



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES
 General Affairs and Resources
Legal Affairs

Brussels,
 MARE.E.4/

NOTE TO THE FILE

Subject: Failure by the Netherlands to comply with Union law on the use of electric fishing - State of play of infringement procedure 2019/4002

This notes aims at providing the state of play of the above-mentioned infringement procedure in view of the next coherence review launched by the Secretariat-General and the Legal Service, to be held in September and October 2019, and as a background to the corresponding NIF fiche.

BACKGROUND

On 2 October 2017, the Commission registered a complaint under reference CHAP(2017)03012 regarding the circumstances under which the Dutch authorities had 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 the Technical Measures Regulation¹ and Article 14 of the Basic Regulation².

These submissions triggered the opening of pre-contentious case No EUP(2018)9298 in April 2018. Following two rounds of exchange of letters with the Dutch authorities through the EU-Pilot procedure, it became apparent that the number of pulse-fishing authorisations granted by the Netherlands under Article 31a(2)(a) of the Technical Measures Regulation exceeded the permitted 5% threshold for the use of electric pulse trawl. In addition, it also became apparent that a number of vessels with pulse-fishing authorisations granted by the Netherlands under Article 43(1) of the Technical Measures Regulation had carried out fishing operations using electric gear that seemed not to have been solely for the purpose of scientific investigations, as expressly required under that provision. Therefore, the Commission services reached the provisional conclusion, based on the information available to them at the time, that the Netherlands had granted

¹ Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 125, 27.04.1998, p. 1).

² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

authorisations for fishing with electric current without respecting the conditions set by EU law.

Moreover, in their last reply of 12 November 2018, the Dutch authorities did not offer any indication or guarantee of a reasonable schedule by which the requirements of the said provisions would be actually met in the Netherlands. On the contrary, they indicated that they did not share the Commission's reading of Articles 31a(2)(a) and 43(1) of the Technical Measures Regulation, thereby confirming that the issues at stake were not to be resolved.

As a consequence, by letter of 11 January 2019³ the Commission services informed the Dutch authorities that, based on the aforementioned assessment, they would close the EU-Pilot case and intended to propose to the Commission to institute the procedure set out in Article 258 of the Treaty on the Functioning of the European Union.

On 14 January 2019 the EU-Pilot procedure was closed and the case transferred to the infringement database with the NIF reference No 2019/4002.

By letter of 1 February 2019⁴ the complainant was informed of the EU-Pilot closure, as well as that the Commission services had the intention to propose to the Commission to open an infringement procedure against the Netherlands, while specifying that it was for the College of the Commissioners to decide whether or not to open such a procedure.

CONTEXT

The issue of pulse-fishing is considered sensitive for two main reasons:

(1) The Commission has made a proposal for an amendment of the current Technical Measures Regulation (proposal for a Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures), in which one of the topics concerned is pulse-fishing. This topic was extensively discussed and one of the most difficult in the negotiations with the co-legislators.

The new Technical Measures Regulation is expected to be adopted by the Council on 18 June. The signature should be around 20 June. The Regulation will enter into force 20 days after publication in the Official Journal.



STATE OF PLAY OF THE PROCEDURE

A draft letter of formal notice was prepared by DG MARE and submitted for comments under the usual inter service consultation. The Legal Service gave its favourable opinion on the draft on 14 January 2019⁵.

³ Commission letter with Ref. Ares(2019)167406.

⁴ Commission letter with Ref. Ares(2019)601382.

⁵ Ref. Ares(2019)193136.

By email of 1 February 2019, the Cabinet responsible for DG MARE agreed to include this case in the cycle of infringements M03/2019, scheduled for consideration by the College of Commissioners on 7 March 2019. Following the applicable procedure, on 5 February 2019 the case was transmitted to SG with all necessary documents and accepted by the SG the same day.

However, the case was not included in the list of cases distributed by the SG on 28 February 2019 for the purposes of the aforementioned College meeting. Therefore, no decision was made on the case at the cycle of infringements M03/2019.

In view of the expected forthcoming entry into force of the new Technical Measures Regulation, the case will have to be reassessed in the light of the new provisions contained therein.


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