

ANNEX to the Compliance Letter Response Template Update by the EU

Updated information on EU investigation concerning possible overharvest of Bluefin tuna (Tarantelo operation)

This document updates the EU response to the letter of compliance issues (S22-05192) that was sent to ICCAT on 30th September, taking into account the feedback received from Spain about the status of the investigation.

The update mainly focuses on explaining the many different steps in the judicial procedure and the current judicial state of play which explains why the Spanish administration must wait until the completion of the procedure to take further action.

Last July, the Spanish Central Court of Investigation **extended** the investigation period, which was to finish the 27 of that month, to 6 months more (**until the 29 January 2023**). During this time, more compulsory legal formalities are taking place: witness evidence and statements of individual people and of legal entities, police reports and reports of some units of the Spanish Ministry of Justice.

In more detail, the following are the main novelties and advances that have occurred in the case, including some introductory paragraphs for better reference:

Background

The Spanish military police (Guardia Civil) in coordination with Europol, carried out Operation Tarantelo, aimed at dismantling a network for the illegal marketing of bluefin tuna in Spain that had been illegally fished in Malta and Italy.

The criminal proceedings were initiated on 18 March 2018 by the Court of Instruction Number Three of Picassent (Valencia) arising from the investigations carried out by the Headquarters of the "Environmental Protection Service" (SEPRONA) of the Guardia Civil, and the "Central Operational Unit for the Environment (UCOMA)", of the same police force. The police proceedings were carried out for alleged offences against fauna, false documentation, money laundering and criminal organisation.

After these initial proceedings, the Court of Instruction Number Three of Picassent deferred to the National High Court given the complex investigation, as a criminal organisation is being investigated for crimes involving fraud and scheming to alter the price of goods and food fraud.

By a decision of 27 February 2019, the National High Court agreed to accept jurisdiction to hear the case (*diligencias previas*), extending it to the following offences: an offence against fauna under article 335 of the Criminal Code; an offence against the market and consumers under articles 282 and following; an offence against public health under article 364 and following of the Criminal Code; falseness in commercial documents, under articles 390 and following; continuous offence of fraud under articles 248, 249 and 250. 5; money laundering under Article 301 and criminal organisation under Article 570 bis of the Criminal Code.

In July 2019, the Central Preliminary Investigation Court of Madrid nº 3 issued an order for the opening of Preliminary Proceedings (Instruction phase) of the abbreviated procedure 91 /2018.

On 11 March 2020, the World Health Organisation upgraded the public health emergency caused by COVID-19 to an international pandemic. On 14 March, Royal Decree 463/2020 of 14 March was published in the Official State Gazette (BOE), declaring a state of alarm for the management of the health crisis situation caused by COVID-19, the second additional provision of which established the **suspension of procedural deadlines**. These deadlines were **not resumed until May 2020**.

In September 2020, the Spanish fisheries authorities found out that the necessary actions continue to be carried out to clarify the facts in the preliminary investigation phase, with the adoption of precautionary measures having also been requested.

Last developments

According to article 324 of the Criminal Procedure Act (LECrím), the judicial investigation shall be carried out within a maximum period of twelve months from the initiation of the case. However, the second paragraph of the same article states that if, prior to the end of the period, if it is found that it will not be possible to complete the investigation, the judge, on his own initiative or at the request of a party, after hearing the parties, **may grant successive extensions for periods equal to or less than six months**. On this basis, the **investigation phase was extended** to July 2022 and from then to **January 2023**.

The judge shall conclude the investigation when he or she considers that it has fulfilled its purpose. Once the maximum time limit or its extensions have elapsed, the investigating judge will issue an order concluding the investigation or, in the abbreviated procedure as this one, the appropriate decision.

The following phases of the trial, according to our Criminal Procedure Act (LECrím) would be:

- Preparation for the oral trial

The purpose of this phase is to decide whether or not to open the oral trial. It begins when the judge decides to agree to the abbreviated proceedings and carries out the relevant actions.

The judge shall transfer the preliminary proceedings to the Public Prosecutor's Office and to the prosecution to request, within ten days, the opening of the oral proceedings by filing an indictment. The Public Prosecutor's Office, after informing its hierarchical superior, and the prosecution may request a justified extension of this time limit. The Examining Magistrate may, in the circumstances, **grant an extension** of this time limit for a maximum of a further **ten days**.

In short, once the pre-trial investigation has been completed, the **trial preparation phase could be extended by approximately one month**.

- Oral proceedings

Once the oral trial is open, the Court will examine the evidence proposed and immediately issue an order admitting the evidence it considers relevant. This phase could last **several months**.

- Sentence

Judgment is handed down within five days of the end of the oral trial.

It is also important to point out that the Spanish **administration cannot carry out any investigation or sanctioning procedure** due to the application of the non bis in idem principle.

The non bis in idem principle is established in the Spanish national law, in article 31.1 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, and Article 92.3 of Law 3/2001, of 26 March, on State Maritime Fisheries, in the following terms: "facts that have been criminal or administratively sanctioned may not be sanctioned, in cases where the subject, fact and basis are identical."

As defined by the doctrine of the Spanish Constitutional Court, this principle entails on the one hand, a prohibition on the repeated punishment of the same conduct by the authorities of the same order and through different procedures, as this possibility implies an inadmissible repetition in the exercise of the State's "ius puniendi" and, on the other hand, a prohibition on the duplicity of administrative and criminal sanctions for the same acts.

In order to avoid a potential double sanction, in the criminal and administrative spheres, for the same facts, which would go against the aforementioned non bis in idem principle, the mechanism regulated in article 92.4 of the Spanish national Law on Fisheries would apply, which states:

4. In cases in which the conduct could constitute a crime, the Administration shall transfer the case to the competent jurisdiction and shall refrain from continuing with the sanctioning procedure until the judicial authority issues a final judgement, the proceedings are dismissed or closed, or the case is returned by the Public Prosecutor's Office.

5. If the existence of a crime or misdemeanour has not been established, the competent administrative body shall continue the disciplinary proceedings. The administrative body shall be bound by the facts declared proven in the final judicial decision.

This article establishes the primacy of the criminal order over the administrative one in such way that, when the administration becomes aware of the existence of criminal proceedings, it must request information from the judicial body on the actions carried out to determine whether there is identity of fact, subject and grounds, and if so, it must suspend the administrative proceedings, in case they have been initiated, until a final decision is handed down in criminal proceedings. If no criminal offence is found to exist, the suspension of the administrative procedure will be lifted. If it is considered that there is no such identity of subject, fact and grounds, the administrative procedure could be processed in parallel with the criminal procedure.

For this reason, the Spanish administration can only wait for the decision of the National High Court on the criminal proceedings, respecting the independence of the judiciary.