

NOTE VERBALE

The Delegation of the European Union presents its compliments to the Royal Norwegian Ministry of Foreign Affairs and has the honour to refer to the Norwegian Fisheries Regulations of 22 December 2015 amending Regulation No 1836 of 19 December 2014 prohibiting catches of snowcrab.

The European Union considers that the Svalbard archipelago, including Bear Island, generates its own maritime zones, separate from those generated by other Norwegian territory, in accordance with the 1982 United Nations Convention on the Law of the Sea. It follows therefore that there is a continental shelf and an exclusive economic zone, which pertain to Svalbard.

The European Union also considers that the maritime zones generated by Svalbard are subject to the provisions of the Treaty of Paris of 1920¹, which grants, by virtue of its Articles 2 and 3, an equal and non-discriminatory access to resources for all Parties to the Treaty, in particular with respect to fishing activities, including fishing for sedentary species on the continental shelf around Svalbard..

The European Union's consistent position on the status of the archipelago of Svalbard pursuant to the Treaty of Paris of 1920 with regard to fisheries, the applicability of the relevant provisions of the said Treaty to fishing activities within the territorial sea, the continental shelf and the Fisheries Protection Zone around Svalbard, and the conditions and limits placed upon Norway's entitlement to take measures for the conservation of the fisheries resources within these maritime zones under the said Treaty, has been expressed many times since 1977, and for the last time in Note Verbale No. 24/15 of 9 November 2015.

In this context reference is once again made to the general considerations outlined in Aide Mémoire No 2059, which the Commission's Directorate-General for Fisheries issued to the Mission of Norway to the European Union on 19 June 1987, and to specific reservations expressed in several subsequent Notes Verbales since then. In this perspective, this is to re-state that acceptance by the European Union of fishery regulations proposed by Norway pertaining to the maritime zones around Svalbard has been conditional on the regulations being:

¹ Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas Dominions and Sweden concerning Spitsbergen signed in Paris 9th February 1920.

- applied in a non-discriminatory manner;
- based on scientific advice; and
- respected by all interested Parties.

In the European Union's view, the Norwegian Regulation No 1836 of 19 December 2014, including its amendment of 22 December 2015, disregards the specific provisions of the Treaty of Paris, and in particular those laid down in Articles 2 and 3, which grant equal and non-discriminatory access to fishing in the maritime zones in question.

More particularly, this regulation provides for a general prohibition to fish for snow crab in Norwegian territorial waters and inland waterways and on the Norwegian continental shelf, but derogations from this prohibition can be awarded to vessels that have been granted permits under the Participation Act for commercial fishing outside territorial waters.

As long as, under the Participation Act, these permits are only granted to Norwegian vessels, this confers an unjustified privileged access to vessels flying the flag of Norway and is thus not consistent with the obligations of Norway under the Treaty of Paris, and, in particular, with the second paragraph of Article 2 which provides that "Norway shall be free to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the re-constitution of the fauna and flora of the said regions, and their territorial waters; it being clearly understood that these measures shall always be applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour whatsoever, direct or indirect to the advantage of any one of them" and with the first paragraph of Article 3, which provides that "The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality".

Furthermore, in relation to whether the Norwegian Regulation constitutes a suitable measure, the European Union is not aware of any scientific study in support of the prohibition or limitation of the catch of snow crab or justifying a differential treatment within or outside territorial waters.

The European Union remains committed to the international conservation and cooperation obligation enshrined in the relevant International Law of the Sea, and in particular in the United Nations Convention on the Law of the Sea and the United Nations Implementing Agreement relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. The European Union would underline its willingness for dialogue with Norway on the fisheries in question.

On this basis, the European Union urges the Norwegian authorities to re-examine the legislation in issue in order to ensure that the rights and obligations flowing from the Treaty of Paris **with regard to fisheries** remain unaffected. Furthermore, it would urge the Norwegian authorities to instruct to authorities charged with at-sea controls and enforcement to desist from interfering with legitimate fishing activities conducted by European Union vessels within the maritime zones around Svalbard.

Finally, and in any event, the European Union reserves the right to take any action it deems appropriate to safeguard its fishery-related rights and interests at stake in the present instance.

The Delegation of the European Union avails itself of this opportunity to renew to the Royal Norwegian Ministry of Foreign Affairs the assurances of its highest consideration.