

Entscheidung im Fall 989/2020/AMF, in dem es um das Vorgehen der Kommission in Bezug auf zwei Vertragsverletzungsbeschwerden geht, die Fischereipraktiken in den Niederlanden betreffen

Entscheidung

Fall 989/2020/AMF - Geöffnet am 14/07/2020 - Entscheidung vom 25/01/2021 - Betroffene Institution Europäische Kommission (Keine weiteren Untersuchungen gerechtfertigt) |

In diesem Fall geht es um die Erwiderung der Kommission auf zwei gegen die Niederlande gerichtete Vertragsverletzungsbeschwerden, die die Elektrofischerei (Fischereifahrzeuge mit Impulsstrom-Baumkurren) betreffen. Die Beschwerdeführerin macht insbesondere geltend, dass die Pulsfischerei eine systemische Gefahr für das Überleben der Meeresökosysteme und der von ihnen abhängigen Küstenbevölkerung darstelle.

Die Kommission erklärte der Beschwerdeführerin, warum sie keine Verletzung des Unionsrechts sieht, und teilte ihr mit, dass sie den Fall zu schließen beabsichtigt.

Für die Entscheidung über die Einleitung von Vertragsverletzungsverfahren gegen Mitgliedstaaten ist der Kommission ein weiter Ermessensspielraum eingeräumt. Die Wichtigkeit des von der Beschwerdeführerin vorgebrachten Themas wurde von der Bürgerbeauftragten anerkannt, sie stellte jedoch fest, dass die von der Kommission gegebene Begründung ihres Handelns in diesem Fall keinen Verwaltungsmissstand darstellte. Da die Kommission auch begründete, warum der Beschwerdeführerin gewisse Erklärungen erst spät mitgeteilt wurden, stellte die Bürgerbeauftragte fest, dass es keine Gründe gab, die weitere Untersuchungen dieses Aspekts des Falls gerechtfertigt hätten.

Background to the complaint

1. In October 2017 the complainant, a French civil society organisation, submitted an infringement complaint to the European Commission against the Netherlands. The complaint related to the number of derogations issued by the Dutch authorities for the use of electrical pulse current by fishing vessels with beam trawls, which the complainant considered to be in violation of Regulation 850/98 [1] (the 'first complaint'). The complainant's main concern is that pulse fishing poses a systemic threat to the survival of marine ecosystems and the coastal communities that depend on them.



2. In February 2019, the Commission informed the complainant of its intention to propose the opening of a formal infringement procedure against the Netherlands. It also informed the complainant that it was for the College of Commissioners to take the final decision on the matter [2] .

3. In September 2019, the complainant submitted a new infringement complaint against the Netherlands (the 'second complaint'). In this complaint, the complainant argued that the number of derogations issued by the Dutch authorities was above the maximum allowed under the new Regulation 2019/1241 [3] , which had replaced Regulation 850/98 in the meantime. The Commission informed the complainant that its second complaint concerned issues on which it had already opened an EU Pilot dialogue [4] in order to ask for relevant information from the Netherlands. The Commission said it would provide the complainant with an update within an indicative timeframe of 20 weeks.

4. The complainant asked the Commission for an update on the status of its second complaint in March 2020. The Commission replied that it was not yet in a position to provide a precise update as it was still in the process of analysing complementary information received from the Netherlands in the context of the EU Pilot dialogue.

5. Dissatisfied with the Commission's handling of its complaints, the complainant turned to the Ombudsman in June 2020.

The inquiry

6. The Ombudsman opened an inquiry and asked the Commission to:

- Inform the complainant whether it had taken a decision to launch infringement proceedings in relation to its first complaint;
- Provide the complainant with an update on the status of its second complaint.

7. In the course of the inquiry, the Ombudsman received the reply of the Commission and, subsequently, the comments of the complainant on the Commission's position.

Arguments presented to the Ombudsman

8. Regarding its first complaint, the complainant considered it unacceptable that more than one year after setting out its intention to propose the opening of a formal infringement procedure against the Netherlands, the Commission had still not started such an infringement procedure. The complainant also found the delay in dealing with its second complaint to be excessive.

9. The Commission explained that it had had to reassess the complainant's first complaint in light of the new Regulation 2019/1241, which entered into force in August 2019. The new Regulation sets some new requirements for the Member States regarding the specific



conditions to be applied during the transition period that will lead to the prohibition of fishing with electric pulse trawl in all EU waters.

10. The Commission opened an EU Pilot dialogue in September 2019 in which it asked the Netherlands to provide information on the measures it would put into place to comply with the new Regulation. The issues raised in the complainant's second complaint fell under the scope of this EU Pilot dialogue, and the complainant was informed accordingly (see footnote 4).

11. In July 2020, the Commission concluded that the Netherlands was in compliance with the legal requirements of the new Regulation [5]. The Commission asked the Netherlands to submit, by the end of 2020, detailed reports of the controls carried out on the implementation of Regulation 2019/1241. The Commission informed the complainant about its intention to close both of its complaints and gave it four weeks to provide any comments [6].

12. The complainant provided its comments in August 2020. According to the complainant, the Commission is misinterpreting Regulation 2019/1241 and the Netherlands continues to infringe EU law [7]. The complainant added that the Netherlands have contested Regulation 2019/1241 before the European Courts [8].

The Ombudsman's assessment

13. The Commission oversees the effective application, implementation and enforcement of EU law by Member States [9]. In the event that a Member State fails to fulfil an obligation under the EU Treaties, the Commission, as "Guardian of the Treaties", has the option of opening 'infringement proceedings' aimed at bringing the infringement to an end.

14. The Commission has a wide margin of discretion in deciding whether or not to open an infringement procedure against a Member State [10].

15. The Ombudsman has consistently taken the view that her role in such cases is **limited to verifying whether the Commission has acted diligently and in accordance with the principles of good administration**. This role includes reviewing whether the Commission has properly explained its position regarding the infringement complaint [11] and whether the complainant has been given the opportunity to comment on the position of the Commission before the Commission closes a case [12].

16. The Commission correctly explained, in its letter of February 2019, that it was for the College of Commissioners to take a final decision on the proposal to open a formal infringement procedure against the Netherlands. The Ombudsman notes that the negotiations for a new regulation to replace Regulation 850/98 started that same month. The new Regulation 2019/1241 entered into force in August 2019.

17. As explained above, the Commission enjoys a wide margin of discretion in deciding whether to open an infringement procedure against a Member State. The role of the Ombudsman is to



ensure that the Commission has provided a full and clear explanation to the complainant as regards the position taken by the Commission. The Ombudsman considers that the Commission has properly explained why it intends to close the two infringement complaints. While the Ombudsman acknowledges the importance of the matter raised by the complainant, namely the preservation of marine ecosystems and coastal communities, it is not her role to take a view on the substance of the explanation provided. The Ombudsman also notes that, in this case, the European Courts may be required to rule on the relevant EU law (see footnote 8).

18. The Ombudsman regrets that it was only in July 2020, after the Ombudsman's intervention, that the complainant received explanations as to the need to reassess its first complaint under the new Regulation.

19. The Commission has kept the complainant informed of the status of the EU Pilot Dialogue related to its second complaint. Even if the Commission did not meet the indicative timeframe of 20 weeks to provide the complainant with an update on the status of the ongoing EU Pilot dialogue (see paragraph 3), the Commission explained that this delay was caused by the need to analyse complementary information received from the Netherlands.

20. The Commission has still not replied to the complainant's comments to the letter informing of its intention to close the two complaints. In the reply to the Ombudsman, the Commission explained that it intended to close the cases provided that the Dutch authorities submit, by the end of 2020, detailed reports of the controls carried out on the implementation of the measures adopted to comply with Regulation 2019/1241. The Ombudsman expects that the Commission will keep the complainant informed of its conclusions after it has analysed these reports. Similarly, the Ombudsman trusts that the complainant will receive a reply to its comments before the Commission decides to close the cases.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by the European Commission as regards the content of the responses provided to the complainant . The Commission has explained the reasons for the delay in providing certain explanations to the complainant, so no further inquiries are justified into this aspect of the complaint.

The complainant and the European Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 25/01/2021



[1] OJ L 125, 27.4.1998, p.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 (no longer in force). Available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01998R0850-20140101> [Link].

[2] See point 9 of the Annex to the Communication from the Commission — EU law: Better results through better application, available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017XC0119%2801%29> [Link]

[3] OJ L 198, 25.7.2019, p. 105–201, Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1241> [Link].

[4] In September 2019, under reference EUP(2019)9494. EU Pilot is an informal dialogue between the Commission and a Member State on issues related to potential non-compliance with EU law. The purpose of “EU Pilot” is to remedy breaches of EU law at an early stage, thereby avoiding the need to launch a formal infringement procedure.

[5] According to the Commission, “ *the total number of fishing authorisations issued by the Netherlands allowing the use of pulse is limited to 22 and no new authorisations are being issued [...] the Dutch authorities have taken the necessary measures to ensure that at any time no more than 15 authorised vessels would be simultaneously operating with pulse [...] In the opinion of the Commission services, this system should ensure compliance with the legal requirements, including the limit of 5% of beam trawler fleet that can use electric pulse for fishing, provided for in Annex V part D of the Technical Measures Regulation 2019/1241* ”

[6] In accordance with point 10 of the Annex to the Communication from the Commission — EU law: Better results through better application (see footnote 2).

[7] According to the complainant, Regulation 2019/1241 does not refer to a maximum number of vessels that would be allowed to operate simultaneously, but to the total number of vessels that should be authorised to use pulse. The complainant has published a study where it indicates that at least 27 Dutch fishing vessels have admitted using electrical pulse current in 2019. Available at:
<https://www.bloomassociation.org/wp-content/uploads/2020/09/au--delat-illegal.pdf> [Link]

[8] See Action brought on 4 October 2019 — *Kingdom of the Netherlands v Council of the European Union, European Parliament* (Case C-733/19), available here:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=221628&pageIndex=0&doclang=EN&mode=lst&dir> [Link]



[9] Article 17(1) of the Treaty on the European Union and Article 258 of the Treaty on the Functioning of the European Union.

[10] See judgment of the Court of Justice of 14 February 1989, *Star Fruit v Commission*, C-247/87, paragraph 11, available at:

https://eur-lex.europa.eu/resource.html?uri=cellar:e4c3d14b-516a-43a2-bc26-4fdc28336562.0002.06/DOC_1&format=HTML
[Link]

[11] In accordance with point 7 of the Annex to the Communication from the Commission — EU law: Better results through better application (see footnote 2).

[12] In accordance with point 10 of the Annex to the Communication from the Commission — EU law: Better results through better application (see footnote 2)v