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THE EUROPEAN UNION**

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ADD 12**

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PECHE 26

PUBLIC

NOTE

from : Permanent Representation of Germany to the European Union

to : General Secretariat of the Council

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 Germany on the abovementioned subject.

Proposal for a Council Regulation establishing measures for the recovery of the stock of European eel (COM(2005) 472 final: 13139/05)

Ladies and Gentlemen,

To follow up my letter of 2 February 2006 (5988/06 ADD 1 LIMITE PECHE 26) and the verbal comments made at the Council Working Party meeting on 9 February, I would again draw attention to the following points in reference to Germany's position:

Art. 3

The COM's idea of laying down binding rules for all trade in eels (including retail trade) is rejected as completely unrealistic.

Given the value of glass eel as a resource, they should not be released back into rivers with access to the sea immediately after being caught; instead, the option of initially placing the young eels in aquaculture should be provided for, given the lower associated mortality rates.

Art. 4

The fishing ban should lapse when Member States submit their request for exemption to the Commission, and not when the Commission approves the request. This would ensure that the fishing ban, which in practice amounts to a ban on employment, cannot be unduly extended unilaterally.

Art. 6

Germany supports those Member States which query the 40% figure as impracticable.

The statistical basis for setting the objective of a 40% return is unclear. Given the intensive stocking measures carried out in the past and the fact that the passability of rivers was extensively impaired by the construction of dams in the last century, it will be difficult to draw up a firm estimate of adult eel biomass occurring naturally, i.e. without the influence of human activities. The wording of Article 6(4) of the draft Regulation should therefore be reviewed. This also applies to the size of the quota of returning eels. Whether there is any point at all in laying down a firm return quota without exception must be open to doubt. Here the subsidiarity principle should be applied and the Member States given the option of setting different target figures in order to be able to react better to individual situations on the spot. It should also be possible to take account of other Community common policies and measures, e.g. climate protection, to ensure consistency across the various Community policy areas. Lastly, the size of the return quota should be judged according to the proportionality principle. Consideration could, for example, be given to how the quota objectively judged to be necessary for preserving eel stocks can be achieved at all if the main obstacles, in particular the mortality caused by damming, cannot or cannot adequately be eliminated. I therefore request that the following proposal be taken into account and included in future discussions:

The following sentence should be added to Article 6(4) of the proposal for a Regulation:

"If this objective is contrary to another Community policy or measure or to the principle of proportionality, the quota set out in the first sentence may be adjusted accordingly."

The 40% across-the-board figure could in addition have disproportionate effects on operators of installations whose continuity is protected. Measures in respect of such installations must be assessed in accordance with the proportionality principle. I therefore request that the following proposal be taken into account and included:

The following sentence should be added to Article 6(5) of the proposal for a Regulation:

"The means to reach the objective set out in paragraph 4 shall not be contrary to a general principle of Community law, especially in the case of means regarding installations which are protected by virtue of being established rights."

Art. 7

It would seem well-nigh impossible to comply with the time-limits laid down here. The Commission's admission that it wishes to review these time-limits must not, however, result in the length of the fishing ban being extended (see also comment on Art. 4).

Art. 8

Transboundary cooperation and coordination with regional fisheries organisations concerning eel management plans certainly require more time than is allowed here. We therefore advert to the comments on Art. 4: once the Member State has sent the Commission an – initially national – eel management plan, the fishing ban lapses.

I reserve the right to make further comments.