



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 20/12/2018

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Opinion of the Legal Service¹

**NOTE FOR THE ATTENTION OF
Mr João AGUIAR MACHADO
DIRECTOR GENERAL, DG MARE**

Subject: Draft letter of formal notice - Failure by the Netherlands to comply with EU law on the use of electric fishing

Reference: DG MARE Note Ares(2018)6245819

Thank you for consulting the Legal Service on the draft letter of formal notice in the above case.

The Legal Service can give a favourable opinion to this draft subject to the comments in track changes in the attached draft being taken duly into account.

Nevertheless, the Legal Service would like to recall the fact that this case is both politically and legally very sensitive.

In 2016 the Commission adopted the proposal to reform fisheries technical conservation measures in place since 1998 (COM(2016) 134 final) that also included amendment enlarging the possibilities of pulse fishing. The negotiations between the Council and the EP of this proposal are still on-going and are very complicated. One of the main difficulties is the different position of the Council and the EP as regards the pulse fishing: while the Council advocates to keep the status-quo currently included in Articles 31a and 43 of Regulation (EC) No 850/1998 (allowing maximum 5% of beam trawler fleet that could use electric pulse in a precisely delimited area plus some limited fishing for scientific purposes), the EP voted in its mandate for a total ban on pulse fishing.

Both co-legislators are currently trying to find an acceptable compromise, but the diverging positions and a lot of public attention in the press on this issue makes it extremely challenging. The Legal Service therefore stresses the necessity to evaluate the political impact and consequences of proceeding with this infringement at this stage. Moreover, depending on the final outcome of these negotiations and the potential changes in the law it may be necessary to re-assess the position taken in this case, as

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infringement proceedings have a forward-looking nature in order to terminate on-going infringements.

[REDACTED]

CONCLUSION

In view of the above the Legal Service therefore stresses the necessity to evaluate the impact and consequences of proceeding with this infringement at this stage. The Legal Service remains at your disposal for further discussion and clarification.

[REDACTED]

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