Case No: 80808
Document No: 920764
Decision No: 106/18/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 19 December 2018

closing a complaint case against Norway regarding the protection of animals used for scientific purposes (tracking devices for wolves)

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

1 Introduction

On 1 June 2017 (Doc No 858690), the EFTA Surveillance Authority ("the Authority") received a complaint against Norway concerning an alleged failure by Norway to fulfil its obligation under *Directive 2010/63/EU on the protection of animals used for scientific purposes* ("the Directive").[1]

First, the complainant alleges that Norway has failed to establish a national committee for the protection of animals used for scientific purposes ("the National Committee"), in accordance with Article 49(1) of the Directive.

Second, the complainant alleges that, in January 2017, the Norwegian Ministry of Climate and Environment ("the Ministry of Environment") instructed the Norwegian Environmental Agency ("NEA") to fit GPS-collars on wild wolves without having received the necessary authorisation from the competent authority, which is the Food and Safety Authority ("FSA") in Norway, as required by Article 36(1) of the Directive.

By letter dated 21 June 2017 (Doc No 861801), the Authority sent a request for information to Norway enquiring about a number of issues relevant to the complaint.

By letter dated 17 August 2017 (Doc No 870345), the Norwegian Government replied to the Authority's letter and provided detailed information regarding the case.

[1] *Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes.* Act referred to at point 9b in Part 7.1 of Chapter I of Annex I to the EEA Agreement, as incorporated into the EEA Agreement by Joint Committee Decision No 256/2014 of 12 December 2014.

On 26 October 2017, the representatives of the Authority and the Ministry of Agriculture and Food ("the Ministry of Agriculture") discussed the case during the package meeting in Oslo.

By letter dated 8 February 2018 (Doc No 896902), the Authority sent an additional request for information to Norway enquiring about the establishment of the National Committee.

On 14 May 2018 (Doc No 913050), the Authority received a reply from the Norwegian Government notifying it that the National Committee had now been established.

On 31 May 2018, the Internal Market Affairs Directorate of the EFTA Surveillance Authority ("the Directorate") sent the complainant a letter informing him of the Directorate's intention to propose to the Authority that the case be closed (Doc No 913057). The complainant was invited to submit any observations on the Directorate's assessment of the complaint or to present any new information.

By letter dated 25 June 2018, the Authority received the complainant's written observations on the Directorate's assessment of 31 May 2018 (Doc No 920729). However, the Authority does not consider that this reply alters the conclusions set out in the letter of 31 May 2018.

2 Applicable law

2.1 EEA law

Article 1(1) of Directive provides:

> *"This Directive establishes measures for the protection of animals used for scientific or educational purposes."*

Article 1(2) of the Directive provides:

> "*This Directive shall apply where animals are used or intended to be used in procedures, or bred specifically so that their organs or tissues may be used for scientific purposes.*
>
> *This Directive shall apply until the animals referred to in the first subparagraph have been killed, rehomed or returned to a suitable habitat or husbandry system*."

Article 1(5) of the Directive provides:

> *"5. This Directive shall not apply to the following:*
> *(a) non-experimental agricultural practices;*
> *(b) non-experimental clinical veterinary practices;*
> *(c) veterinary clinical trials required for the marketing authorisation of a veterinary medicinal product;*
> *(d) practices undertaken for the purposes of recognised animal husbandry;*
> *(e) practices undertaken for the primary purpose of identification of an animal;*

> *(f) practices not likely to cause pain, suffering, distress or lasting harm equivalent to, or higher than, that caused by the introduction of a needle in accordance with good veterinary practice."*

Article 36 of the Directive provides:

> *"1.Member States shall ensure, without prejudice to Article 42, that projects are not carried out without prior authorisation from the competent authority, and that projects are carried out in accordance with the authorisation or, in the cases referred to in Article 42, in accordance with the application sent to the competent authority or any decision taken by the competent authority.*
>
> *2. Member States shall ensure that no project is carried out unless a favourable project evaluation by the competent authority has been received in accordance with Article 38."*

Article 49 of the Directive provides:

> *"1. Each Member State shall establish a national committee for the protection of animals used for scientific purposes. It shall advise the competent authorities and animal-welfare bodies on matters dealing with the acquisition, breeding, accommodation, care and use of animals in procedures and ensure sharing of best practice.*
>
> *2. The national committees referred to in paragraph 1 shall exchange information on the operation of animal-welfare bodies and project evaluation and share best practice within the Union."*

2.2 National law

Section 13 of the Animal Welfare Act No 97 of 19 June 2009 sets out provisions for the use of animals for scientific purposes and provides the legal basis for adopting further regulations in this area.[2]

Regulation No 761 on the use of animals for scientific purposes of 18 June 2015 implements the Directive into Norwegian law.[3]

3 Assessment

3.1 Establishment of national committee for the protection of animals used for scientific purposes in accordance with Article 49(1) of the Directive

In the complaint, the complainant alleges that Norway has failed to comply with Article 49(1) of the Directive by not establishing the National Committee.

By letter dated 21 June 2017,[4] the Authority asked the Norwegian Government to provide information on how Article 49(1) of the Directive had been implemented into Norwegian legislation.

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[2] *Lov 19. Juni 2009 nr. 97 om dyrevelferd (dyrevelferdsloven), LOV-2009-06-19-97.*
[3] *Forskrift 18. Juni 2015 nr. 761 om bruk av dyr i forsøk, FOR-2015-06-18-761.*
[4] Doc No 861801.

By letter dated 17 August 2017,[5] the Norwegian Government responded to the Authority's letter, stating that work was in progress to establish the National Committee under the direction of the Ministry of Agriculture. The Norwegian Government undertook to notify the Authority when the National Committee was in place.

On 26 October 2017, the representatives of the Authority and the Ministry of Agriculture discussed the case during the package meeting in Oslo. In the meeting, the representatives of the Ministry reiterated that work was underway to establish the National Committee, which should be concluded in December 2017. The representatives of the Ministry again undertook to notify the Authority when the National Committee had been officially established.

By letter dated 8 February 2018,[6] the Authority enquired of the Norwegian Government whether the National Committee had been established, as no such notification had been received by the Authority.

On 14 May 2018, the Authority received a letter from the Norwegian Government notifying that the National Committee is now established.[7]

In light of this, the Authority concludes that Norway has fulfilled its obligation under Article 49(1) of the Directive by establishing the National Committee.

3.2 GPS-collaring of wild wolves without authorisation from the competent authority

The complainant alleges that, in January 2017, the Ministry of Environment instructed the NEA to fit GPS-collars on wild wolves without having received the necessary authorisation from the FSA, as required by Article 36(1) of the Directive. According to the Norwegian Government, the collaring with GPS-transmitters was done to two separate packs of wolves in the Osdalen and Slettås territories in the winter of 2016/2017, without the involvement of the FSA.[8]

First, an assessment on whether the measure of attaching GPS-collar on wild wolves falls under the Directive is required. The scope of the Directive is limited to the protection of animals used for either scientific or educational purposes.[9] Article 1(5) (e) of the Directive states that practices undertaken for the primary purpose identification of animals fall outside the scope of the Directive.

Therefore, measures such as attaching GPS-collars to identify wild wolves, carried out for the purposes of management decisions, do not fall within the scope of the Directive in the absence of clear scientific or educational purpose. The Norwegian Government has assured the Authority that the tagging of wild wolves with GPS-collars was done due to acute management concerns and was not as part of any scientific programme or study. The reasoning behind the decision was purely management related, primarily to gain information derived from the daily locations of wolves as a part of a continuous evaluation

[5] Doc No 870345.
[6] Doc No 896902.
[7] Doc No 913050.
[8] Doc No 861801.
[9] Articles 1(2)-(3) of the Directive.

of whether the wolves should be lethally removed via hunting and/or management action, i.e. whether the legal requirements for such actions were met.[10]

The Authority notes that, in addition to affixing GPS collars to the wolves, blood and tissue samples were also collected during the winter of 2016/2017. These samples are stored with the NEA and might possibly be made available in the future for scientific studies. According to the Norwegian Government, the purpose of taking these samples was to reduce the number of wolves being captured and sampled in future studies. It is well documented that the capture of wild animals can cause the animal considerable stress and varying degrees of short- or long-term discomfort. Therefore, the Norwegian Government considers it good practice that data collected for management purposes may also be used for later scientific studies, to maximise the utility value once a capture and collaring decision has been made.

The Authority is satisfied with the response of the Norwegian Government that the primary purpose of the GPS tagging was wolf management. Further, the Authority notes that the simultaneous taking of samples was not done within the context of any particular scientific or educational study. Such samples are, instead, accessible upon request and following a formal application.

The Authority is satisfied that the 2017 measures, attaching GPS-collars to wild wolves in Norway, were carried out for the primary purpose of management decisions relating to the wild wolf population. As such, these actions fall outside the scope of the Directive and cannot therefore be considered as a project requiring prior authorisation subject to the requirements of Article 36 of the Directive.

In the light of the above, the Authority concludes that there are no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

The complaint case against Norway regarding the protection of animals used for scientific purposes (tracking devices for wolves), is hereby closed.

For the EFTA Surveillance Authority

Bente Angell-Hansen	Frank J. Büchel	Högni Kristjánsson
President	College Member	Responsible College Member

For Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Catherine Howdle.

[10] Doc No 861801.