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Trade in troubled waters for the octopus



The project

The global value chains of companies in the seafood industry may pose risks to human rights and the environment. Those companies face increasing regulatory, financial, litigation, and reputational risks connected to their human rights and environmental impacts. Without actionable policies and clear due diligence mechanisms in place, companies cannot identify, assess, and act on environmental and human rights risks across their value chains. Financial institutions providing capital to these companies may also face material risks as a consequence.

In this series, we examine the stories behind seafood species frequently seen on supermarket shelves in Europe. Our aim is to learn what the impact of their trade is on the environment and on the lives of coastal communities. As increasingly required by EU legislation, we expect seafood companies and investors to conduct due diligence across their value chains and portfolios, to identify and address environmental and human rights impacts.

European domestic production is insufficient to meet the rising demand for common octopus (*Octopus vulgaris*) in the EU. Common octopus is especially popular in Mediterranean countries, which are major importers.

Most of the octopus consumed in the EU is imported as frozen whole product, with Morocco and Mauritania being the biggest and second-biggest source countries. The focus of this story is the frozen octopus imported into Europe directly or indirectly (i.e., through interstate re-exports) from Morocco.

In 2022, Morocco was the largest supplier of octopus to the EU, exporting:

40,044 tonnes

For a total value of:

€470,388,046

The main European importing countries were:

Spain

26,022 tonnes

Italy

12,702 tonnes

Greece

525 tonnes

The EU market for Western Sahara octopus

While some octopus is caught in Northern Moroccan fisheries, significant catches occur in the waters off Dakhla, a major fishing hub in southern Western Sahara. The Food and Agriculture Organisation (FAO) recognises the Dakhla stock as one of the three identified stocks of common octopus in Western Africa, along with the Cape Blanc and Senegal-Gambia stocks.

In the waters off Dakhla, octopus is caught by industrial trawlers and artisanal Moroccan fleets, it is landed in Agadir (Morocco) and exported and sold to the EU, mostly to Spain, as a Moroccan product, making it challenging to trace the exact place of origin.

Although the fleet belongs to Moroccan companies, they often operate with European companies through joint ventures. Several European companies are involved in the local processing of octopus.

According to the European Market Observatory for Fisheries and Aquaculture (EUMOFA), in 2022 Morocco exported 40,044 tonnes of octopus to the EU, for a total value of € 470,388,046. The main importing countries were Spain (26,022 tonnes), Italy (12,702 tonnes) and Greece (525 tonnes).

EU octopus imports from Morocco, 2018-2022

Volume (tonnes) and Value (EUR)

| | 2018 | | 2019 | | 2020 | | 2021 | | 2022 | |
|--------------|---------------|--------------------|---------------|--------------------|---------------|--------------------|---------------|--------------------|---------------|--------------------|
| EU Country | Tonnes (t) | Value (EUR) | Tonnes (t) | Value (EUR) | Tonnes (t) | Value (EUR) | Tonnes (t) | Value (EUR) | Tonnes (t) | Value (EUR) |
| Spain | 23,085 | 306,272,889 | 22,141 | 215,248,479 | 23,565 | 180,391,896 | 33,457 | 372,004,446 | 26,022 | 322,826,765 |
| Italy | 9,595 | 102,049,735 | 12,673 | 102,466,170 | 13,858 | 95,240,902 | 11,653 | 120,751,642 | 12,702 | 132,726,353 |
| Greece | 270 | 3,264,853 | 998 | 9,125,606 | 517 | 3,973,027 | 629 | 6,448,490 | 525 | 6,503,542 |
| Other | 1,205 | 17,823,440 | 804 | 6,766,431 | 1,013 | 6,889,576 | 909 | 9,781,649 | 794 | 8,331,386 |
| Total | 34,155 | 429,410,917 | 36,616 | 333,606,686 | 38,953 | 286,495,401 | 46,649 | 508,986,227 | 40,044 | 470,388,046 |

Source: EUMOFA, with analysis by ClientEarth

The EU market for Western Sahara octopus

Once a Spanish colony, Western Sahara was annexed by Morocco in 1975, which led to a long-standing territorial dispute between Morocco and the Saharawi people. Western Sahara has rich fishing grounds off its coast, targeted by European seafood companies. The ongoing self-determination process in the territory makes their involvement, especially in the case of processing companies, importers, retailers, and their investors, potentially problematic.

According to International Law, Morocco cannot dispose of the natural resources of this territory without the explicit consent of its people. Western Sahara is classified as a “non-self-governing territory” by the United Nations, indicating that its people have not achieved a full measure of self-government. As the Front Polisario has been recognised as the legitimate representative of the Saharawi people, it must therefore give its consent, as per resolutions 34/37 (1979) and 35/19 (1980) of the United Nations General Assembly.

On 29 September 2021, the General Court of the European Union annulled two Council decisions covering fishery and agricultural products from Morocco for lack of consent from the Saharawi people. The first decision concerned an amendment of the protocols of the European Association Agreement on imports into the EU which included products originating in Western Sahara, subject to export controls by the Morocco customs authorities. Octopus is traded under this Agreement. The second decision concerned the Sustainable Fisheries Partnership Agreement (SFPA) between the EU and Morocco, which included the waters off the coast of Western Sahara within its scope. The annulment of the SFPA could affect the import of species covered by the agreement and imported to the EU, such as pelagic species, sardines, or anchovies.

The Court stated that the effects of these decisions are to be delayed for a period to preserve the EU’s external action and legal certainty over its international commitments. On 14 December 2021, the European Commission appealed the General Court’s decision to the European Court of Justice. A final judgment is pending.

The annulment of the trade deals covering fishery products between the EU and Morocco, in particular the Protocols amending the European Association Agreement under which octopus is traded, might therefore affect supplies of octopus to the EU.

The activities of seafood companies, investors, and retailers, involved in the octopus trade from Western Sahara, could indirectly have an impact on various social, economic, and political rights of the Saharawi people. Several civil society groups and UN bodies have reported possible human rights violations directly and/or indirectly linked to activities of multinational corporations in Western Sahara. In particular, the exploitation of Western Sahara’s natural resources, including octopus, without the consent of its people clearly violates their right to access and dispose of natural resources and their right to free, prior, and informed consent.



“All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development. All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”.

**International Covenant on Economic,
Social and Cultural Rights, Article 1.**

Therefore, there are financial, business-related, and reputational risks and litigation risks for companies involved in the Western Sahara octopus value chain. These risks include legal proceedings and penalties, for example, through the assertion of consumer rights laws. The Court of Justice of the EU has clearly stated that consumers' choice can be influenced by, inter alia, health, economic, environmental, social, and ethical considerations, including considerations relating to the observance of international law.

European companies will soon be required to implement due diligence processes to prevent and mitigate adverse environmental and human rights impact they might cause, contribute, or be directly linked with. Operating in conflict-affected areas requires companies to have heightened due diligence systems in place to ensure the rights of people therein, particularly their rights to resources and prior, informed consent, are not impaired. Knowing the risks and enhancing transparency is a first step towards more sustainable value chains.