



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Brussels,
MARE/C5/MK/ac

Subject: Request for the establishment of an Arbitration Tribunal pursuant to Article 739 of the Trade and Cooperation Agreement

Dear Ms Finkelstein CB,

On 16 April 2024, the European Union (“EU”) requested consultations with the United Kingdom (“UK”) pursuant to Article 738 of the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland of the one part, and the European Union and the European Atomic Energy Community of the other part (“TCA”)¹ with regard to the UK’s decision to prohibit since 26 March 2024 the fishing of sandeel in English waters of the North Sea and in all Scottish waters (areas SA4 and SA1r) (“sandeel fishing prohibition”).

The EU held consultations with the UK on 21 and 22 May 2024 with the aim of reaching a mutually agreed solution. Unfortunately, the consultations concluded without a mutually agreed solution having been reached.

Therefore, the EU hereby requests, pursuant to Article 739 of the TCA, the establishment of an arbitration tribunal to examine the sandeel fishing prohibition in the light of relevant covered provisions of the TCA, to decide on the conformity of the sandeel fishing prohibition with those provisions and to issue a ruling in accordance with Article 745 of the TCA.

I. Background

Sandeel in the North Sea is a jointly managed fish stock between the EU and the UK.

The North Sea sandeel fishery is seasonal and typically takes place between 1 April and 31 July.

¹ OJ L 149, 30.4.2021, p. 10–2539.

Ms Tamara Finkelstein CB
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Total Allowable Catches (“TACs”) for sandeel in the North Sea are set annually by the EU and the UK during bilateral consultations, following the issuance of scientific advice prepared by the International Council for the Exploration of the Sea (“ICES”).

On 8 March 2024, the EU and the UK agreed on a TAC for sandeel in the North Sea for 2024. Pursuant to row 57 of Annex 35 of the TCA, the EU has a 96.89% share and the UK has a 3.11% share of that TAC.

The sandeel fishing prohibition was preceded by the following public consultations:

- On 7 March 2023, a public consultation was launched regarding sandeel in English waters of the North Sea.
- On 21 July 2023, a public consultation was launched regarding sandeel in all Scottish waters.

II. Measure at issue

In English waters of the North Sea, the sandeel fishing prohibition took effect through amendments to the existing licences granted to vessels by the UK’s Marine Maritime Organisation.

In Scottish waters, the sandeel fishing prohibition took effect by the Sandeel (Prohibition Of Fishing) (Scotland) Order 2024.

III. Brief description of how the measure constitutes a breach of the TCA

The EU considers that the sandeel fishing prohibition constitutes a breach of the UK’s obligations under Articles 494(3)(c), 494(3)(f), 496(1) and 496(2) of the TCA.

Pursuant to those obligations, the EU and the UK shall base their respective conservation and management decisions for fisheries on the best available scientific advice and ensure that such measures are proportionate and non-discriminatory to a legitimate public policy objective.

However: (i) the sandeel fishing prohibition is not based on the best available scientific advice within the meaning of Article 494(3)(c) and 496(2) of the TCA; (ii) constitutes a discriminatory measure within the meaning of Article 494(3)(f) of the TCA, given that it essentially affects EU vessels; and (iii) is not proportionate within the meaning of Article 494(3)(f) of the TCA, given that it is neither apt to achieve the objective pursued by the UK nor is it the least means to achieve that objective and other less restrictive alternatives exist.

As a result, the sandeel fishing prohibition also constitutes an unjustified restriction on the access of EU vessels to UK waters, and in particular an unjustified restriction of the right of full access of EU vessels to UK waters pursuant to Annex 38 of the TCA.

IV. Conclusion

Accordingly, the EU requests, pursuant to Article 739 of the TCA, the establishment of an arbitration tribunal to examine the sandeel fishing prohibition, with standard terms of reference as set out in Article 743 of the TCA.

Finally, the EU would like to invite the UK to consult with a view to agreeing on the composition of the arbitration tribunal in accordance with Article 740 of the TCA and Annex 48 of the TCA, and to considering the possibility of contracting the services of the Permanent Court of Arbitration (PCA) to carry out the arrangements necessary for the operation of the arbitration tribunal.

Yours sincerely,

(e-signed)
Charlina VITCHEVA