



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate D - Waterborne
The Director

Brussels
MOVE.DDG2.D/MK

MEP Seán KELLY
European Parliament
60 rue Wiertz
BE - 1047 Bruxelles

Dear Mr KELLY,

Your letter of 19 April 2021 addressed to Commissioner Reynders concerning the m/v "Mary Kate" and its owner, Mr CJ Gaffney, has been transferred to me for response.

I recognise that this is a particularly difficult and unfortunate case that has been drawn to the Commission's attention on many occasions in the past by fellow Irish MEPs. I set out in annex to this letter the exchanges of correspondence to let you see that the options for this case have already been examined at EU level over many years. The Commissioners, to whom the issue was addressed, made the following points in their respective correspondence: the fishing vessel fell outside the relevant EU legislation on fishing vessel safety, Directive 97/70/EC, as it concerns vessels of 24 metres and over in length and hence the Commission has no jurisdiction in the case; fishing vessels are not covered within the Single Market legislation and hence EU acquis on consumer rights are not applicable in this case; nevertheless, as indicated in previous letters, the Commission did act pro bono on Mr Gaffney's behalf to raise the case with Germanisher Lloyd, but given the absence of jurisdiction could not take the case further.

The annexed information papers you provided show that you are also aware that Ireland raised the issue with other EU Member States at the Commission's Committee on Safe Seas and the Prevention of Pollution, and the Commission has made the UK, NL and DE authorities aware of the potential stability issues with the sister vessels of the Mary Kate under their respective flags. I would add that there seems to be a mistake in the copy of the letter attributed to me, and I enclose the correct version for ease of reference.

In terms of addressing the loss that Mr Gaffney has suffered, on a previous occasion the possibility was outlined that the case might exceptionally be addressed through the European Fund for Maritime and Fisheries, but that this was a decision for the Irish authorities as they oversee the allocation of such funding. The Commission could not instruct them in this regard.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate D - Logistics, maritime & land transport and passenger rights
The Director

Brussels, **21 FEB. 2014**
MOVE D2/RM

Note to DE, NL, and UK
Transport Attachés

Dear Madam,
Dear Sirs,

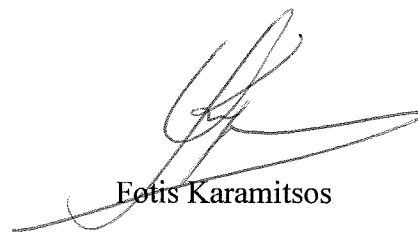
I would ask you to draw the attention of your competent national authorities to an important matter which does not come under the scope of the EU fishing vessel safety Directive. This concerns the stability of a series of fishing vessels. This issue has been drawn to the attention of several Commissioners and involves a 'Eurocutter' class fishing vessel, the 'Mary Kate', purchased by an Irish operator and found to be seriously deficient in stability. This vessel has 9 sister vessels.

The case has most recently been brought to the attention of all Member States by a note from Ireland circulated to other delegates at the 29th meeting of the Committee on Safe Seas and the Prevention of Pollution in Brussels on 3 July 2013. A copy of the note is attached for information.

A Member of the European Parliament has since drawn our attention to the fact that a sister vessel, the 'Destiny', in the German Registry, has been confirmed to have the same lack of stability, a fact that only came to light once the ship changed ownership and had undergone an inclination test. Given that these ships may still be in operation, I have undertaken to write to those administrations which I understand may oversee one or more of the 9 sister vessels (see Annex). My aim is to alert you to the danger that these vessels pose to their crew and to ask your authorities to check their fleets for such ships and consider subjecting them to a new inclination test.

The vessels concerned and a brief background on their construction are set out in the attached appendix, based on information supplied to the Commission from the Irish operator.

Yours faithfully,


Fotis Karamitsos

Cc: IE Transport Attaché

I would reiterate that while we do have much sympathy for Mr Gaffney's situation, the EU has no jurisdiction over this matter and the European Commission is not in a position to offer more than what has already been done.

Yours faithfully,

(E-signed)
Magda KOPCZYNSKA

Annex

Encl.

Previous Exchanges of Correspondence between Irish MEPs and Commissioners on the case of the Mary Kate.

Cssr Maria Damanaki to Ms Mairead McGuinness MEP	14 October 2011
Vice President Siim Kallas to Ms Mairead McGuinness MEP	18 December 2013
Vice President Siim Kallas to Mr Liam Aylward MEP	28 March 2014
Cssr Karmena Vella to Andrew Doyle MEP	6 February 2015
I responded to Andrew Doyle MEP	26 September 2017

In addition, you put down a question to the Commission on this issue in 2014 and I attach the Commission's response.

Appendix

Vessels concerned

German register:

BRA 4 Destiny
SK18 Aquarius

Dutch Register:

VLI 27 Jeanet Maartje
UK 158 Willem Jakob
UK 194 Lub Romkes

UK Register:

BM110 Lady Lou
BM 111 Catherina
BM 112 Becky Lou

Background

Ship design: Herman Jansen, BV, Monnickendam, NL

Hull construction: built in the former Yugoslavia under contract to Maaskant Shipyard, NL. Designed for the 'Eurocutter' market, vessels which have a length between 15-24 m with engine power not exceeding 300 h.p.

Maaskant finished a number of hulls themselves and a number were sold to other shipyards for fitting out. In the case of the vessel purchased by the Irish operator, the hull was sold to the Hoogenraad & Kuyt shipyard, Scheveningen, NL, which constructed the vessel in 1992.

COSS 29

Any Other Business

FISHING VESSEL SAFETY

“EURO-CUTTER” - “MFV MARY KATE”

Submitted by Ireland

Ireland wishes to inform the COSS Committee of safety concerns regarding a series of fishing vessels. Ireland became aware of this issue when an Irish owner sought to operate the fishing vessel “MFV Mary Kate” on the Irish flag. The vessel falls within the 15m to 24m length range for fishing vessels. Ireland has a national safety regime for such vessels which is based on the Torremolinos Convention and EU Directive 97/70, as amended. The fishing vessel “MFV Mary Kate” did not comply with the stability standards by a significant margin. The owner of the vessel also advised of a “near-miss” with the stability of the vessel. The owner engaged a naval architect to assist him and discovered that the vessel was seriously deficient in stability. Since May 2009 four different inclining tests and one lightship check were carried out and these resulted in the conclusion that the vessel’s weight was 21 tonnes different from that specified. Five tonnes can be explained but 16 tonnes are unaccounted for and following exhaustive analysis it appears that these 16 tonnes were present from the building date.

In order to have the ship certified under the Irish flag significant modifications were required to the ship resulting in its lengthening, as the vessel design was based on an original design for a 28m hull length. Following these modifications the vessel is now compliant with the stability standards. During the course of the remedial works the owner discovered that a number of sister ships were built in Europe. We understand that these sister ships are of the “Euro-Cutter” design and designation. In total nine such hulls were built and may still be operating in Europe. The Irish maritime Administration wishes to share this safety information with the other EU Member States and the European Commission in relation to safety concerns with such fishing vessels.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate C - Maritime transport
The Director

Brussels, **18 AVR. 2011**
MOVE C/RM D(2011)

Mr Erik van der Noordaa
Chairman
Germanischer Lloyd SE
Brooktorkai 18
20457 Hamburg
Germany

Dear Mr van der Noordaa,

Let me first congratulate you on your appointment as Chairman of the Executive Board of Germanischer Lloyd. I hope that we can develop a good working relationship as I did with your predecessor, Mr Klein.

I wish to draw your attention to a particular case that has been highlighted to several Commissioners, including my own, and which continues to be pressed by Members of the European Parliament.

It concerns an Irish fisherman, Mr Gaffney, who purchased a Eurocutter class fishing vessel in 2007 in the Netherlands. It was one of a series of 9 sister hulls built in Yugoslavia under contract to a Dutch shipyard to a Dutch design. It was fitted out in Holland, but built under the German flag, in compliance with Germanischer Lloyd and SBG rules. It seems that the ship is intrinsically unstable and that the initial ship stability book figures, certified by Germanischer Lloyd, do not reflect the current state of the vessel. In subsequent enquiries with GL and SBG, it appears that the relevant papers for the vessel have not been able to be found.

Mr Gaffney noticed its instability when first using the vessel and arranged four separate assessments with inclining tests, all of which confirmed it was highly unstable with 21 tonnes extra weight on board compared with the original 1992 figures. Removal of machinery and concrete ballast did not account for the additional weight. Under more stringent legislative rules introduced in 2009, the Irish authorities refused to allow the fishing vessel boat to put to sea due to its inherent instability. An initial hearing before a Dutch court brought by Mr Gaffney simply concluded that the boat must always have been overweight and should never have been passed as seaworthy. Mr Gaffney has been unable to continue his livelihood and no longer has the financial means to pursue this case through the courts.

As this vessel falls just outside the scope of EU legislation, the Commission cannot normally pursue the matter further. However, the case has generated considerable political interest at EU level and for that reason I would call on you to re-examine this case, the details of which are in the attached Annex. I understand that five sister ships are also on the German register and at least one has similar stability problems.

Your cooperation in locating the relevant documentation and providing an explanation for the initial and subsequent authorisation by Germanischer Lloyd of the vessel's stability records would be much appreciated.

The contact point for this particular case is Mr Richard Mason (Tel.: +322953078; e-mail: richard.mason@ec.europa.eu)

Yours sincerely,



Fotis Karamitsos



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

ATLANTIC, OUTERMOST REGIONS AND ARCTIC

Brussels, 05 JUN 2012
MARE Ares (2012) 664248

Mr. Christopher Gaffney,
10 Harbour Road,
Arklow,
Co. Wicklow – IRELAND.

Dear Gaffney,

Ms Kirchner has asked me to reply to your e-mail of 10 May 2012 in respect of the Irish fishing vessel the Mary Kate.

We have duly taken note of the situation that you and your family find yourselves in concerning the particular problems outlined by you in your correspondence. However, having looked thoroughly at all the different facets of the problem surrounding the Mary Kate, I must advise you that unfortunately neither the EU fisheries policy nor any other EU policy can offer a solution to the difficulties you are facing.

Taking into account that the circumstances regarding licencing and decommissioning of the Mary Kate refer to national rules, I must advise you that it is for the Irish authorities to decide on those issues and therefore refer you to them.

Yours sincerely,

Bernhard Friess
Director

Cc: Messrs Martin Crowley Permanent Representation of Ireland.
Martin.Crowley@dfa.ie
Damien.Clarke@agriculture.gov.ie
Mrs Kirchner, Damanaki's Cabinet



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

ATLANTIC, OUTERMOST REGIONS AND ARCTIC

Brussels, 29 NOV. 2012

MARE/BF/IG/VAA ARES(2012) 1416008

Mr Christopher Gaffney,
10 Harbour Road,
Arklow, Co. Wicklow
IRELAND

Dear Mr Gaffney,

I am writing you on behalf of Maia Kirchner to which you have addressed your letter of 4 November 2012 regarding the MFV "Mary Kate" WD 30.

First of all, I would like to reassure you that the situation you and your family have been facing with during the last three and a half years has been constantly and thoroughly considered by the Commission services.

However, as you were already informed, neither the EU fisheries policy nor any other EU policy can offer a solution to the difficulties you are facing.

As regards your specific question regarding the use of the European Fisheries Fund (EFF) for temporary (or permanent) cessation, it should be noted that since the management of the fund is shared with Member States, specific decisions concerning the financing of a project are taken at national, regional or local level, and the European Commission does not intervene in the selection of individual projects.

The Irish management authorities in charge of the EFF (Department of Agriculture, Food and the Marine, National Seafood Centre, Clonakilty, Co. Cork) may give you information on the concrete possibilities to use the provisions for temporary or permanent cessation in the specific case of your vessel.

Yours sincerely,

Bernhard Friess

Cc: Mr Martin Crowley, Permanent Representation of Ireland
Mr Colm McKiernan (colm.mckiernan@agriculture.gov.ie)
Ms Kirchner, Damanaki's Cabinet



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

THE DIRECTOR-GENERAL

N J Blazeby

Brussels, 20 OCT. 2010
MARE/LE/Ares(2010)722466

Mr Gay Mitchell MEP
European Parliament
Rue Wiertz ASP 08F359
B-1047 Brussels

Subject: Licence for Scallops

Dear Mr. Mitchell,

Thank you for your enquiry of the 15 September 2010 concerning the request for assistance on behalf of the owners of the Irish fishing vessel the Mary Kate. I apologise for the delay in reply.

While I have sympathy for the situation that the vessel owners of the Mary Kate find themselves in, I fear that neither the EU fisheries policy nor any other EU policy could offer a solution to this particular problem. We have looked thoroughly at the different facets of the problem and come to the conclusion that the EU fisheries policy does not provide any solution to the difficulties your constituents are facing.

There is no possibility to deviate from safety requirements. Consequently, there is no way round addressing the stability problem in order to obtain a Sea Fishing Boat Licence. In principle, according to EU rules, it is possible though to purchase additional capacity on the market. However, such capacity cannot be transferred from vessels decommissioned with public aid as according to EU provisions the capacity associated to the decommissioned vessel has to be permanently deleted and cannot be replaced.

As many of the explanations provided by the owner of the vessel refer to national rules, I would recommend the vessel owners to check once again with the national authorities if there is any possibility for access to the licences needed, notably for the allocation of Scallop Fishing Permits.

Finally, we have also looked into possibilities for financial assistance to address the stability problem of the Mary Kate. The European Fisheries Fund (EFF) may in principle contribute to the financing of safety investments on board vessels, under limited circumstances even if this leads to the increase of tonnage of the vessel. At this stage, it is for the national authorities to decide on the allocation of funding under the EFF. However, the Irish Seafood Development Operational Programme 2007-2013 implementing the EFF does not foresee this measure.

Yours sincerely,

Lowri Evans

MARIA DAMANAKI

B-1049 BRUSSELS

MEMBER OF THE EUROPEAN COMMISSION

Brussels, 14 10. 2011
MK/pb Ares (2011) 1198570

Dear Ms. McGuinness,

Thank you for your enquiry of 21 September 2011 concerning the issue of stability of the Irish Fishing Vessel Mary Kate and other similar Dutch vessels that were built in Yugoslavia in 1992 under contract to a Dutch shipyard to a Dutch design.

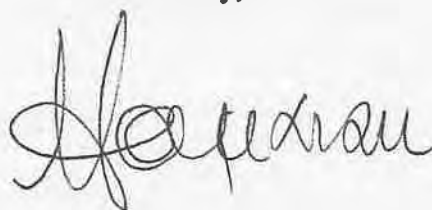
During the period 2010/2011 extensive research of this complex matter was undertaken by the Commission following representations by MEPs – Pat The Cope Gallagher, Gay Mitchell and Liam Aylward and discussion by the parties concerned with my Cabinet and the Cabinet of Commissioner Siim Kallas and DG MOVE. While I have the deepest sympathy for the situation that your constituents are facing, I have unfortunately to inform you that the conclusion is that this case falls outside EU rules in terms of customer protection and fishing vessel safety.

Although the Commission has no jurisdiction to address the said situation, it has endeavoured to find a solution for this case and the case of the other similar vessels with the executive board Germanischer Lloyd, (Germany), by requesting that the stability circumstances of these cases be examined. Given the distance of time from the date of construction of the vessels and the likely modifications that may have been carried out in the intervening years, Germanischer Lloyd were not in a position to offer any advice on resolving the situation.

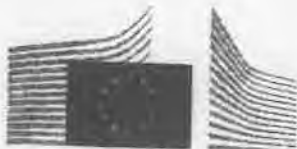
However, should the Mary Kate complete the stability modifications recommended by the national surveyors and satisfactorily complete a stability survey it is possible for your constituents to apply to the national authorities for a licence to fish. In principle, according to EU rules, it is possible to purchase additional capacity on the market. However, such capacity cannot be transferred from vessels decommissioned with public aid as according to EU provisions the capacity associated to the decommissioned vessel has to be permanently removed and cannot be replaced.

There is no possibility to deviate from safety requirements provided by the Irish national authorities. Consequently, there is no way round addressing the stability problem in order to obtain a Sea Fishing Boat Licence. As many of the explanations concerning stability and fishing licences refer to national rules, I would recommend the vessel owners to check once again with the Irish national authorities if there is any possibility for access to the licences needed.

Yours sincerely,



Ms. Mairead McGuinness, MEP
European Parliament
Rue Wiertz ASP 08F 266
B-1047 Brussels



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

Ref. Ares(2014)3249131 - 02/10/2014

ATLANTIC, OUTERMOST REGIONS AND ARCTIC

Brussels,
MARE C/ ARES(2014)

Mr Christopher Gaffney,
10 Harbour Road,
Arklow, Co. Wicklow, IRELAND

Dear Mr Gaffney,

I am writing you on behalf of Maia Kirchner to which you have addressed your email of 14 September 2014 regarding the MFV "Mary Kate" WD 30.

As mentioned in our previous letters addressed to you or to different MEPs or TDs representing your interests, unfortunately, this case falls outside EU competences both in terms of customer protection and fishing vessel safety. The fact that several Member States are involved does not make this case an EU issue, as long as no EU laws are applicable. The European Commission has no prerogatives to directly address it and the Irish national authorities were informed of this. The decision on under which Government Department's remit your case falls is exclusively an Irish matter.

Although the Commission has no competence to address this sad situation, it wrote to the Chairman of Germanischer Lloyd (Germany) which carried out the initial stability testing. Unfortunately, Germanischer Lloyd was not in a position to offer any advice or resolving the situation. Given our lack of jurisdiction we could not pursue the matter further.

Once the information that several sister vessels are registered in the EU fleet was brought to Commission's attention, the Commission also informed the Member States in the Committee of Safe Seas meeting and subsequently, wrote to Germany, the Netherlands and the UK of the potential risk these vessels pose and asked them to check their fleet and make all the necessary tests.

Regarding decommissioning, as a possibility offered by the European Fisheries Fund (EFF) in the context of a fishing effort adjustment plan, we previously mentioned that specific decisions concerning the financing of a project are taken at national level and the Commission does not intervene in the selection of individual projects.

Yours sincerely,

Bernhard Friess

Cc: Mr Barry Delany, Permanent Representation of Ireland
Mr Paschal Hayes, EFF Managing Authority
Ms Kirchner, Damanaki's Cabinet

MARCH 2012

Dear Mr Gaffney,

Thank you for your e-mail of 27 February 2012 requesting a statement by the Commission concerning the allocation of European Fisheries Funds (EFF) assistance in the framework of Ireland's Seafood Development Operational Programme (OP) 2007-2013. We have examined thoroughly the different facets of your circumstances and come to the conclusion that it is not within the Commission's competence to provide a solution to the difficulties you are facing.

Pursuant to the obligations of the EFF, it is the responsibility of the Department of Agriculture, Food and the Marine to implement the policies and priorities to be co-financed by the EFF and decide on the allocation of funding in the framework of the national OP. In addition the national authorities are required to comply with the principles of sound financial management. To this end the national authorities cannot randomly choose what they use their EFF allocation on, they have to follow the rules provided for in the EFF.

With regard to the modernisation of the Mary Kate the EFF may in principle contribute to the financing of safety investments on board vessels, under limited circumstances even if this leads to the increase of tonnage of the vessel. However, the OP does not foresee this measure and therefore no aid can be granted.

EU rules require that there be a stable and enduring balance between fishing capacity and fishing opportunities and in this regard lay down maximum capacity (i.e. gross tonnage and kilowatts) limits for member States' fishing fleets. Entries and exits from the fleet must be managed in such a way that the entry of new capacity into the fleet must be compensated by the previous withdrawal of at least the same amount of capacity (i.e. gross tonnage and kilowatts). According to the information provided by the Irish authorities capacity is not a State owned asset. It is a privately owned tradable asset on the tonnage market and must be provided at a ratio of 1:1 as part of the licensing process in Ireland.

While I have sympathy for your situation I must advise that it is for the Irish authorities to decide on the allocation of funding under the EFF.

With best regards,

Maja Kirchner