

INFR(2019)4002	Member State: NL	Lead DG: MARE
Associated services: SG,SJ		
Title: Failure to comply with Union law on the use of electric fishing by the Netherlands		
Legal basis: 31998R0850		
Type: Regulations - treaties - decisions	EU financing: No	
Related procedures:		
Alleged breach:		
The Netherlands has failed to comply with the EU requirements on the use of electric fishing under Articles 31a(2)(a) and 43(1) of Council Regulation (EC) No 850/1998. In particular the Netherlands did not respect the 5% threshold for the use of electric pulse trawl and did not comply with the rule permitting the use of this fishing method only when the fishing operations are conducted solely for the purpose of scientific research.		
History of the decisions		
		Referral 258 / 260(3)
Sent:		Decision date:
Reply:		Application received:
		Court ref.:
		Ruling date:
Additional letter of formal notice 258		Letter of formal notice 260
Sent:		Sent:
Reply:		Reply:
Reasoned opinion 258		Additional letter of formal notice 260
Sent:		Sent:
Reply:		Reply:
Additional reasoned opinion 258		Referral 260
Sent:		Decision date:
Reply:		Application received:
		Court ref.:
		Ruling date:
Referral 258		Closure
Decision date:		Decision date: 19/05/2022
Application received:		
Court ref.:		
Ruling date:		
Other adopted decisions:		
Origin: Complaint EUP(2018)9298		Correspondence with the Member State (last events)
5/05/2021 Closure letter		
29/07/2020 Pre-closure letter		
Pre-closure letter: 29/07/2020		

State of play on: 1/04/2022	Lead Unit: MARE.E.4
Background:	
I. FACTS	
<p>The Commission received a complaint (CHAP(2017)03012) regarding the circumstances under which the Dutch authorities have authorised Dutch registered vessels to use electric pulse fishing methods. In particular, the complainant questioned the manner in which these vessels were authorised in relation to Articles 31a and 43(1) of Regulation 850/1998 for the conservation of fisheries resources through technical measures (Technical Measures Regulation) and Article 14 of Regulation 1380/2013 on the Common Fisheries Policy (Basic Regulation). Subsequently, the same complainant submitted a new complaint (CHAP(2019)02717) on the same topic, but based on the provisions of the new Technical Measures Regulation (Regulation 2019/1241). Finally, the Commission received a multiple complaint (CHAP(2020)02862) initiated by the same complainant and aggregating multiple complaints by individual citizens, all containing the same allegations on the breach of the new Technical Measures Regulation. The same complainant submitted also a petition to the Ombudsman (case 989/2020/AMF) concerning the handling of his complaints by the Commission.</p> <p>This fiche will, however, only cover the legal assessment of the first complaint (CHAP(2017)03012), reference being made to other complaints as background information.</p>	
II. CORRESPONDENCE WITH THE MEMBER STATE	
<p>The facts mentioned above regarding complaint (CHAP(2017)03012) triggered the opening of the EU Pilot case N° EUP(2018)9298. On 6 April 2018, the Commission requested the Netherlands to provide detailed information on the non-compliance issues alleged by the complainant, as well as on the measures they intended to take to solve them. On 22 June 2018, the Netherlands provided the requested information and indicated that they did not share the Commission's reading of Article 31a of the Technical Measures Regulation. By letter of 10 August 2018, the Commission specified its reading of the concerned EU provisions and requested further extensive and concrete data from the Netherlands. In their reply of 12 November 2018, the Dutch authorities provided the data requested and reaffirmed their understanding of Article 31a. Moreover, they indicated that they also did not share the Commission's reading of Article 43(1) of the Technical Measures Regulation.</p>	
III. LEGAL ANALYSIS	
<p>The information provided by the Dutch authorities through the EU Pilot procedure and gathered by the Commission in the course of its investigations showed that the Netherlands failed to fulfil their obligations under Articles 31a(2)(a) and 43(1) of the Technical Measures Regulation, since they were not respecting the 5% threshold for the use of electric pulse trawl (Article 31a(2)(a)), nor were they complying with the rule permitting the use of this fishing method only when the fishing operations are conducted solely for the purpose of scientific research (Article 43(1)).</p> <p>Regarding the calculation of the 5% threshold for the use of electric pulse trawl, the Commission considered that the Dutch concept of beam trawler fleet, the application of the 5% threshold, the monitoring and adjustment of the number of pulse-fishing authorisations, and the actual number of pulse-fishing authorisations granted were not in line with Article 31a(2)(a).</p> <p>Regarding Article 43(1), the Commission found that the interpretation of this Article by the Dutch authorities led to a large number of pulse-fishing authorisations granted for fishing operations that were not conducted solely for the purpose of scientific investigations, contrary to the express requirements set out in that Article.</p> <p>A draft letter of formal notice was prepared and approved by Commission services on 14 January 2019. However, the case was not included in the list of cases to be considered by the College of Commissioners on their meeting of 7 March 2019. This is because at that time the negotiations on the new Technical Measures Regulation underpinning the main claims of the complaint and the EU Pilot procedure ended, entailing a change of the legislative framework (that included prohibition on fishing with electric pulse trawl in all Union waters as of 1 July 2021, with specific conditions established to be applied during the transition period). Therefore, no decision by the Commission was made on the case at that stage. Subsequently, the new Technical Measures Regulation (Regulation (EU) 2019/1241) repealing the above referred rules on pulse fishing entered into force in August 2019. Under the new Regulation, pulse fishing is banned as of 1 July 2021. Currently Dutch licenced vessels no longer engage in pulse fishing and therefore the Netherlands are now complying with the current legislation in force.</p>	
IV. CONCLUSION	
<p>This case is based on legislation which is no longer in force. Under the current rules pulse fishing is banned as of 1 July 2021. As the Netherlands now comply with the legislation in force, there is no infringement anymore and the case should be closed.</p>	
Conclusion and proposal:	
Prop. of the responsible service:	
Legal service opinion:	
Consulted services opinion:	
Prop. validated by DG CAB:	