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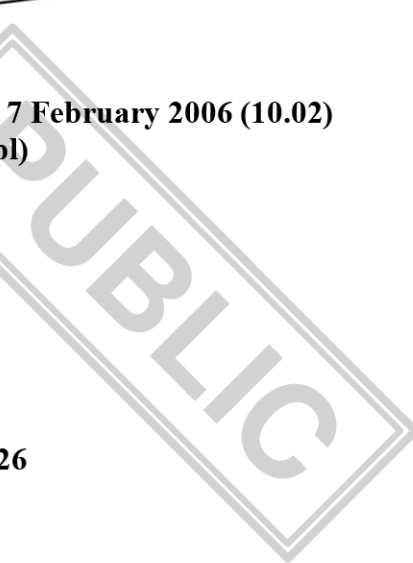
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NOTE

from : Permanent Representation of Poland 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 written comments from Poland on the abovementioned subject.

Comments on the proposal for a Council Regulation establishing measures for the recovery of the stock of European eel – COM (2005) 472

- 1. While Poland understands the need to protect the eel population within the EU, it would point out that protective measures should be taken by the Member States, in accordance with the subsidiarity principle, which is infringed in Article 2 of the proposal for a Council Regulation through the introduction of a ban on eel fishing from the first to the fifteenth day of each month.**

2. The Polish representative cannot support the Commission's proposal to ban eel fishing in inland waters because it is not clear whether the Commission has competence in such management. Poland sees that the Commission has doubts in that connection, as expressed in its document of 1 October 2003 (COM (2003) 573 final – Communication from the Commission to the Council and the European Parliament: paragraph 5.1). While the provisions governing accession to the EU allow for the possibility of transferring certain powers to the Commission, e.g. with regard to protection of the eel population, it should be noted that this matter was not discussed by the Member States when establishing the bases for the Common Fisheries Policy, as adopted by Council Regulation (EC) No 2371/2002. Such powers must be laid down explicitly in legal provisions. In Poland's opinion, the Commission may not, on its own initiative, extend the provisions of Chapter V of Council Regulation (EC) No 2371/2002 to inland waters without consulting the Council. In that connection, a separate discussion should be held on the subject of the direct management by the Commission of fish stocks in Member States' inland waters. It should also be determined whether a decision on such management (in the form of the introduction of bans on fishing, specific dimensions and periods of protection) should be left to the Member States. The circumstances and traditions of individual Member States vary. All the EU Member States should express an opinion on this matter and decide whether, on the basis of current legal provisions, the Commission is competent to manage fish stocks in inland waters.

3. The proposal for a Council Regulation makes no provision for economic operators in inland waters to be compensated for the restrictions placed on eel fishing. In Poland at least, such operators have for many years had to bear the costs of restocking waters with eel from their own (private) resources. The proposal for a Council Regulation makes no provision for compensation for the restrictions introduced. Nor does the proposal for a new European Fisheries Fund provide for any such assistance. In view of that fact, inland water fishermen may be expected to file claims for loss of earnings and for any expenditure which they incur. Inland water fishermen in the EU are not eligible for assistance (compensation) for activities carried out in an aquatic environment. Previous proposals to introduce compensation were rejected by the Commission. Polish inland water fishermen who have incurred costs in connection with eel restocking in past years have contributed to the protection of the eel population in inland waters, and they should now be given an opportunity to reap the benefits by fishing adult eel. Temporary exemption from the application of the seasonal suspensions of eel fishing for the purpose of increasing escapement levels does not satisfy Poland. In Poland, only eel more than 40 cm in length may be fished. Consequently, Polish fishermen and anglers allow a substantial proportion of eel to migrate to the sea to spawn. Furthermore, there are enclosed bodies of water in Poland with no outlet to the sea; such bodies of water are privately owned and have been restocked with eel from the fishermen's own resources. The proposal for a Regulation does not provide for any exemptions for fishing in such waters. If such waters are to be excluded from the Regulation, this must be made clear in the text of the proposal.

In Poland's opinion, facilitating the access of recruiting eel to waters and restocking waters with juvenile eel are basic requirements for maintaining levels of eel stocks in Polish inland waters. If such activities are abandoned in inland waters, the species will become extinct, and the proposed fishing bans will become irrelevant because they will apply to a species which no longer exists in Polish waters.

4. Article 7 of the proposal for a Council Regulation fails to state which criteria will be used to determine the level of the objective referred to in Article 6(4). During earlier discussions on the proposal, the Commission promised to provide information and explanations in that connection. Poland takes the view that Articles 6 and 7 should be discussed only after the Commission has provided written information on this subject.
5. The level of the migration rate should be determined individually for the waters of each Member State, and should be calculated in relation to the current state of affairs with regard to the fishing of eel more than 40 cm in length. Moreover, account should be taken of restocking and the extent of the recruitment of larval eel to specific areas of inland waters. The solutions proposed in Article 6 are highly theoretical and assume that inland waters were not restocked at that time, and that the level of natural migration of larval eel from the sea to inland waters was the same in all Member States and did not have to overcome any obstacles, e.g. pollution, over-fishing for the purposes of consumption, the narrowing of channels in the Baltic and dams in rivers.
6. Poland would also point out that the provisions of Article 10 cannot be satisfied. Furthermore, the wording of this Article confirms that the provisions concerning control of the CFP system do not cover inland water fisheries. It is not possible to establish a system for the control and monitoring of inland waters in accordance with Regulation (EC) No 2371/2002. The system of control and monitoring applied in maritime waters cannot simply be transferred to inland waters. First of all, suitably large financial resources would have to be secured in order to set up an inspection service to monitor fishermen and markets. Such services would have to be suitably equipped with transportation and communications devices; in addition, a computer system would have to be created and the services would have to be accorded the relevant powers. It would also be necessary to lay down criteria on the basis of which Member States would recruit staff to such inspection services, e.g. which specific areas of water would be assigned to individual inspectors, and how many inspectors should be employed in relation to local fish markets.

7. The proposal for a Council Regulation does not provide for any period of *vacatio legis* in respect of its implementation. The deadlines referred to in Article 7 cannot realistically be achieved. We consider it impossible to draw up the appropriate national provisions and establish Eel Management Plans in such a short period of time.
8. The proposal for a Regulation fails to state whether the Commission is intending to improve the system for compiling fisheries data on eel (with regard to both maritime and inland waters fisheries), and if so, what steps it plans to take to effect such an improvement. Such information should be incorporated into the text of the proposal for a Regulation.
9. The proposal should also contain provisions concerning methods for managing eel stocks in cross-border waters. A commitment on the part of Member States to draw up plans on a joint basis is unsatisfactory in view of the possibility of contentious issues arising which Member States will be unable to resolve among themselves.
