

**The European Union's IPA 2016 Programme for Albania**

# **SUPPORT AND TRANSFER OF EXPERTISE TO FISHERIES IN ALBANIA**

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**Contract Nr. 2018/399/301**

**Revise the existing legislation and make the necessary updating in line with recent developments of the EU CFP in an inclusive and evidence based-manner**

*Activity 1.2 Revise the existing legislation and make the necessary updating in line with recent developments of the EU CFP in an inclusive and evidence based-manner*



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The legal experts as for the Activity Number 1.2 - Activity Title: Revise the existing legislation and make the necessary updating in line with recent developments of the EU CFP in an inclusive and evidence based-manner” has been outlined on the basis the availability of recipients and the substantive contents of the project.

### *Synopsis*

- During the meetings with the political and technical representatives of the Albanian Ministry of Agricultural Policies and Fisheries, the following aspects emerged to be examined in depth through the sharing of further materials by the same Ministry for a comprehensive outline about the regulatory and institutional framework under reference and its correct implementation.

**Overview of the current legislative framework** (also with reference to the last analysis carried out by the European Commission on the compliance of ordinary and second degree legislation with the EU regulatory framework) as well as of the institutional architecture (in relation to the existing model and possible corrective measures) and administrative procedural mechanisms with a view to bringing the Albanian State closer to the EU model.

The framework is based on two main legislative instruments concerning the fisheries and aquaculture systems, under a center-state management. They respond to the legal commitments required by the EU framework.

Meanwhile It should be pointed out that the Albanian legislation is produced with the intent to transpose the contents of basic EU Regulations, which are not directly applicable at the Albanian domestic level: this means that proper reception should entail the need to deserve special attention to substantive and formal features of the EU legislation to facilitate a correct transposition in future legislative procedures at the domestic level; at the same time, in this process the importance of consultative tools involving the scientific community and those who directly work in the fishing sector has to be included, especially at the planning level.

### **Overview of the orientation and strategic planning pursuant to Art. 24 of Law No. 64/2012 on fisheries.**

The result is a framework encompassing different Albanian strategic measures at the core of the fisheries policy (National Strategy, Management Plan, Implementation of the Fisheries Plan). This framework is based on a cycle-programming model that could face difficulties if related to the six-year frequency of EU programs, and connected mid-term review.

### **Overview of the data collection processing.**

With regard to data collection including several aspects (scientific, economic, control in terms of quantitative size of vessels, monitoring and control of fishing activities), in general terms a problem of coordination of data convergence and the process of compilation in place according to the GFCM model has emerged (with some partial information, e.g. 2015-2016).

Critical issues according to a sectoral ratio were also highlighted for appropriate resolution, taking into account the Italian experience and how the domestic legislative and programming measures have overcome these criticalities – to be used as a proper lesson learned to facilitate the adoption of Albanian legislation and operational tools in a view to facilitate the adaptation in line with EU requirements:

a. small-scale fisheries (artisanal/recreational fisheries):

- some difficulties have emerged in exercising control over this fishing segment in view of the inflexible distinction of authorisations on the basis of the type of activity (fishing, family, tourism);
- there is the need to tackle controlling over SSF activities, opting for a revision of the monitoring system which is generally centralised: a potential path could envisage the subdivision of the Albanian coast into 5/6 areas to be assigned to associations for responsible co-management.

b. ship-building

- a positive feature is represented by the structural framework where the main competence in the field is assigned to a special Agency delegated by the Ministry;
- an advancement of the port infrastructures has been recorded, that determines the acquisition of the asset and of the structures purposely created by the private sector during the concessional timeline and to be transferred under the State property at the end of the concession itself.

c. quality of the fish product

- the competence is delegated to a special Agency
- the issue is governed by Law No. 64/2012, ensuring high qualitative standards of the fish product along the production and marketing chain.

d. professional and entrepreneurial investment

- this issue is perceived as a critical one, due to the lack of proper input for the preservation and transmission of professional knowledge in the family context, in support to young entrepreneurial development.

• In the ad hoc meeting with the representatives from the Legal Office and other Divisions of the Ministry with specific reference to fisheries and aquaculture policies, two ppt presentations were released by the legal experts of the team to introduce the legal and programming Italian framework, to be retained as a reference model to detail the hardness and softness of its features and so far help the Albanian system to prevent any possible criticality in the legislative, programming and operational performance, as well as the international general and sectoral legal settings in relation to the role played by States – Albania included - as IOs Members and Parties of international agreements and programming documents. First of all the presentation has been shared related to the national and EU regulatory framework in force in the Italian fishing sector, in order to facilitate a comparative evaluation between the Albanian and Italian fisheries systems.

In particular, the description of the three-year national programme for fisheries and aquaculture 2017-2019, currently in force in Italy, has been discussed in order to link it with the Albanian National Fisheries Strategy and the related Fisheries Management Plan, as provided for in Articles 24 ff. of Law No. 64/2012. This interrelation is necessary in view of the accession to the EU as well as of the need of the Albanian State to ensure ad hoc compliance between national policies and interventions in the fisheries sector and the future management of funding programs at the EU level. It has been pointed out that the temporal determination of the above-mentioned planning documents does not respond to the six-year timeline of the EU Funds programming period. At a later stage, the evolutionary process of the programming policy of the EU Funds concerning the fisheries sector was illustrated, with specific regard to the SFOP 2000-2006, the EFF 2007-2013, up to the ongoing mechanisms and management procedures relating to the

EMFF 2014-2020. This has also reminded to specific aspects related to the implementation of the Common Fisheries Policy.

The structural differentiation of the Albanian framework based on a centralized approach and of the Italian one informed by the principle of separation of powers in the field of fisheries between the State and the Regions under Art. 117 of the Italian Constitution has led to an exchange of views with the Albanian administrative officials in order to clarify also the distribution of powers on measures and percentages of expenditure of the Programme between the central administration and intermediate bodies (e.g. Regions).

In the second ppt presentation it was observed that the multilevel framework allows a comparison between the Albanian and Italian systems, so as to present shared elements for international compliance with reference to UNCLOS Convention and its Implementing Agreements, and related elements for the best implementation of binding commitments descending thereof.

The EU level could be considered as middle level yet operational for the Italian system and as an useful model for the Albanian one in the future negotiation phases towards the EU membership. It has been stressed that this intermediate level implies a continuous dialogue of EU Member States with the European Commission within international intergovernmental systems, which is translated into of common positions by virtue of the exclusive nature of the EU fisheries policy: this does not exclude that the membership can however assume its own additional position in line with the European one.

The international legal dimension has been complemented by a reference to the FAO sectoral instruments, underlining their different nature in terms of obligation, self-regulation, programming actions: this does not exempt the FAO Member State, which is also an EU member, from aligning itself with the EU position (as a consequence of the EU status as a FAO member) and this is relevant in the perspective of the future EU Albanian membership when the FAO programmatic actions refer to the European regulatory legislation.

The programmatic nature has been ultimately examined in relation to the United Nations system and the voluntary exercise of submitting Member States' information concerning activities for the achievement of the Sustainable Development Goals, with a focus on SDG14: the definition of targets and indicators for it, translated into commitments by the Albanian State, will be important if compared to the traditional assessment parameters for the accession to the EU, given that the UN and EU systems will work together to collect and exchange data checking the reliability of the commitments made by their members in the fisheries and aquaculture field.

Some dialogue has been further promoted in relation to both institutional and procedural aspects of the Ministry in terms of working and coordination activities.

As for the first, according to the accessible information and the staff involved for the meeting, some criticalities have been explored to be properly tackled in relation to the under-sizing of the staff dedicated to the performance of institutional and administrative activities pertaining to the fisheries' sector.

This dialogue has been considered crucial to pre-assess, whenever possible, a reinforcement and expansion of the Ministry staff itself – encompassing both human and financial resources (not quantified at this time) - for a more adequate performance of the aforementioned tasks and administrative procedures, also in order to facilitate the empowering structural and normative setting as a precondition to deal with the EU operational programming mechanisms and tools.

At the same time the procedural process aimed at compiling the draft legislation has been explored in terms of exchange of management skills and experience in the field of regulatory drafting and adoption of norms. It emerged that the draft legislative proposal has a technical origin and is submitted to the attention

of the Legislative Office in order to detail the legal substance and the drafting process of the text; it has been also highlighted that this process includes the active participation of non-institutional actors. If the proposal requires a shared expertise, it is clear that the process should include an inter-ministerial consultation.

More recently, each legislative proposal is necessarily accompanied by a special pre-assessment political, economic, financial and environmental report.

It has been specified that, according to the topic, a choice is made between the most suitable regulatory instrument (Law or DCM) in relation to the content and to the possibility of amending the text in due time. Assumed these circumstances, the legal experts' team has suggested that the formal aspects in terms of technical drafting principles should be considered as close as possible to the original language of the EU legislation, also with the technical assistance of the EU Commission Services for an authentic interpretation of the text.

In the debate also the timeline component of the domestic legislative process has been mentioned due to the need, for the Albanian system, to clarify the timing needed to adapt the domestic legislative and institutional framework immediately following the entry into the EU system: on this point the legal experts' team has not formulated any specific proposal but it has stressed the need for a proper transposition according to common timelines in all EU Member States (opting for a comprehensive/case-by-case solution preferably in a 1-year cycle term)

**PROPOSAL OF RECOMMENDATIONS IN ORDER TO FACILITATE THE  
TRANSPOSITION OF EU LAW AT THE DOMESTIC LEVEL AND THE PROGRAMMING  
MEASURES IN LINE WITH EU PRIORITIES IN THE FISHERIES AND AQUACULTURE  
SECTORS**

➤ **Legal setting:**

Assumed that the current legislative framework in force in Albania responds to the legal commitments required by the EU framework, the following points might be taken into due consideration:

- ✓ mechanism of transposition of EU Regulations, which are not directly applicable at the Albanian domestic level;
- ✓ importance of consultative tools in the drafting legislative process transposing EU LAW, involving the scientific community and those who directly work in the fishing sector, especially at the planning level
- ✓ attention to be paid to formal aspects in terms of technical drafting principles to be as close as possible to the original language of the EU legislation, also with the technical assistance of the EU Commission Services for an authentic interpretation of the text
- ✓ attention to be devoted to timing needed to adapt the domestic legislative and institutional framework immediately following the entry into the EU system. No ad hoc proposal has been outlined but a proper transposition entails to take into proper consideration common timelines in all EU Member States (opting for a comprehensive/case-by-case solution preferably in a 1-year cycle term).

➤ **International legal framework setting:**

- ✓ deserve attention to the international (UN-FAO) legal governance in the future negotiation phases towards the EU membership, especially when, for example, FAO programmatic actions refer to the European regulatory legislation or - as for the achievement of Sustainable Development Goal 14 – to the definition of targets and indicators in line with similar tools at the EU level.

➤ **Programming setting:**

in relation to the framework of the Albanian strategic measures at the core of the fisheries policy (National Strategy, Management Plan, Implementation Plan), whereas all these national documents make general and specific references to the EU planning and related programmatic tools:

- ✓ need to reflect upon the timeline compilation and formal adoption, in relation to the six-year frequency of EU programs, facilitating the necessary mid-term review;
- ✓ give a proper clarification about the distribution of powers on measures and percentages of expenditure of the Programme between the central administration and intermediate bodies (e.g. Regions).

➤ **Structural setting:**

- ✓ need to tackle under-sizing of the human and financial resources dedicated to the performance of institutional and administrative activities pertaining to the fisheries' sector
- ✓ opportunity to pre-assess, whenever possible, a reinforcement and expansion of the staff itself for a more adequate performance of the aforementioned tasks and administrative procedures, also in order to facilitate the empowering structural and normative setting as a precondition to deal with the EU operational programming mechanisms and tools.

- **Data collection setting:**
  - ✓ need to address the problem of coordination of data convergence and the process of compilation in place according to international and regional models.
  
- **Sectoral setting - small-scale fisheries (artisanal/recreational fisheries):**
  - ✓ address difficulties in exercising control over this fishing segment in view of the inflexible distinction of authorisations on the basis of the type of activity (fishing, family, tourism);
  - ✓ need to deal with monitoring and control functions through a possible subdivision of the Albanian coast into 5/6 areas to be assigned to associations for responsible co-management.