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THE EUROPEAN UNION**

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from : 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 a "bible" on the abovementioned subject with the comments, set out as footnotes to the proposal, made by Member States during the meetings of the Working Party on Internal Fisheries Policy of 26 January and 9 February 2006.

Please note that written comments submitted by delegations have been partly, but not exhaustively, included within the footnotes. Therefore, this document should be examined in conjunction with doc. 5988/06 plus ADD 1 to ADD 14.

Proposal for a
COUNCIL REGULATION¹

establishing measures for the recovery of the stock of European eel

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The latest scientific advice from the International Council for the Exploration of the Sea (ICES) concerning European eel is that the stock is outside safe biological limits and current fisheries are not sustainable.
- (2) ICES has further advised that management of eel fisheries requires coordinated action at the level of catchment areas and higher.
- (3) ICES recommends that a recovery plan be developed for the whole stock as a matter of urgency and that exploitation and other human activities affecting the fishery or the stock be reduced to as close to zero as possible until that plan is agreed upon and implemented.
- (4) On 19 July 2004 the Council adopted conclusions concerning the Commission's Communication to the Council and the European Parliament, of 1 October 2003, on the development of a Community Action Plan for the Management of European eel², which included a request to the Commission to come forward with proposals for long-term management of eels in Europe.
- (5) There are diverse conditions and needs in the Community which require different specific solutions. That diversity should be taken into account in the planning and execution of measures to ensure protection and sustainable use of the population of European eel. Decisions should be taken as close as possible to the locations where eel are exploited. Priority should be given to action by Member States through the drawing up of Eel management plans adjusted to regional and local conditions.

¹ ***CY, DK: Reserve on the whole proposal. CY specially on Art. 8.***

ES, IT: Scrutiny reservation on the whole proposal.

² COM(2003) 573 final

- (6) Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ³ and Directive 2000/60/EC establishing a framework for Community action in the field of water policy ⁴ are intended, inter alia, to protect, conserve and enhance the aquatic environment where eels spend part of their life cycle and it is needed to ensure that there is coordination and consistency between measures taken under this regulation and those taken under the mentioned directives.
- (7) In particular, eel management plans should cover river basins defined in accordance with Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁵.
- (8) The success of measures for the recovery of the European eel stock depends on close cooperation and coherent action at Community, Member State and local level as well as on information, consultation and involvement of the public sectors involved.
- (9) In order to ensure that eel recovery measures are effective and equitable, it is necessary that Member States identify the measures they intend to take and the areas to be covered, that this information be communicated widely, and that the effectiveness of the measures be evaluated.
- (10) Within a river basin where fisheries and other human activities affecting eels may have transboundary effects, all programmes and measures should be coordinated for the whole of the relevant river basin. For river basins extending beyond the boundaries of the Community, the Community should endeavour to ensure appropriate coordination with the third countries concerned. However, the need for such coordination should not prevent urgent action being taken by Member States.

HAS ADOPTED THIS REGULATION:

³ OJ No L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ No L 284, 31.10.2003, p. 1).

⁴ OJ No L 327, 22.12.2000, p. 1.

⁵ OJ No L 327, 22.12.2000, p.1. Directive as last amended by Decision 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- ⁶ **IT, LV:** Lakes or inland waters which have no access to the sea should be excluded from the scope.
- SE, CZ:** Large scope: All relevant waters should be included in the proposal, i.e. sea, coastal areas up to 4 miles from the baseline, estuaries, rivers and lakes. CZ: Eel should be protected everywhere including high seas.
- DE, EL:** Unacceptable for protective measures to focus solely on the fishery, rather than on the damming of rivers or on fish-eating animals (cormorant feed). Take into account sustainability.
- DE:** Supports the aim of the proposal: to protect the stock of European eel but not the proposal itself. General approach: fishing is not such a relevant factor in the mortality of the eels. Council conclusions in July 2004 expressly mentioned taking into account all factors relating to the fishing mortality of eels. The proposed measure does not achieve the objective set. Serious problems for a lot of DE fishermen. Glass eel fishing is one of the contributors.
- LT:** Inland fishing should be excluded.
- NL:** The Regulation should cover all areas where eels live, including the Baltic sea and the basins defined in accordance with Directive 2000/60/EC.
- FR:** The protection of eels is very important but an approach limited to the fishing aspect is not enough. There should be a global approach to cover the environment as well. The pollution and the quality of the water could void any effort made on fishing. Second paragraph: not against but more general approach including environment.
- PL:** It can not support the proposal to ban eel fishing in inland waters. Doubts about the EC competence in such waters. The Legal Service of the Council should provide an opinion.. Doubts on whether this plan comprises inland waters, with no outlet to the sea, which are privately owned.
- ES:** Scrutiny Reservation. Approach should be very large, taking into account the environmental aspect. A discussion is underway with the industry and a number of regional administrations concerned because they are competent in this matter. The key should be to take into account the diversity of situations in the different river basins.
- UK:** Support delegations seeing covering all waters where eels are. Ask the Com the meaning of the last sentence of the Article (second paragraph).
- DK:** Need for a general discussion.
- FI:** Scrutiny reservation.
- COM:** The plan is the result of the previous Communication and the following discussion in Council. Of course, there will be other measures such as in trade to restrict the exports of eels. Other measures that are being discussed are intended to cope with illegal fishing. They could consist on a system of monitoring of catches. The key instrument would be the management plans where MS can choose the means to reach the objective of the proposal. As regards the environment policy, these are mixed competencies.
- Lakes:** Cover management of eels in inland waters. If not natural habitat of eels then it is not covered by the proposal..
- CLS:** It has already provided its opinion in the previous meeting. The fishery products in inland waters are traditionally assimilated to agricultural products: Article 32 and Annex I of the EC Treaty.
- SI:** Amend Article 1: "“Provisions of this Regulation shall not apply to Member States not engaged in the fishing activities and/or exploitation of the stocks of European eel in

Subject-matter

This Regulation establishes a framework for the protection and sustainable use of the stock of European eel of the species *Anguilla anguilla* in the estuaries and rivers of Member States that flow into the seas in ICES areas III, IV, VI, VII, VIII, IX or into the Mediterranean Sea.

Measures under this regulation shall be adopted and implemented without prejudice to the relevant provisions of EU Directives 92/43/EC of the Council on the protection of wild fauna and flora and 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

accordance with Article 14 of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.”

⁷ **COM:** Intention is to have long term measures complemented by short measures to improve escapement. Not any 15 days but effective ones would be the best option.

SE: Practical difficulties and in some cases a total stop. Understand the purpose but difficulties regarding control and marketing. The current trading system is based on storing of living fish what it would be impossible with this system. There could be other measures to achieve the same effect. Major problems with this provision.

DE: This provision is not acceptable. Alternatives: See doc. 5988/06 ADD 1.

PL: Certain misgivings with this article. Certain doubts as to whether such a ban does not violate the principle of subsidiarity. In practice, such a ban would be very difficult to enforce on inland waters. Moreover, they wondered whether without sufficient financial compensations would be possible to implement such a system. See doc. 5988/06 ADD 6.

NL: Agree that short term measures are required but they are very strict and therefore not acceptable. There are different ways to fishing for eel in the NL. So, no practical.

Alternative: MS should be forced to reduce fishing effort on all live stages of the eel by 50% but MS have the right to choose the way.

SI: Can MS introduce stricter measures?

IT: Doubts on the uniform application of this monthly closure. Why from 1 to 15? Rather difficult to accept such a rigid provision. Better to allow MS to decide the right measures and to specify the period. Green peace sending alarm calls about pollutants in the seas. Broader approach to look to the problem. Shorter period of time and leave it for MS to decide.

LT: Doubts about the uniform and effective application of this provision. National legislation is sufficiently strict. Serious socio/economic problems since it involves unacceptable disturbance into fisheries not related to eel fishery. Every Member State should be able to decide for itself. Plus need for repopulation measures.

UK: Agree with NL and DE. There is a need for short term measures but it does not believe that this measure is workable. Very difficult to enforce and to apply to all waters in the MS. It could rather propose alternatives such as the return to the water of a great deal of catches alive until implement eel management plans.

PT: Reservation. It seems in contradiction with Art. 5. Important is to agree on the objective; implementation should be a matter of subsidiarity. Until the plans are submitted, implement management measures including closures appropriate to the situation and the dynamic of the species.

ES: Reservation. Subsidiarity is very important.. It does not understand the rationale of this provision because it could forbid fishing when it is already impossible and vice versa. Global approach is necessary. The cost of recovery is going to be on the fishing sector until the management plans are in place.

DK: Supports the idea of short term measures but it does not accept this provision. It is going to hamper DK fishing quite considerably without being able to achieve the desire effect for recovery. Different formulas for fishing for eels. Limiting the gear used. Good to limit the export.

FR: Reservation. This provision puts all the burden on fishing with very heavy socioeconomic consequences. Reduction by 50% is huge. Take into account subsidiarity as in Art 4(1). This provision is excessive. Is there any entitlement to compensation from the European Fisheries Fund?

FI: Subsidiarity and special circumstances have to be taken into account.

EE, LV: General Scrutiny Reservation. Very important topic. Against this provision. Hydro

Seasonal Closures for Eel Fishing

From the first to the fifteenth day of each month it shall be prohibited to fish for, land or retain eel of the species *Anguilla anguilla*.

electrical plants create a problem even if the eels escape to the rivers. Where there has been restocking, fishing should be permitted. Alternative: establish fishing days for MS that they can allocate as they consider best. LV: Additional measures in sea waters are necessary.

IE: Extremely difficult to enforce it equitably.

EL: To examine further on the basis of scientific evidence.

CZ: It does not solve the situation. Much better across the board closed season: spawning season.

COM: Given the wide range of different problems all over Europe, the objective is to achieve a common agreed target to be implemented according to local conditions. River continuity is a long term process. Sc adv: conservation at all ages is important. But agree with subsidiarity: up to MS to present alternatives. There is an obligation to remove some gears fishing for eels in the seas. Timing is difficult.

Temporary exemptions from Seasonal Closures for the increase of escapement levels

By way of derogation from Article 2, until 30 June 2007 it shall be permitted to fish for, to retain and to land eel of the species *Anguilla anguilla* from the first to the fifteenth day of each month provided that:

- (a) the eel are less than 12cm long and
- (b) all the eel captured are⁹ released into European inland waters having access to the sea for the purpose of increasing the escapement levels of adult silver eels

⁸ ***LV, NL, SE:*** How can exceptions be controlled?. Introduce certification system with time, person and place of capture and registration of buyers and sellers.
SE: Agree to allow restocking also in closed seasons. Add release of glass eels in coastal waters.
NL, BE: If glass eels used for breeding, obligation to release some of them into inland waters.
BE: Supports Article 3. Need of ban on catch and export of glass eels. What about Minimum landing sizes (MLS) and technical measures on mesh sizes.
ES: Reservation. What is the scientific explanation for 12 cm?
DE, CZ, IE: Understand exception but how to control and this provision does not reflect the Council conclusions. There should be a ban on exports and on the human consumption of glass eel.
PL: In the framework of the WTO, can exports of glass eels be banned? Supports DE and NL on controls.
LV: Take account of fisheries practice.
IE: Under Irish legislation commercial fishing of glass eel is not allowed. Therefore, there is a need for the text to allow non-commercial fishing of glass eel.
EL: Glass eels are used by fish farming industry.
PT: Ban on trade in glass eel outside the area of distribution of this species.
COM: Not enough glass eels for settlement and restocking. As regards technical measures, there is an enormous variety of gears and MLS (22 - 45 cm) so difficult to harmonise. Matter for MS although EC to set result. Control is a MS competency in the Framework Regulation. COM not looking to overrule national measures but to make them more effective.

⁹ ***DK:*** Add: "used for breeding in Europe or"

Article 4¹⁰

Temporary exemptions from Seasonal Closures for certain river basins

1. If existing national measures already ensure, for specified river basins, that the objective referred to in Article 6(4) is met, the Member State concerned may submit a request for exemption until 30 June 2007 from the measures provided for in Article 2 for those basins.
2. The Member State shall submit the request together with a full scientific and technical justification to the Commission and to the other Member States.
3. The Commission shall decide on the request after consultation of the Scientific, Technical and Economic Committee for Fisheries.

¹⁰ ***COM:*** Asked MS to document existing national rules. It could provide for an exemption after consulting STECF.
PT, LT: More logical to move Article 6 to Article 2 and in particular the 40% target and avoid reference to Article 6(4) in Art. 4(1). Each MS should be able to set own period for closure to reach 40% objective and not have 15 days closure. Such flexibility can solve many problems.
COM: Open to move Art. 6 and supports MS defining own measures to reach 40% but what happens if MS do not develop a national management plan that reaches 40%. There must be measures until management plans are in place.
EE: Wants an exception concerning the Narva hydropower plan. The possible fish pass could be built on the territory of the Russian Federation which is not interested. ***COM:*** Art. 8(2).
NL, FR, UK, NL, ES: Art. 4(3) gives COM enormous power to decide. Need for transparency: maybe comitology procedure. There is no deadline for consulting STECF.
COM: Difficult to identify a timetable for scientists to check the data collected and provided by MS in their national plans. No objection in principle to comitology but it can take longer.
FR: Open to fix objective first and means later. There should a balance of obligations.
DE: Fishing ban should lapse when MS submit their request for exemption to the COM.

Article 5¹¹

Exemptions from Seasonal Closures for management plans

By way of derogation from Article 2, from 1 July 2007 it shall be permitted to fish for, to retain and to land eel of the species *Anguilla anguilla* from the first to the fifteenth day of each month provided that such fisheries conform to the specifications and restrictions set out in an Eel Management Plan.

¹¹ ***NL, PT:*** *Eel Management plans (EMP) are to be coordinated with all the countries concerned. Revise the time schedule in line with with requirements following the timing of the Water framework Directive: at least 2 years. Transform 15 days closure on 50% decrease on effort for MS to apply. COM: Aim is to move quickly to fully devolved national management plans.*
ES: *Reservation. Need to refer to sport fishing (where fish do not die). COM: Sport fishing for eel different from fishing for Salmon because eels do die.*

Establishment of Eel Management Plans

1. Member States shall identify and define the individual river basins lying within their national territory that, prior to human intervention, constituted natural habitats for the European eel ("eel river basins").
2. In defining eel river basins, Member States shall have due regard to the administrative arrangements referred to in Article 3 of Directive 2000/60/EC.

¹² **COM:** Paragraph 3 deliberately vague. MS can choose. Factors: natural reproduction, no fishing, pollution, dams, free migration up or down and productive capacity of river basin, control measures, data to be collected, ...
PT, NL, LT, BE, IE, CZ, DE, LV, UK, EL: What is the current figure in order to judge whether 40% is realistic or not. How to reach or calculate 40%? Difficult to achieve and monitor. MS should be free to adopt measures for the recovery of the eel stock in the river basins they consider important, with the aim of maximising the degree of escapement to the sea.
SE: 40% figure to be linked to a time frame for "undisturbed conditions". Eel survival in previous stages should be considered.
PL: 6(1) How to know where eel was prior to human intervention?
6(4) The migration rate should be determined individually for the waters of each MS and calculated in relation to current state of affairs regarding the fishing of eel more than 40 cm in length.
NL: 6(4) Data is lacking. Against the formulation of the article. Why only one parameter (escapement of the eel) when there were three in the Action plan for the management of the European eel. Use management committee to flesh the details.
LT: Scrutiny reservation. Need of different targets and criteria depending on the river basins.
ES: Scrutiny reservation. Not convinced by 40%. Need more realistic objectives. Homogeneity is main problem, many different situations.
BE: Need criteria for monitoring and guidelines on how to draw up EMP
DK: Need to understand better the 40% objective and not convinced that the objective should be identical for all river systems. Prefers regional approach. Take into account mortality in sea waters. Need for technical guidelines for how to monitor and verify the attainment of the objective.
LV: MS free to estimate 40% escapement.
FR: Scrutiny reservation.
FI: Reservation on 40%. Need to estimate the costs of implementation. Better regional approach than individual basins.
IT: Difficulties with 40% and definition of river basins and "prior to human intervention".
COM: ICES: 50% escapement; FAO: 40-60%. Historically abundant areas 25 years ago. 40% includes restocking.
Glass eel abundant in Bay of Biscay: So legitimate to catch them there to restock elsewhere. No different figure depending on the river basin: all escapes contribute to the common European eel stock. This Regulation covers fresh water, inland water. Eel fishing in sea water is for TQR. Definition of river basin: flexibility for MS but with reference to Water framework Directive.

3. For each eel river basin defined under paragraph 1, Member States shall prepare an Eel Management Plan.
4. The objective of each Eel Management Plan shall be, for each eel river basin, to permit with high probability the escapement to the sea of at least 40% of the biomass of adult eel relative to the best estimate of the potential escapement from the river basin in the absence of human activities affecting the fishing area or the stock.
5. Each eel management plan shall include both the means to reach the objective set out in paragraph 4 and means to monitor and verify the attainment of that objective.

Article 7¹³

Approval of Eel Management Plans

1. Member States shall communicate by 31 December 2006 to the Commission all individual Eel Management Plans prepared in accordance with Article 6.
2. On the basis of a technical and scientific evaluation from the Scientific, Technical and Economic Committee for Fisheries, the eel management plans shall, where appropriate, be approved in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002.

¹³ ***BE:*** *What's the possibility of financial support for establishing national management plans and for the implementing measures.*
IT, BE, DE, DK, LT, LV, ES, PL: *Time limit too short. COM: can be re-examined.*
UK, PL, FR, ES: *COM does not approve the management plans. Only notification but COM can open an infringement procedure if the plans are considered inadequate to the purposes.*
EL: *What happens if MS can not implement the management plan within a time limit?. 15 days ban should apply ad infinitum? COM: Until the management plans are in place.*
PT: *Art. 7(4) No simplification.*
SE: *Welcomes this provision*
FR: *What's the relation between pars. 1 and 4?. In par. 2, what's the definition of "where appropriate"?*
ES: *Supports comitology procedure.*
COM: *UK proposal on notification interesting, burden of proof switched from positive to negative.*
PL: *It fails to state which criteria will be used to determine the level of the objective referred to in Art. 6(4). Could scientific assessment be done at MS level?. COM: Aware of large workload for STECF. Any national assessment would be helpful and would speed up process.*
UK: *Did COM consider a Directive instead of Regulation? COM: Yes.*

3. Member States shall implement the Eel Management Plans approved under paragraph 2 from 1 July 2007.
4. Each Member State shall communicate a national overview of its proposed Eel Management Plans to all other Member States and to the Commission by 31 December 2006.

Article 8¹⁴

Transboundary Eel Management Plans

1. For eel river basins extending to the territory of more than one Member State, the Member States involved shall jointly prepare an Eel Management Plan.
2. Where an eel river basin extends beyond the territory of the Community, the Member States involved shall endeavour to develop an Eel Management Plan in coordination with the relevant third countries.
3. Where an eel river basin extends beyond the territory of the Community, the competence of any relevant regional fisheries organisation shall be respected.
4. Articles 6 and 7 shall apply mutatis mutandis to the transboundary plans referred to in paragraphs 1 and 2.

¹⁴ ***EE:*** *What happens if no agreement with Russia?*
DK: *It can very complicated from the administrative point of view with waters passing trough a large number of MS.*
CY: *Reservation.*
FR: *Support extension of competence of NASCO to eels. "shall endeavour" is very weak from legal point of view.*
LT: *More soft wording in par. 2 since shares a huge basin with Russia.*
DE: *See comments on Article 4 (doc. 5988/06 ADD 12).*
SE: *RACs to comment on national management plans and STECF evaluations.*

*Article 9*¹⁵

Reporting and Evaluation

1. For each Eel Management Plan, each Member State shall report to the Commission by 31 December 2009 on the monitoring, effectiveness and outcome of the plan, and in particular shall estimate for each river basin that proportion of the biomass of the eel that escape to the sea to spawn relative to the escapement achieved in the absence of fishing or other human activities affecting the fishery or the stock.
2. The Commission shall, by 1 July 2010, present a report to the European Parliament and the Council with a statistical and scientific evaluation of the outcome of the implementation of the Eel Management Plans accompanied by the opinion of the Scientific, Technical and Economic Committee for Fisheries.
3. The Commission shall, considering the report described in paragraph 2, propose any appropriate measures to achieve with high probability the recovery of the stock of European eel.

¹⁵ ***NL:*** *What is the link between this Article and the data collection Regulation. This Regulation should not lead to extra burdens in addition to data collection Regulation.*
COM: *Agrees. This Regulation should prevail so the data collection Regulation should be amended accordingly.*

ES, PL: *Problem is the link between Art. 9(1) and Art. 6. Amend it in line with amendments in Art. 6.*

UK: *Longer period for reporting to have meaningful results.*

*Article 10*¹⁶

Control and Enforcement

1. Chapter V of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹⁷ shall apply mutatis mutandis to all measures provided for by this regulation.
2. Article 22 (1)(b) of Regulation (EC) No 2371/2002 shall not apply.

Article 11

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*

¹⁶ ***PT:*** Doubts because there are different bodies from other Ministries that carry out the control.
NL: Wondered whether Chapter V can apply since fishery on eels in the Dutch inland waters takes place with small boats that are not registered under the CFP and the fishery is not always a commercial activity. Does Article 22 apply to any quantity of eel sold?
PL: General reservation on the application of chapter V.
FR: Reservation. Two main issues: commercial fishing and fight against illegal fishing.
BE: Do the control provisions apply to internal waters?
UK: Prefers individual control requirements.
FI: Reservation on application to recreational/sport fishing
LT, IT, DK, NL: Reservation.

¹⁷ OJ L 358, 31.12.2002, p. 59.