

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED
UNLAWFUL STATE AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

LOW IMPACT FISHERS OF EUROPE (LIFE)

Association registered in Belgium in the form of an ASBL

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LIFE ASBL is an organization of organizations, representing its member organizations. The members of these organizations are mainly owner operators of vessels with a length of under 12 metres using non-towed gears who have signed up to LIFE's Declaration. This commits them to fishing in a low impact manner, as described in its constitution. In line with the objectives assigned to it in this constituent act, LIFE has decided to submit the present complaint in order to join those submitted on an individual basis by small-scale fishers who are affected by the activity of electric fishing practised by vessels under the flag of the Netherlands which have benefited from State aid that is illegal and incompatible with the internal market. To this end, we attach a copy of the decision of the Board of Directors to lodge this complaint (Annex 0.). In accordance with the LIFE statutes, the Board of Directors has delegated the Executive Secretary, Mr Brian O'Riordan, to represent the ASBL in this complaint and to carry out all useful and necessary acts to this end.

3. Please select one of the following options, describing your identity*

a) Competitor of the beneficiary or beneficiaries

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

LIFE represents its member associations and defends the wider interests of the small-scale low impact fishing fleet across Europe. These interests are being undermined by the encroachment of larger scale intensive fishing activities onto their fishing grounds and the impact of such activities on stocks targeted by small scale low impact fishers. The landings of these activities also have a depressing effect on fish prices, and their products compete with products from small scale low
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impact fishers. A number of Dutch fishing companies have received state aid for electric pulse trawl equipment and to equip their vessels equipped with electric trawls. This provides an unfair advantage to these companies, whose activities are particularly destructive on the sea bed and on fish stocks.

4. Please select one of the following two options*

Yes, you may reveal my identity

No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5 and 6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: the Netherlands

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central government:

Region (please specify):

Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

Overview of electric fishing activity by Dutch vessels

The so-called electric 'pulse' trawling has been authorized since 2007 as an exemption to the strict and total prohibition of this type of fishing, which was implemented via Regulation 850/98. A derogation

from this prohibition was introduced from 2007 onward in the annual regulation on fishing opportunities for 5% of the beam trawler fleet of each Member State and was then incorporated, via Regulation 227/2013, for the same percentage of vessels, in Regulation 850/98 (Article 31a).

The judgment of February 1, 2021 (ECLI: NL: RBDHA: 2021: 969) provides detailed information on the number of authorizations issued since 2010 by the Netherlands and the regulatory framework used for this purpose.

According to this judgment, these authorizations were issued in three phases:

- The first group, comprising 22 vessels, obtained an authorization with no time limit in 2010 on the basis of the derogation regime provided by Article 31a of Regulation 850/98 (for information, from 2010 to 2012, it was on the basis of the transitional Regulation 1288/2009 extended by Regulation 579/2011);
- The second group, comprising 20 vessels, obtained an authorization in 2011-2012 under Article 43 of Regulation 850/98 for scientific research;
- The third group, comprising 37 vessels, was granted a five-year authorization in 2014 under Article 14 of Regulation 1380/2013, i.e., to carry out a pilot project to facilitate the introduction of the landing obligation.

Given that there was a regulatory continuity between the 2007-2009 period and the following period starting from 2010, it can be considered that the number of authorizations issued during the period 2007-2009 was also 5% of the beam trawler fleet, i.e., approximately 22 vessels or so.

There is no record to indicate that the authorizations issued to the 2nd and 3rd groups of vessels were issued in compliance with the conditions specified in the provisions mentioned:

- For those issued in 2011-2012 under Article 43 of Regulation 850/98, the fishing activity of this group of vessels was carried out under the same conditions as those carried out for the last 4-5 years by the vessels of the first group mentioned in the judgment. Therefore, it cannot be considered as a scientific research activity. Moreover, there is no information in any scientific publication showing that these vessels have participated in a scientific research program which includes conditions defined in specific terms of reference as is the case for any scientific research. This confirms that this group of vessels, exercising electric fishing under the same conditions as those authorized by Article 31a of Regulation 850/98, was exercising electric fishing in a manner which was not permissible by this article since the number of authorized vessels was strictly limited to 5% of the beam trawler fleet of each country and that this percentage was already reached by the vessels of the first group.
- For those issued in 2014 under Article 14 of Regulation 1380/2013, i.e., as part of a pilot project, it is also not clear how the fishing carried out by these vessels, which was also carried out under the same conditions as those carried out by the vessels of the first group mentioned in the judgment, could also be considered on a circumstantial basis as participating in a pilot project. A pilot project is generally considered to be a project of an experimental nature, the purpose of which is to test its feasibility under ordinary conditions. The electric fishing activity carried out in the first few years (2007 and 2008), with a reduced number of vessels (from a few units to a maximum of about ten if there is a particular justification), could possibly have been considered a pilot project at that time. Moreover, such a pilot project may have benefited from EFF aids under Article 41 of Regulation 1198/2006, although we have not found any publicly available report on such a project, as provided for in paragraph 3 of the same Article 41. In any case, an

activity carried out under the same conditions suddenly qualifying as a pilot project seven years later (in 2014) is inconsistent with the spirit of what a pilot project should be. While the landing obligation did not exist in the years 2007-2008 since it was only implemented in 2013, it should be noted in this regard that the derogation from the general prohibition of electric fishing was justified because it resulted in a better selectivity in the species fished, which is precisely the objective that motivated the landing obligation. Therefore, the same activity carried out under the same conditions seven years later, which has become a common and an ordinary activity for the fleet in question, cannot be considered as a pilot project.

Consequently, the electric fishing carried out by the Dutch vessels has been done under conditions that questioned the legality of the majority of the authorizations issued.

“Electric fishing licenses” whose illegality has been confirmed by the Commission.

DG-MARE has twice acknowledged that the Netherlands was in violation of the European law with regard to the number of derogations allowing electric fishing:

- The NGO BLOOM filed a complaint with the Commission on October 2, 2017, with respect to this country's non-compliance with the rules applicable to electric fishing. BLOOM was then informed, by letter dated April 13, 2018, that this complaint had been transferred to the EU Pilot application. Following the exchange of information between the Commission services and the Netherlands, BLOOM was informed by DG MARE, by a letter received on February 1, 2019 under reference Ares(2019)601382, that the Commission services would propose to the College of Commissioners to formally open a complaint procedure. BLOOM has not been informed of the formal initiation of this complaint procedure or if the College of Commissioners had, at its discretion, decided not to do so. Nevertheless, the investigation on the complaint filed by BLOOM lasted 16 months, including 10 months during which there was an exchange of information between the Commission services and the Dutch authorities as part of EU Pilot. This shows that, apart from the possible discretionary decision of the College of Commissioners not to formally initiate this complaint procedure, there was a firm presumption that the Netherlands had acted in breach of the law (see Annex 1).¹

- In a letter dated July 29, 2020 addressed to BLOOM, DG-MARE stated that the measures proposed to address the illegal use of electric fishing by the Netherlands on the effective implementation of the short-term measures constituted sufficient grounds to close the BLOOM's complaints CHAP(2017)03012 and CHAP(2019)02717. Accordingly, DG-MARE implicitly acknowledged that there had been a breach in the rules governing the use of electric trawls by the Netherlands until that date (see Annex 2).

European aids that are illegal and incompatible with the internal market

The illegality of electric fishing means that the aids granted for its development are incompatible with the internal market.

In fact, it seems that the Netherlands considered these aids as falling within the framework of either the EFF (Regulation No. 1198/2006) or the EMFF (Regulation No. 508/2014). However, since EU financial support is subject to compliance with the rules of the CFP, all vessels that have been equipped beyond 5% of the Dutch beam trawler fleet and have therefore fished in violation of the 5% rule for trawlers that can be equipped with electric trawls were not eligible for EFF or EMFF aids.

¹ All the annexes to this complaint are identical to the annexes attached to the complaint filed on the same topic by individual fishers.

These aids thus became State aids. However, they cannot be considered as compatible with the internal market given the basic principle that no aid can be granted where EU laws are breached (paragraph 3.1 of the 2008 guidelines and paragraph 3.2 of the 2015 guidelines).

It should also be noted that European aids cannot finance gears that increase the fishing capacity of vessels. Article 25 of Regulation (EC) No. 1198/2006 stipulates that investments on board fishing vessels do “*not increase the ability of the vessels to catch fish*” and Article 11 of Regulation (EU) No. 508/2014 states that “*the following operations shall not be eligible under the EMFF: a) operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish.*”

This implies that even the vessels that legally obtained a fishing license within the 5% limit allowed by way of derogation from Regulation 850/98 could not be eligible for such aids given that they resulted in an increase in catching capacity.

It has been scientifically proven that the use of electric trawls increases fishing capacity. The following is a non-exhaustive list of studies or reports that prove this:

- The WGELECTRA (Working Group on Electric Trawling) reported in 2018 that “*The higher catch efficiency of the pulse trawl for sole implies that the sole quota can be caught in less fishing time than with the tradition beam trawl*” (see Annex 3 p.34).
- IMARES — the Dutch institute in charge of conducting the research on electric fishing — also showed that electric trawls catch three times as much sole (target species) as traditional beam trawls for the same fuel consumption (see Annex 4, Table 2).
- In its evaluation report for the MSC certification of the North Sea Brown Shrimp Fishery, the certifier reported that “[landing per unit of effort] *values from individual vessels may increase over time due to 'technological creep' thus masking a stock decline. The most obvious change in efficiency would be due to the introduction of electric pulse fishing which can increase efficiency by 50%*”. (see Annex 5 p. 35).
- Scholars also reported an increase in efficiency in peer-reviewed journals: “the weekday effect found in sole LPUE suggests that competition is related to the fishing activity of the Dutch trawler fleet. When Dutch trawlers fish from Monday to Thursday, sole landings of Belgian beam trawlers are lower, while the opposite occurs when the Dutch beam trawler activity drops from Friday to Sunday.” (see Annex 6 p.1491-1492)
- Finally, in a report of an ICES working group on innovative fishing gears commissioned by the European Commission, it is mentioned that electric fishing is too efficient: “*It needs a fundamental shift in the ability to control fishing, as it is in effect too good.*” (see Annex 7 p.28).

The aids have been provided either directly by public authorities or have been channeled through professional organizations. These aids made it possible to significantly reduce the costs linked to the acquisition of this gear. A peer-reviewed scientific paper establishes the specific list of beneficiaries on the basis of the EFF and EMFF files published by the Netherlands (See Annex 8).

State aids that are incompatible with the internal market

There is, a priori, no readily-available public document establishing the list of State aids allocated by the Netherlands to its fishing fleet.

In addition to the information obtained through the scientific article referred to above (see Annex 8), it should be noted that, without having carried out an exhaustive research, we found press articles mentioning the allocation of national subsidies to fishing companies, subsidies that greatly exceed the

amount included in the de minimis regulation, which automatically leads to their qualification as State aids.

- In 2008, the Dutch government granted 176,000 euros in State aids to five beam trawlers (for a total of 880,000 euros) in order to finance pulse trawl gear (see Annex 9 p.1238).
- A press article of June 17, 2011 mentioned that the Urk Municipal Council intended to allocate 1 million euros to fishing companies who wished to equip themselves with electric pulse trawls (see Annex 10).

Following the prohibition of electric fishing, the Dutch government made several announcements indicating that it will make funds available in response to the ban:

- The Netherlands have reportedly released 5 million euros to compensate for the loss of the electric trawl (see Document 11) (<https://www.telegraaf.nl/nieuws/1470158085/vissers-seinen-sos-straks-op-een-postzegel-vissen>).
- A press release from the Dutch government mentioned that 15 million euros were available for innovative fishing (see Annex 12).
<https://www.rijksoverheid.nl/actueel/nieuws/2019/02/19/minister-schouten-stelt-%E2%82%AC-15-miljoen-beschikbaar-voor-innovatieve-visserij>

Other articles later in June 2020 mentioned even higher sums: 74 million euros to repurchase boats from fishers who wanted to stop electric fishing, and 45 million euros for innovation (see Annex 13):
<https://www.destentor.nl/urk/kabinet-gaat-voor-74-miljoen-euro-vissers-uitkopen~a4dd6613/>

b) For what purpose was the alleged aid given (if known)?

Enabling the development and equipment of fishing vessels with electric trawls.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

In total, based on the fragmented information available to us, the amount of aids granted is estimated to be at least 20 million euros (see Annex 8).

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

Fishing vessel owners with vessels under Dutch flag equipped with electric trawls

e) To your knowledge, when was the alleged aid granted?

From 2006 to date

f) Please select one of the following options:

According to my knowledge, the State aid was not notified to the Commission.

According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

Public aid has been granted to fishing vessel owners in order to equip vessels under Dutch flag with electric trawls.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

The Dutch fishing companies that have been equipped with electric trawls through these aids have an advantage over other fishing companies, including my own and those of my colleagues who have also filed the same complaint.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

These aids undeniably provide an economic advantage to these companies since they have obtained public funds to equip their vessels in violation of the rules of the Common Fisheries Policy.

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

These aids distort competition given that they strengthen the competitive position of the beneficiaries in the market for fishery products.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

These aids affect trading between Member States because the market for fishery products is a very open market where the level of trade between Member States is very high in relation to production and it is regular.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

It is completely unclear to the Low Impact Fishers of Europe on what basis these aids could be considered compatible in the internal market. These aids do not meet the criteria defined in the guidelines for the examination of State aids to fisheries and aquaculture. Neither do they fall within the scope of aids that could be considered as complying with one of the exemption regulations adopted by the Commission.

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

The majority of vessels equipped with electric trawls are in violation of the technical measures regulation which generally prohibits the use of the trawls, with the exception of 5% of the beam trawl fleet. However, it was acknowledged by the Commission that this 5% rate was and still is very much exceeded.

b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

As individuals, no, but complaints have been filed with the Commission, OLAF and the Ombudsman by the NGO BLOOM.

If yes, please attach copies of correspondence.

c) Have you already approached national authorities or national courts concerning the same issue? *

No

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

d) Please provide any other information that may be relevant for the assessment of this case.

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant”

Rixensart, Belgium, 11 March 2021

Brian O’Riordan
Executive Secretary, LIFE