



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.10.2005
COM(2005) 472 final

2005/0201 (CNS)

Proposal for a

COUNCIL REGULATION

establishing measures for the recovery of the stock of European Eel.

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Objectives

The objective of the proposal is to achieve a recovery of the stock of European eel to previous historic levels of adult abundance and the recruitment of glass eel.

1.2 Historical elements

European eel are widely distributed throughout European estuarine and inland waters. In their adult phase eel spawn in the western central Atlantic Ocean, with the larval eel recruiting to European estuaries. Management of the European eel stock is a Community-wide issue because the fish form a single stock that is distributed across the European continent.

Scientific advice indicates that the eel stock is highly depleted.

1.3 Existing provisions

Many Member States have adopted a wide range of measures concerning eel management such as minimum landing sizes, closed seasons and areas, licensing of eel fishermen, regulations concerning construction of dams and eel passes. The EU Habitats Directive was established in 1992 and the Water Framework Directive was established in 2000, *inter alia*, to protect, conserve and enhance the environment where the eel spends the largest part of its life cycle.

1.4 Differences with existing provisions

Due to the variety of habitats and fisheries affecting the eel populations in different river basins, eel cannot be managed exclusively using standard management instruments in all areas. Therefore the proposed Regulation identifies a specific target for the management of eel populations. Each Member State should apply locally-appropriate management measures to reach this target. The adoption of a common target for all Member States is necessary in order that measures to restore eel populations are equitable. This proposed Regulation also establishes an obligation for Member States to develop, implement, monitor and evaluate means to reach these targets. A review of experience so gained will be made.

A Community approach is needed in order that Member States can each implement a balanced and equitable contribution to eel management. It is not clear that the existing national measures are either adequate or equitable.

1.5 Consistency with other policies

The coordination and consistency between measures taken under this proposal and those taken under the mentioned Directives becomes of utmost importance, because restoration of a healthy eel population is an indicator of river continuity and water quality under the Water Framework Directive.

2. RESULTS OF CONSULTATIONS AND IMPACT ASSESSMENTS

2.1 Consultations

The Commission organised a Regional Workshop on eel management in March 2003 at which scientific advice concerning eel management was presented and was discussed among scientists, the eel fishing sector and Member States. The Commission prepared a Communication entitled "Development of a Community Action Plan for the management of European Eel (COM(2003) 573 final) in 1st October 2003. This document was debated by Council, whose conclusions were adopted in July 2004. Based on these conclusions, the Commission organised a second workshop on 17th. September 2004 in order to discuss specific targets and immediate measures for eel management.

The Commission, scientific advisors, industry sectors and Member States could agree that the eel stock is at a very depleted level, that measures need to be taken to achieve this, and that the Commission should come forward with specific proposals covering recovery measures on both environmental and fisheries aspects. All sectors agreed that the approach of setting a management target at Community level while leaving Member States the freedom to decide the means to reach the target is a good one.

However, some industry sectors focused on the problem of market supply of glass eels and requested a ban the export of these eels and state aids for restocking. The Commission will look into possible market measures but notes that World Trade Organisation rules require *inter alia* that market measures imposed to deliver a conservation benefit should affect the various sectors involved in an equitable manner. The Commission will address possibilities for aid for restocking in the context of the new European Fisheries Fund.

2.2. Collection and the use of expertise

The Commission has obtained scientific advice from the International Council for the Exploration of the Sea and the European Inland Fisheries Advisory Committee. This advice indicates that urgent management action is required to restore the stock. Recent recruitments of eel have been as low as 1% of historic levels, and adult eel that are migrating to the sea to spawn suffer high mortality rates. It is necessary to protect this resource in order that the river basins of Member States are populated with adequate numbers of recruiting eel, and that adequate numbers of eel survive to spawning time.

2.3 Impact assessment

The eel fisheries sector is highly diversified across Europe. The main sectors are the glass eel fisheries in France, the UK and Spain, the on-growing of eel in European aquaculture. Statistics concerning eel fishing are incomplete at a European level. FAO data indicate average catches of wild fish in the 1990s of around 15 000 tonnes/ year and aquaculture production of around 18 000t/year, with a sale value around € 150 Million. In addition, glass eel catches of around 500 - 800 tonnes (with a very high value) were taken in the 1980s but are currently at a much lower level. The latest recorded size of the European eel fishing sector numbered about 25 000 fishermen. In some areas, especially in estuarine fisheries in France where consultations with the sector indicate that there are around 1100 fishing vessels catching eels in the estuaries and a further 450 fishermen working in the rivers, fishing for glass eel represented about 75% of the turnover of the fishermen in that area.

If no action is taken to improve the survival of adult silver eel, the current very low abundances of glass eel will result in a decline in the abundances of yellow eel in rivers, and at the end of the five to ten year growing phase the abundance of emigrating silver eel will also decline. If the decline in the adult populations reflects the decline in the glass eel recruitment this would mean that eel abundances would decrease one-hundred fold. If, in addition, the recruitment of glass eel reduces when the escapement of silver eel also reduces, this effectively means the eel stock will no longer exist as a significant exploitable resource after ten years, and the associated jobs and markets will be lost. These effects are in addition to the immediate problems of low supply and high price caused by the scarcity of glass eels, and also in addition to the effects experienced in recreational fisheries.

Under the proposal, the choice of conservation measures to ensure eel survival remains with Member States. Measures such as a reduction in yellow eel fishing in the summer, a reduction in silver eel fishing during the autumn downstream migrations, increases in restocking, improvements in water quality, modifications to dams and turbines to allow improved eel migrations, reduction in recreational fisheries and assisted migrations are all measures that could form part of eel management plans. Different choices among these measures would have different social and economic consequences which cannot be evaluated in a global fashion. The key element to retain is that a failure to act will result in a disappearance of all eel fishing and aquaculture sectors if the stock decline continues.

3. LEGAL ELEMENTS

Measures to protect eel stocks fall under Article 37 of the Treaty, as are considered to be agricultural products for the purposes of this Treaty Article.

3.1. Eel Management Plans

The principal element of the Regulation is the establishment of national eel management plans, by means of which each Member State will achieve the objective of a 40% escapement of adult silver eel from each river basin (measured with respect to undisturbed conditions). These plans should be reviewed by the Scientific, Technical and Economic Committee for Fisheries and, if a positive evaluation is received should be approved by the Commission and should come into force on 1 July 2007.

3.2 Short-term measures

Given the urgency of the situation, eel survival should be improved as much as is possible, compatible with social and economic needs, by imposing fishery closures for 15 days each month. These closures should stay in force until a Member State has implemented an approved Eel Management Plan.

3.3. Derogations from short-term measures

Fishing could continue during the closed period if a Member State can reliably demonstrate that existing measures are in conformity with the 40% objective described in Section 3.1 or if the fishing is for glass eel to be used for restocking purposes.

3.4. Subsidiarity and proportionality

Restoring the eel stock will bring benefits to eel fishermen in all member states. It will deliver important social and economic benefits in sectors that depend on eel, such as marketing and distribution and aquaculture. All Member States should make an equitable, concerted and harmonised effort to protect their eel populations, in order that all may benefit from a restoration of the eel population. Therefore, the main part of the proposed Regulation is cast as an obligation for Member States to achieve a specified target for eel management. The choice of management instruments to use is at the discretion of Member States. This is an appropriate division of responsibilities between Member States and Community. The choice of a devolved approach based principally on eel management plans devised by Member States, but whose objective is determined in Community legislation and whose quality and fitness is subject to review by Community institutions is a appropriate method, in terms both of subsidiarity and of proportionality, for managing a common Community fish resource that is distributed in diverse river systems, and in diverse fisheries and installations.

4. BUDGETARY IMPLICATIONS

The Regulation has negligible direct additional budgetary implications for the community budget. Budgetary implications concerning support for research on eels are considered in the context of the seventh Framework Programme. State aid applicable to fisheries and its applicability to eel fisheries and environmental measures are addressed in the European Fisheries Fund.

5. ADDITIONAL ELEMENTS

The Commission will shortly propose the establishment of a traceability system to assist in the fight against poaching. As a first step in this process, the Commission proposes that the provisions concerning control and enforcement of the Common Fisheries Policy should also apply to eel fisheries and to eel products. In addition, the Commission intends to explore measures to limit the export of glass eels, compatible with international trade law, to increase the amount of glass eels available for stock enhancing measures and required for conservation purposes.

Appropriate management of eel stocks and fisheries requires consideration of both the impact of fisheries and the impact of environmental modifications such as dams, eel passes and hydroelectric installations. The present regulation addresses the management of the eel stocks *per se*. The scope and conditions of financial assistance for implementation of these measures are being addressed in the context of the European Fisheries Fund for the programming period 2007-2013.

Proposal for a

COUNCIL REGULATION

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 eel¹, 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 COM(2003) 573 final

- (6) Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora² and Directive 2000/60/EC establishing a framework for Community action in the field of water policy³ 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 policy⁴.
- (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:

Article 1

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.

² 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)

³ OJ No L 327, 22.12.2000, p. 1.

⁴ 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)

Article 2

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*.

Article 3

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 are released into European inland waters having access to the sea for the purpose of increasing the escapement levels of adult silver eels

Article 4

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.

Article 5

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.

Article 6

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.
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 7

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.
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 8

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.

Article 9

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.

Article 10

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 Policy⁵ 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.

⁵ OJ L 358, 31.12.2002, p. 59.

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