inclusive, 8, and 21 of the Working Time Directive shall not apply to fishermen covered under EU Council Directive (EU) 2017/159.

In case C-55/18 of Federación de Servicios de Comisiones Obreras (CCOO) that concerned the question if the MS are, under WTD, required to set up a system of recording of working time that would apply to all working time and all workers.

In a nutshell, the Court of Justice of the European Union (CJEU) replied that in order to ensure the effectiveness or rights to rest and limitation of working time from the WTD, and the fundamental right enshrined in Article 31(2) of the Charter, Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked by each worker to be measured. Directive (EU) 2017/159 has to be interpreted in line with this case law developed under WTD. This concerns in particular Art 15 (b) of the Work in Fishing Directive (EU) 2017/159.

**8. Fishers do not know if and when they catch fish. How have you dealt with this in the introduction of working hours and rest periods. How was this received? What were the obstacles? Are there derogations?**

For instance, in the UK the industry was concerned on how to comply with working time rules. The UK approached it by linking it closely to the safe manning requirements. The fishing vessel owner may set out how they will man the vessel, what the patterns of work will be and how they are able to comply with ILO C188 minimum hours of rest under this arrangement.

On the limits of rest and working hours, there is some flexibility in the Conventions and in the EU Directive for authorised exceptions. The UK used that provision so longer periods of rest between fishing trips or other aspects of the pattern of work can sometimes offset some breaches of the minimum daily hours of rest. It depends on the pattern of work. See the Merchant Shipping Notice MSN 1884 available on the UK government website. <https://www.gov.uk/government/publications/msn-1884-ilo-work-in-fishing-convention-working-time>

## **Fisherman's Work Agreement**

### **9. Do self-employed share fishers have to comply with the same rules applicable to contract fishers?**

All fishers (employed and self-employed) are covered by ILO C.188 Work in Fishing Convention.

Under the Council Directive (EU) 2017/159 self-employed fishers have to comply with the same rules applicable to contract fishers if they work on the same vessel as employed fishers.

## **Fisheries management**

### **10. According to ILO C188, the accommodation space has fixed standards, and in many cases an improvement of accommodation spaces would imply an increase of gross tonnage of a vessel. Would that be having some question or discussion in the topic of fishing effort and fisheries management?**

There has been much discussion about the need to review fisheries management requirements to ensure that regulation of effort based on tonnage or length does not create pressure to reduce accommodation on board.

Within the EU the overall capacity ceilings are determined by the Common Fisheries Policy (CFP) and not Directive 2017/159. Concerning the latter, EU Member States need to ensure that, while respecting the overall capacity ceilings as determined by the CFP, the allocation of capacity allows the operator to meet all requirements in terms of safety, hygiene and decent working conditions in line with the Work in Fishing Directive 2017/159.

### **11. Do you see that there will be further commercial reasons to apply C.188 protection on vessels regardless of flag states implementation?**

That's difficult to answer. Several labelling schemes are being set up, but not all of those introduce (all of) the ILO C.188-requirements. As more countries ratify ILO 188 and the standards of the Convention become the norm in the industry, with port State inspections of vessels flying the flags of non-ratifying countries, there will be a greater incentive for all fishing vessels to comply.

## Inspection and enforcement

### **12. Some fishing vessels remain at sea for very long periods. How to ensure that fishers have decent working and living conditions on board ? How to accredit work hours and rest hours for fishers?**

Fishing vessels remaining at sea for long periods are a real challenge. Conditions on board should be in order before a vessel departs to the fishing grounds. Very important is to ensure that the number of crew on board of a fishing vessel remaining at sea for more than three days allows for at least the minimum rest time of 10 hours per 24 hours and 77 hours per 7 days (*ILO C.188 requirements*). In addition, Council Directive (EU) 2017/159 requires hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between two consecutive periods of rest shall not exceed 14 hours.

As mentioned, the ILO C.188 Work in Fishing Convention covers fishers on all fishing vessels engaged in commercial fishing, regardless the size of the vessel, with exemption of recreational or subsistence fishers.

The EU Directive 2017/159 applies to:

1. All fishermen working in any capacity under a contract of employment or in an employment relationship on all fishing vessels engaged in commercial fishing;
2. All other fishermen who are present on the same vessel with fishermen referred to in (a) in order to ensure the protection of the overall safety and health.

### **13. Some countries have fishing fleets fishing far overseas for long periods of time (months even), perhaps with little port visits sometimes. How do you organise the inspections of these vessels?**

For instance, in the Netherlands this is often the case. The Ministry of Infrastructure is the responsible party for inspections. The vessels have to be certified on the spot after an inspection when departing from the Netherlands. Complaints can be submitted to the maritime labour inspection. All of these guarantees that the shipowners comply to the required labour conditions and which labour conditions are applicable. This makes the system quite functional. In case of issues the certificate can be revoked when the vessel calls back at the port. Sometimes additional follow-ups are needed. Until now the Netherlands has not experienced these issues.

There are Dutch vessels away for a longer time span. Usually the labour inspectors are invited to go to the foreign port. For instance, in Africa and the Canary Islands the vessels can be inspected.

For example, in the UK, inspections in the framework of C188 have been done for a ship sailing under the British flag in the Netherlands. This is something that can be organised as long as we can come up

with methods to do so. Of course this option involves higher costs for the shipowners because the inspectors have to be flown in and accommodated for, but it can be organised. When the labour inspection is joint with the safety inspection it can be taking place at the same time.

The Netherlands has not considered the use of recognised organisations, but might happen in the future.

**14. What plans the EC has in place to develop and implement EU provisions for port state control for fishing vessels, as envisaged in the ILO C188?**

For a proper answer, it should be put in the context of personal application of EU Directive 2017/159. Namely, unlike C188 the Directive applies primarily to employed (i.e. workers). Self-employed are, in principle, not covered unless the coverage concerns health and safety provisions. Article 153 of the Treaty of the Functioning of the EU is a good legal basis to cover workers, but then the protection would be narrower in scope than C188.

The EC would like to see all fishers come within the scope of the enforcement document.

The EC is, in that sense, exploring other provisions of the Treaty of the Functioning of the EU that would give the opportunity to provide for a broader coverage of fishers - not limiting it only to workers.

**15. How has your national legislation transposed the Directive's requirements on fishermen their rest periods? Have Member States encountered difficulties in getting the sector to accept these rest rules? Has national legislation considered derogations?**

The Netherlands has transposed Directive (EU) 2017/159 on rest time and gives the option of derogations (Arbeidstijdenbesluit vervoer, Hoofdstuk 6A see [HERE](#) for the Dutch text.

The UK approach to this is set out in MSN 1884(F) available on the UK government site ([HERE](#)). The UK has linked working time very closely with safe manning. One option is for the owner to set out the proposed pattern of work, and only exceptions to that pattern have to be recorded.

**16. The EC attaches great importance to the fact that partners have ratified ILO C188 and states that the Convention should be effectively implemented and enforced. How is it possible to assess the effect of C.188 once ratified?**

From ILO's perspective, information comes in through the reporting process of the implementation of the Convention (Article 22 reports), but those are not made to punish the states but to help a state fully comply. Via these reports the ILO can monitor what happens, what the States have done and the comments by the supervisory system.

Another way is via Port State Control, as the Convention becomes more widely ratified and we have more port state inspections, the ILO collects the data as an important source of information. This is the same approach as what is happening for the Maritime Labour Convention. It provides a good overview

of the vessels in which states have problems. The ILO also performs some monitoring directly in ILO projects, such as looking at different countries in Asia that have ratified in what they are doing to follow-up. The purpose of ratifying the Convention is to raise the standards and not to create a barrier to trade.

From the European Commission's perspective, the yellow card mostly focuses on environmental sustainability, but there has been evidence of the link between labour and human right abuses and IUU fishing. As mentioned above, the ILO supervisory system may provide some information on this and eventually, port State control information may be used. There is a lot of work underway to determine whether and how regional port State control agreements, as in shipping, will be established. There are also ILO Fundamental Principles and Rights at Work Conventions to consider.

The European Social Partners for Sea Fisheries called upon the European Commission to take pertinent measures to restrict the imports, hence EU market access, from third countries in case of evident labour and human right abuses.

## General

### **17. Those under 18 need permission from parents in the giving of medicines to the minor. Is this covered within the ILO C.188 Work in Fishing Convention?**

The ILO C.188 Work in Fishing Convention does not specifically address this issue.

### **18. In many countries fisheries policies are divided among several ministries, like in France. Would this have any effect on the county's decision to ratify the Convention and would the involvement of several ministries affect the implementation process.**

To give an example, in France the fisheries policies are divided among the labour ministry and the ministry in charge of Sea. There were some discussions between the two ministries and it was decided that the ministry in charge of Sea would be responsible for the social certification (both MLC and C188), while the Labour Ministry will remain responsible for all the other aspects of the conventions. So there is a dual competence on the social policies which is perceived working well. This is because the Ministry of Sea is more competent on shipping and fishing aspects and the Labour Ministry is more competent on labour inspections, which is why their work is complementary.

### **19. The MLC has benefits of a lot of guidance, like guidelines on implementing occupational, safety and health provisions. Are there topics where similar guidance is needed for C188?**

It is necessary to have guidelines for C188 as soon as possible. There is a low level of ratifications of the fisheries sector bargain agreement. In the merchant navy the percentage of ratification by State is much greater than in the case of fisheries. Fisheries has always been the younger sibling. We need a similar system in the framework of ILO that provides clear guidance, clear criteria regarding health and safety at work.

In addition, Article 31, paragraph b, of the C188 requires training for fishers in handling types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged. In many countries such training is not available, for which the industry itself has made a quick fix training in order to comply with it. Here guidance from the ILO is much needed.