



Madam Director-General Charlina Vitcheva
Directorate-General for Maritime Affairs and Fisheries (DG MARE)
European Commission
1049 Brussels
Belgium

Copy to: Commissioner Virginijus Sinkevičius

Paris, 26 August 2020

Re: Action requested against the Netherlands' illegal licences for electric fishing - Ares(2020)4005303 – 29/07/2020

Madam,

In your letter dated 29 July 2020, you consider that the measures envisaged by the Netherlands to tackle their illegal use of electric fishing and the guarantees you have obtained from the Dutch authorities regarding the effective implementation of these measures in the short term constitute sufficient grounds for closing our complaints CHAP(2017)03012 and CHAP(2019)02717.

We take note of this position, which confirms that the Netherlands has infringed the rules governing the use of electric trawls and that this infringement will, theoretically, end on the day of the effective implementation of these measures by that country. **This confirms the validity of our complaints.**

Nevertheless, we utterly disagree with your decision to close our complaints and, worse, to allow the Netherlands to retain their currently illegal licences. This decision is all the more unacceptable that your predecessor had already acknowledged the problem on 1 February 2019, mentioning in a letter to us **his intention (which was not followed upon) to open a "formal infringement procedure against the Netherlands" for failing to comply with the European Union's law.** We are also surprised not to have received any information regarding this infringement procedure since then, i.e. over a year and a half ago.

Misinterpretation and abusive interpretation of the Rules of Procedure

According to DG MARE, the 22 authorisations issued by the Netherlands for electric trawling are compatible with the 5% limit set out in Part D of Annex V of Regulation 2019/1241, given that the Netherlands will shortly put in place a system ensuring that there will be no more than 15 beam trawlers using electric trawls at the same time. **This is a completely erroneous and abusive interpretation of the regulation.** It was never the intention of the EU co-legislators to allow Member States with a fleet of beam trawlers to introduce a system whereby there could be a number of vessels equipped with this system higher than the 5% threshold. Had this been the case, the conditions set in paragraph 2 (a) of Part D of Annex V would read as follows: "No more than 5%, at any one time, of the beam trawler fleet per Member State use the electric pulse trawl ". In addition, the regulation would have defined conditions and criteria to ensure that the 5% threshold were respected or, alternatively, it would have called for a delegated regulation or an implementing regulation to define them.

Therefore, the 5% threshold is the maximum number of vessels equipped at any given moment and fit to go fishing immediately. **DG MARE's interpretation, probably suggested by the Netherlands, contravenes the**



general spirit in which fisheries regulations are designed. Moreover, this interpretation would set a dangerous precedent for the interpretation of other EU texts, or texts implementing national laws, which refer to a maximum number of vessels allowed to fish. Nothing can support such an interpretation.

For over ten years, the Netherlands has trampled on EU regulations without any reaction from you (see 'Supplements' below). If you were to dismiss our complaints — i.e. without reviewing your misinterpretation — you would give the Netherlands the right to continue equipping 22 vessels with electric trawls, in clear violation of the European law, without any sanctions. Such a decision would ignore the general interest, small-scale fishers, and European citizens. If this were to happen, **our organisation would once again have to file a complaint for this infringement of Regulation 2019/1241**. BLOOM will not give up its fight: **electric fishing is a matter of respect for democracy and the fight against the moral corruption of the European institutions**. Your decisions affect the lives of small-scale fishers and the confidence of citizens in their institutions.

Respectfully,

Sabine Rosset
BLOOM Director



Supplements

Mixed up regulations

Beyond the points made above, we inform you that we do not share the fact that complaint CHAP(2017)03012 was examined in light of Regulation 2019/1241. This regulation, which entered into force twenty days after its publication in the Official Journal of the EU, does in no way provide for a retroactive application. It is therefore Regulation 850/98 which applies to our complaint, even though the technical characteristics for the use of the electric trawl contained in Regulation 2019/1241 are identical to those contained in Regulation 850/98 since the amendment introduced by Regulation 227/2013.

Highlights of the Dutch infringements

We remind you of the conclusions of a 2018 legal article¹ on the topic:

- The derogations granted at the end of 2006 and allowing the use of electric current to catch fish have gone against an explicit scientific advice, as well as other successive decisions;
- The European Commission used irregular procedures to introduce derogations related to a fishing technique in a regulation on fishing quotas (the derogations should therefore not have been included there);
- The Netherlands has committed a very clear infringement by granting a number of licences far in excess of the regulatory framework;
- European subsidies that were allocated to those licenses exceeding the regulatory framework should not have been granted;
- This fishing activity is clearly commercial and cannot be considered as a scientific fishery.

¹ Morin M (2018) *Étude de cas sur des dysfonctionnements de l'Union européenne : l'exemple de la pêche électrique*, Annuaire de Droit Maritime et Océanique, T. XXXVI. Available at: <https://cdmo.univ-nantes.fr/admo-precedentes-editions-894309.kjsp>. Michel Morin is an [associate member of the Maritime and Oceanic Law Centre \(CDMO\)](#) of the Law faculty of Nantes.