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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 written comments from Germany on the subject mentioned above.

Proposal for a Council Regulation establishing measures for the recovery of the stock of the European eel (9247/06 PECHE 152)

To supplement my various earlier letters and oral expressions of opinion in working party meetings, I would draw attention to the following regarding Germany's position:

Introductory remarks:

The new draft Regulation certainly contains a number of improvements. This does not however change anything in the fundamental problem of the approach.

The draft Regulation follows the approach of an across-the-board reduction in the fishing effort. This takes no account of present conditions or of what has already been achieved.

Germany unreservedly supports the Commission's desired aim of protecting or restoring eel stocks.

Because of the dissimilar situations in the Member States at the outset, it is not however appropriate to prescribe for the Member States how they should arrive at the common aim. The necessary flexibility for the Member States, as implied by the subsidiarity principle, is lacking.

Since nothing has changed in the basic approach of the original proposal, our conclusion stands: Germany rejects the proposal in its present form.

Stocks in Germany at present depend overwhelmingly on restocking measures, above all by fishing undertakings themselves. If the fishing possibilities are limited as severely as planned, this will lead to sharply declining stocks. The existence of many fishing undertakings would be threatened, jobs will be lost and eel stocks will be even more gravely under threat as a result of declining restocking measures.

The glass eel problem is still not satisfactorily resolved. Although the recitals (point 12) say that measures should be implemented leading to a greater number of glass eels in European waters, the Regulation itself contains no such provisions.

With the focus in its proposal on a reduction of the fishing effort the Commission makes use of a typical set of instruments for the regulation of sea fisheries. This is not, however, suitable for conditions in inland waters. The desired measures are barely enforceable, let alone verifiable. Further more, the administrative burden would increase greatly.

1.1. Comments in detail

Article 1:

The inclusion of maritime waters is welcomed.

Article 2:

The drafting of the new wording is too restrictive. The choice of measures for bringing down the fishing effort should be left to the Member States.

In principle the aim must be to leave the choice of method for achieving the necessary change to the Member States themselves.

We welcome the fact that in the present wording the retention of eels during the close season is not prohibited.

Article 3:

Here again the old wording is reproduced, including "retain". This is inconsistent with Article 2 and must be deleted.

The proposed rules would lead to unequal treatment of the different fisheries sectors. Glass eels may be caught all year round and their use for restocking in open waters is laid down only during certain periods, while in the yellow and silver eel fisheries extensive restrictions are imposed. From the point of view of guaranteeing stocks another approach must be found. If priority were given to restocking in open waters it would be possible to dispense entirely with restrictions on glass eel fishing, for example by means of a stocking quota which must first be met before glass eels may be sold for other purposes.

Article 4:

The request for an exemption should have a suspensory effect, as in the case of punctual submission of Management Plans, so that fishery restrictions would only apply in the case of rejection.

Article 5:

We welcome the allowing of time for implementation of Management Plans.

Also sensible is the provision that punctual submission of a Management Plan shall have suspensory effect until the Commission has taken its decision, although the date mentioned (31 December 2006) must be reviewed. According to the present wording, the Regulation will not come into force before 1 January 2007. On that date the period for submitting Management Plans aimed at temporary exemption from the requirement to reduce the fishing effort would already have expired. This appears to pose a legal problem. Moreover, the deadline of 31 December 2006 is unrealistic as there will not be sufficient data by that date. Since plans are to be implemented by 30 June 2008, the deadline chosen for submission of plans should be 31 December 2007.

Article 6:

Paragraph 1:

In several respects greater clarification is required as regards terms and context. On the one hand, it is supposed to be possible to define the entire area of a Member State as a river basin; on the other, the greatest possible reference to the administrative units under to the Water Framework Directive is encouraged. There is a need to clarify what is meant by "appropriate justification". Otherwise, this seems a useful option.

Paragraph 4:

There remains no adequate explanation as to why the limit is fixed at 40%. If this abstract value is retained, with no clearer definition nor indication of an alternative reference period, the question of optimum evaluation must be the responsibility of the Member States, such that it cannot be automatically rejected by the Commission or the STECF.

Paragraph 5:

The obligation to include a 50% reduction in the fishing effort in the Management Plans is unacceptable. Firstly, this completely ignores the current level of fishing and measures to raise stocks (restocking). This means that model fisheries may be just as affected by the across-the-board reduction as areas which are overfished. Secondly, the possibility for Member States to make regional and local arrangements is removed. This contradicts the subsidiarity principle. Germany has already proposed to the Commission alternative protective measures that lead to an increase in spawning stocks without the need to apply an overall reduction. As a temporary measure, we propose that this Article should enable restocking, for example, also to be taken into account in connection with the reduction in fishing effort.

Paragraph 6:

While inclusion of the obligation to reduce technical mortality is in principle to be welcomed, we doubt whether this requirement is feasible. For legal reasons this question cannot be resolved by the fishing industry; nor, on the other hand, must it have negative consequences for the fishing industry. The question of power stations on transboundary rivers will also cause problems here.

As the Commission takes other mortality factors into account with this Regulation, it should also include the question of predation by cormorants, as explicitly mentioned in an Opinion of the European Parliament in 2005.

Article 7:

The question of deadlines should be looked at again in the context of the whole.

A sensible solution might be to give the Member States one year to implement a Management Plan following a positive decision from the Commission.

If a Management Plan is submitted by the deadline, it should initially have a suspensory effect in any event, i.e. meaning that Member States are freed from the immediate obligation to reduce fishing effort.

Article 8:

The possibility in problem cases of submitting first the national part of a plan for a transboundary river basin is welcomed. The deadlines for multinational plans should be looked at again in the context of the whole.

Article 9:

The inclusion of maritime waters in the Regulation is logical in principle and to be welcomed, but the proposed arrangement is not particularly appropriate. The Commission is again proposing an across-the-board reduction in fishing effort of 50%, which ignores the existing situation.

On the German side of the Baltic, eel is currently fished using longlines and a few large pots, for example. In areas of brackish water (transitional waters) smaller pots are also used. (There are already other regulations limiting trawl fishing for eel in the Baltic). These devices also catch significant quantities of other economically important species (e.g. cod, and, in brackish waters, zander, pike and perch). The proposed arrangement would not only make it impossible for fishermen to make up the yield loss on eel with other species, it would even reduce their catch of such species. This would be tantamount to a ban on them carrying out their occupation, which cannot be the aim of the Regulation; hence a different approach must be found.

Articles 10, 11 and 12

The periods proposed here must be looked at in the general context. It would be advisable to set a later date for entry into force, e.g. 1 January 2008, so as to enable the necessary data for Management Plans or derogation measures to be drawn up.

For

(s.) Dr Ludewig
