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INFORMATION NOTE

From: Legal Service

To: Permanent Representatives Committee (Part 1)

Subject: **Case before the Court of Justice the European Union**

C-733/19 (The Kingdom of the Netherlands v. the Council of the European Union and the European Parliament)

- action for annulment of Annex V, Part D, points 1 to 5 of Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 (concerning fisheries technical measures), in so far as it includes the pulse fishing prohibition, the transitional period and the restrictions applying to pulse fishing during this period.

1. In Case C-733/19, notified to the Council on 8 October 2019, the Kingdom of the Netherlands has requested the Court of Justice to annul Annex V, Part D, points 1 to 5 of Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 concerning fisheries technical measures,¹ in so far as it includes the pulse fishing prohibition, the transitional period and the restrictions applicable to pulse fishing during this period.
2. In support of its application, the Kingdom of the Netherlands invokes the following three pleas:

¹ 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, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005, OJ L 198, 25.7.2019, p. 105.

i) First, it alleges that the contested provisions were **not adopted on the basis of the best available scientific advice**, in breach of Article 3(3) TEU in conjunction with Article 11 TFEU, with Article 191(3) TFEU and with Article 2, Article 3, points c), h) and i) and Article 6(2) of Regulation 1380/2013 on the Common Fisheries Policy².

ii) Second, it alleges that the contested provisions were adopted in **violation of the duty to promote innovation and technological development** pursuant to Article 3(3) TEU in conjunction with Article 11 TFEU, with Article 173(1) and (3) TFEU, with Article 2, Article 3, point h) and Article 6(2) of Regulation 1380/2013 on the Common Fisheries Policy and with Article 3(1) of the contested regulation.

iii) Third, it alleges that in so far as the contested provisions were adopted on the basis of the **precautionary principle**, that principle was **not correctly applied** in breach of Article 3(3) TEU in conjunction with Article 11 TFEU, with Article 191(2), first paragraph TFEU, with Article 2(2) and Article 3, point h) of Regulation 1380/2013 on the Common Fisheries Policy and with Article 3(1) of the contested regulation.

3. In subsidiary order, if the Court should find that these provisions are not separable, the Kingdom of the Netherlands asks the annulment of the entire Part D of Annex V and of the reference to this Part in Article 7(1), point b of the contested regulation. In further subsidiary order, if the Court should find that even those broader provisions are not separable, the Kingdom of the Netherlands asks the annulment of the entire contested regulation.
4. Within two months of the service of the application, the Council has to lodge its defence in accordance with Article 124, paragraph 1 of the Rules of Procedure of the Court of Justice.
5. The Director-General of the Legal Service of the Council has appointed Mr Frederik NAERT and Ms Alessandra MACERONI, legal advisers in the said service, as the Council's agents in this Case.

² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22.