

Brussels, 30. 04. 2009
CAB D (2009) 166

Dear Ms Verburg,

Thank you for your letter of 24 March 2009 concerning the relationship between the Common Fisheries Policy (CFP) and nature conservation measures pursuant to the Bird and Habitats Directives.

You enquire as to whether a Member State may take measures designed to protect special areas of conservation designated under the Bird and Habitat Directives, which may affect fisheries. I understand that the question has arisen in connection with recommendations issued by the Council of State of the Netherlands in respect of a proposal concerning an extension of the 1998 Dutch Nature Conservation Act to the Exclusive Economic Zone (EEZ) of the Netherlands in order to create special areas of conservation designated under the Bird and Habitats Directives.

Your proposal is based on the premise that regulating fishery activities to protect the nature values within the EEZ is subject to the provisions of the CFP. This is fully in line with the views of the Commission.

However, in your letter you question whether Member States can take national measures, in cases where measures to protect the marine environment have not yet been taken at Community level, under the Bird and Habitats Directives in line with the Council of State's recommendations. As you point out in your letter, such a position would clearly differ from the position expressed by the European Commission in several documents and on many occasions.

In this respect, it must be borne in mind that fisheries is an area which entirely falls under an exclusive Community competence and that, therefore, fisheries conservation and management measures may only be decided in the context of the CFP and in accordance with its rules. The basic rules are enshrined in the Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy¹ (also known as the Basic Regulation).

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¹ OJ L 358, 31.12.2002, p. 59.

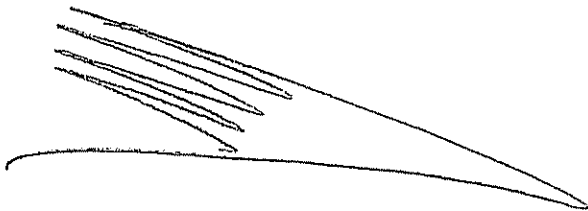
On the basis of Article 37 of the EC Treaty, it is for the Council, upon a proposal from the Commission, to adopt measures regulating fisheries. This rule also applies to measures regulating fishing activities in order to protect a Natura 2000 site.

However, Articles 9 and 10 of the Basic Regulation delegate some limited powers to the Member States to regulate fisheries. In particular, Article 9 enables Member States to take non-discriminatory measures to minimise the effect of fishing on the conservation of marine eco-systems within 12 nautical miles and Article 10 enables them to take measures applicable solely to fishing vessels flying their flag. Outside these empowerments, which clearly require a strict interpretation, Member States do not have any competence to adopt measures related to fisheries.

Although the Commission fully understands the need to protect sites designated under the Birds and Habitats Directives, the existing legal situation is such that Member States can only take national measures within the existing legal framework of the aforementioned exceptions foreseen in Articles 9 and 10 of the Basic Regulation.

I would, therefore, recommend that you ensure that any Dutch measures designed to regulate fisheries in the given context fully comply with the rules of the CFP. In the event that measures regulating fisheries taken at national level, do not comply with existing CFP rules, the Commission would have to decide on formal action, including the institution of infringement proceedings where appropriate, in order to ensure the necessary compliance.

Yours sincerely,

A handwritten signature consisting of several overlapping, slanted lines that form a stylized, elongated shape pointing to the right.