



## THE LEGAL CONSTRUCTION OF EUROPEAN LAW ON ELECTRIC FISHING

**On 30 March 1998**, Council prohibits "*the catching of marine organisms using methods incorporating the use of explosives, poisonous or stupefying substances or electric current*" (Council regulation (EC) No 850/98).

**On 5 December 2006**, the European Commission proposes to grant derogations for the use of electric current to catch fish.

**On 21 December 2006**, Council adopts the Commission's proposal (Council Regulation (EC) No 41/2007), which states that "*by way of derogation from Article 31(1) of Regulation (EC) No 850/98 fishing with beam trawl using electrical pulse current shall be allowed in [part of] ICES zones IVc and IVb [...]*" and that "*no more than 5 % of the beam trawler fleet by Member State shall be allowed to use the electric pulse trawl*". In total, 22 derogations are granted.

**In 2008 and 2009**, these derogations were renewed for one year by Council Regulation (EC) No 40/2008 and Council Regulation (EC) No 43/2009.

**In December 2010**, 20 additional licences were granted using Article 43 on "Scientific research" of Council Regulation (EC) No 850/98, i.e. beyond the 5% regulatory framework of Council Regulation (EC) No 41/2007.

**In March 2013**, the Technical Measures Regulation (EU) No 227/2013 integrates the principle of derogations.

**In December 2013**, Article 14 of the reformed Common Fisheries Policy Regulation (EU) No 1380/2013 states that "*In order to facilitate the introduction of the obligation to land all catches in the respective fishery in accordance with Article 15 ("the landing obligation"), Member States may conduct pilot projects*". This article was used to get 42 additional licenses to equip trawls with electrodes. The validity of derogations is 5 years.

**On 11 March 2016**, the European Commission releases its legislative proposal to reform the Technical Measures Regulation ([COM\(2016\) 134 final](#)). Although it reminds that "destructive fishing gears" such as electric fishing should be prohibited, it simultaneously lays the conditions of its exemptions<sup>i</sup> (in Article 24 and Part E of Annex V)<sup>ii</sup> and calls electric fishing an "innovative fishing gear". The Commission proposes to widespread the use of electric fishing in the Southern part of the North Sea. If the proposal were to be adopted as such, it would mean that electric trawlers no longer operate under a derogation regime and a 5% threshold in each Member State.

**21 November 2017**, an amended version of the Commission's proposal is voted by the Members of the Fisheries (PECH) Committee of the European Parliament. Committee members adopt (23 versus 3) Compromise 10 on Article 24 defended by the Spanish EPP MEP Rapporteur Gabriel Mato, by which electric fishing would now be considered an "innovative" fishing gear (as opposed to destructive). This compromise lays down conditions for deploying the gear:

- During a trial period of at least four years, use of the gear would be limited to 5% of the "métier" (and no longer to 5% of the beam trawl fleet, meaning that an immediate expansion of electric fishing would be possible if the AM goes through in Plenary)
- The gear could only expand to commercial scale if a scientific assessment finds that there would be no negative impacts on "species" and "habitats" (and the language carefully avoided mentioning "ecosystems" as electricity kills off everything).

The industry intel we have has confirmed that the four-year lapse for research could be lifted right after the adoption of the amendment as the Dutch could make the case that they have already done conclusive research (their research project is due to give results in 2019, just when their licenses were going to come to an end).

<sup>i</sup> "*Certain destructive fishing gears or methods which use explosives, poisons, stupefying substances, electric current, pneumatic hammers or other percussive instruments; towed devices and grabs for harvesting red coral or other type of corals and coral-like species and certain spear-guns should be prohibited except in the specific case of the electric pulse trawl which may be used under certain strict conditions*".

<sup>ii</sup> The Annex of the European Commission's legislative proposal is a separate document available here:

[http://eur-lex.europa.eu/resource.html?uri=cellar:41312a57-e771-11e5-8a50-01aa75ed71a1.0024.02/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:41312a57-e771-11e5-8a50-01aa75ed71a1.0024.02/DOC_2&format=PDF)