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NOTE

from : Polish delegation

to : Working Party on Internal Fisheries Policy

No. Cion prop. : 13139/05 PECHE 203 – COM(2005) 472 final

Subject : Proposal for a Council Regulation establishing measures for the recovery of the stock of European eel

Delegations will find attached additional written comments from the Polish delegation on the above.

Warsaw, 13 February 2007

*Written comments by Poland on Articles 1 and 2 of the draft Council Regulation
establishing measures for the recovery
of the stock of European eel [6068/07 of 6 February 2007]
for discussion in the Working Party on Internal Fisheries Policy*

GENERAL COMMENT

The European Commission has taken on board requests from a number of countries for eel conservation measures to cover a wide range of areas; this is a move in the right direction, which will allow effective action to improve the status of eel stocks in European waters. The new proposal creates a minimum basis, which leads us to believe that Member States will take action in areas which have a real negative impact on the status of eel stocks. The conservation and reconstruction of the eel population in Europe is a complex issue going far beyond the powers and capabilities of fisheries authorities. Comprehensive action, admitting no exceptions, is needed in all areas which affect the status of eel stocks. The top priority should be to rebuild habitats and enable juveniles to reach them. The costs and obligations involved in adopting the above Regulation should be spread proportionally over all the Member States, their respective administrative authorities and all sectors of the economy whose activities have a negative impact on eel stocks, including water power, industry, farming, public utilities, aquaculture and fishing. The Commission's role here should be to make sure that every country is doing its utmost to reconstruct eel stocks, irrespective of their economic importance and the ways they are traditionally used in marine and inland waters. The Commission has introduced more flexibility in the choice of conservation measures, at Member States' request; this should not be allowed to serve as an excuse for failing to take difficult and costly measures. In our view this is precisely the aim which the Regulation is designed to achieve.

Article 1

According to the Commission, conservation measures are to be applied to eel stocks in all inland waters (rivers, lakes and reservoirs) with access to the sea. Bearing in mind that eel is a migratory species, this approach is fully justified. Nevertheless, the arrangements proposed by the Commission should take full account of the differences between the legal systems which govern rules on the use of inland waters for fishing purposes. Unlike marine waters, inland waters may be private property, and permission to fish may be closely connected with ownership of the waters. In the Polish case, there are three legal bases for authorisation to engage in fishing in inland waters. Authorisation may be linked to the right of ownership of the land beneath the waters. It may also be a historical privilege protected by law. The Polish Constitutional Court gave a very firm ruling on this issue in 2005. In the case of waters under state ownership, authorisation to engage in commercial fish farming is acquired through a tendering procedure and confirmed in the form of a multi-annual contract, concluded under civil law between the state administrative body and the interested party. The above contract places many obligations on the party engaged in commercial fish farming, including considerable financial obligations in terms of restocking the waters being farmed. Under this system, **restocking waters is a form of financial investment from private resources**, designed to keep fish stocks in good condition, so that they can be exploited commercially by the interested party and by any successors to it. No regulations on fishing in inland waters can disregard the rules of the legal system on which permission to engage in fish farming in inland waters is based. Yet there is no mention of these essential questions in the draft Regulation (6068/07). The draft does not provide for any compensation for the restriction of rights, privileges or for the financial losses which may be incurred. Article 33 of *Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund* does allow support to be granted for the temporary cessation of inland fishing activities, but it should be pointed out that this support is solely for fishermen (persons actually catching fish) or the owners of floating gear. No form of

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support is offered to the owners of inland waters who have financed the restocking of glass eels from private sources. Article 33 makes no provision for support for those who have contracts giving them the right to fish in inland waters and have invested private money in restocking. No account is taken of the fact that in Poland, eel may legally be fished in inland waters using traps which do not require any floating gear. The Commission rejected the proposal put forward during work on the Regulation on the European Fisheries Fund for inland water fishing to be included in Article 30 on aqua-environmental measures. The ongoing discussion on the draft *Council Regulation establishing measures for the recovery of the stock of European eel* shows how useful it would be to include inland fishing in aqua-environmental measures.

Article 2

On 8 February 2007 the Commission explained that the ban on eel fishing proposed in Article 2 of the draft Regulation is by way of a penalty for not having an eel management plan. This gives rise to three basic observations on our part. The first relates to the position of the Article in the text of the draft Regulation. If the temporary fishing ban is by way of a penalty, then it would be better to move it to the provisions on penalties at the end of the Regulation. Our second observation relates to the scope of the penalties. According to the Commission, the penalty should be severe, compelling essential measures to be taken. If that is the aim, then it is essential to broaden the scope of the obligation to take action and extend penalties to cover all sectors with responsibility for improving or rebuilding eel stocks in Europe. Article 5(4) indicates the basic areas in which Member States should take action. It lists, by way of example, action on commercial fishing activities, recreational fishing, improving habitats, building fish passes and switching-off hydro-electric power turbines. The penalty proposed in Article 2 is illogical. The Commission assumes in advance that it will always be the fisheries sector which must be held to account for failure to act on improving the state of natural habitats, building fish passes or improving the working of hydro-electric power turbines. In practice, this arrangement undermines the position of national fisheries authorities in their talks with other administrative authorities and sectors of the economy responsible for taking measures to conserve eel stocks. The proposed arrangement thus

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encourages other sectors to be inflexible, since whatever the outcome of the decisions taken, only the fisheries sector will be penalised for failure to submit or implement a plan. Under these circumstances the penalties should cover the **whole** range of measures which a Member State is required to take to rebuild eel stocks. The third observation concerns the proposed content of Article 3. Bearing in mind the Commission's explanation of the purpose of introducing a closed season as laid down in Article 2 of the draft, it is quite incomprehensible why fishing for glass eel should be exempt from the proposed penalty system from the outset. Glass eel fishing has a most harmful effect on the state of eel stocks in inland waters. The high price of live glass eels makes catching and trading in them exceptionally prone to illegality. This being the case, it is not appropriate for glass eel fishing to be exempt from penalties. In addition, it should be pointed out that the rather enigmatic wording of Article 3(1)(c) of the draft Regulation could be used to circumvent the fishing ban for purposes other than restocking. There is no specific indication of the proportion of farmed eel which has to be earmarked for restocking, which means that any minimum figure could be adopted, for example: 0.0005 %. There is also good reason to doubt whether all farmed eel is suitable for release into inland waters. During the aquaculture process, growing eels have to be sorted according to their rate of growth. Farmed eels offered for sale for restocking purposes have often turned out to be slow-growing and thus unsuitable for further on-growing. Under no circumstances should very slow-growing farmed eel which has been rejected for further on-growing be released into inland waters as restocking material.
