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# **Fisheries Subsidies**

## **Will the EU turn its back on the 2002 Reforms?**

**May 2006**



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### Explanatory Note

The study was carried out by Clare Coffey. Views expressed herein do not necessarily represent those of WWF. The study was commissioned by WWF's European Marine Programme, and funded by WWF's Common Fishery Policy Initiative. This study and further information on European Fisheries policy is available online at:

<http://www.panda.org/epo>

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## **1 Introduction**

In 2002, the European Union adopted a long-awaited reform to its Common Fisheries Policy. The chief objective of that reform was to put Europe's overtaxed fisheries and oversized fishing fleets onto a path back towards biological and economic health. There was no doubt then that EU fisheries policy needed a new orientation in order to end decades of unsustainable fishing practices. Nor was there any doubt the necessary reform should include an overhaul of EU fisheries subsidies programmes. But today, as the EU prepares to issue regulations that will govern the next six years of state aid to the fishing industry, it appears the 2002 reform may be substantially weakened or reversed just at the outset of its implementation.

## **2 Fisheries, fisheries subsidies and 2002 EU reforms**

Fisheries are in crisis the world over, with overfishing, overcapacity and industry decline now common characteristics of the sector. The link between the present day crisis and past and present 'perverse' subsidy regimes is increasingly accepted, as reflected in commitments made at Johannesburg in 2002 and ongoing discussions within the WTO Doha Round of negotiations. There is a pressing need for a more sustainable approach, involving the dismantling of the most damaging subsidies and the very cautious treatment of all other subsidies.

EU fisheries and the EU fisheries sector are firmly part of the global fisheries crisis, generating problems within home waters and globally through the EU's 'footprint'. Most EU commercial fish stocks are outside safe biological limits, while overseas EU fleets have done more than their share to bring 75% of the world's stocks to the brink of depletion or beyond. Fish stocks and the marine ecosystem - like the economic health of the industry itself - have little chance of recovery unless EU fishing effort is brought down through significant reductions in the European fleet, which is in some cases as much as 40 % above capacity. In the EU, as elsewhere, subsidies have played a major role in capacity build up; subsidy reforms are thus also key in securing EU capacity reduction and, in turn, stock recovery and sustainable fisheries.

The 2002 CFP reform therefore represented a much needed turning point as regards EU subsidy policy. Since the early 1990s, a growing consensus has emerged about the stupidity of using EU funds to develop a sector's infrastructure whilst simultaneously paying for its dismantling. Apart from economic wastage, this was placing the sector on a less rather than more sustainable path, jeopardizing rather than reinforcing its overall economic situation and its contribution to fragile and heavily dependent fisheries regions. The 2002 CFP reforms were set to make public money work for fisheries management rather than against it, and thus to contribute to the EU's Treaty objective of sustainable development.

### **3 CFP 2002 reforms - EU promises concerning subsidies**

The 2002 reform process consisted of lengthy and often tense negotiations, the result of which was a set of legally binding promises contained in three new Regulations agreed in December 2002.<sup>1</sup> In the run up to the December deal, a series of political statements was made by the different EU institutions, revealing their varied positions.

The European Commission - and particularly DG Fisheries - led the way in proposing a strong package of subsidy reforms. It emphasized the need to introduce coherence to the EU's fisheries management system, combining traditional fisheries management tools (catch limits, gear restrictions, etc) with a more effective fleet policy to ensure a balance between fishing effort and resource availability. A reformed financial aid package would be central to this approach, contributing to the aims of the CFP rather than undermining them.

Ministers sitting as the Fisheries Council presented a less resolute and coherent view, with major differences on the subject of fleets and subsidies emerging during the reform negotiations. A block of countries in particular sought to defend the old subsidy regime. But while these retrograde proposals were able to weaken a few elements of the final reform package, they did not ultimately succeed at undermining the basic direction of the reform.

The eventual willingness of the EU Council of Ministers to accept meaningful subsidy reform was helped by parallel developments in the multilateral arena, where fisheries subsidies had emerged as a significant worldwide concern. After years of attention from the FAO, the OECD, the World Bank, and others - and after vigorous campaigning by leading international NGOs - the topic of fisheries subsidies had secured a place among the central issues of the WTO negotiations launched in 2001 in Doha, Qatar. The following year, heads of state gathered at the 2002 Johannesburg World Summit on Sustainable Development identified the elimination of harmful subsidies as one of the top global priorities for achieving sustainable fisheries.

Against this political background, and despite the sometimes difficult nature of the debate, the 2002 CFP reforms ultimately adopted by the EU did represent a fundamental and long-overdue change in the orientation of EU fleet and fisheries subsidies policies. The key 'promises' as regards subsidy reform consisted of the following core provisions:

- Phasing out of the most problematic subsidies – by 2004, subsidies to the construction of new vessels and the export of capacity to third countries (including under joint ventures) were to cease. In both cases, the agreement marked a major step forward for EU subsidy policy.
- Restriction of aid for equipment and modernization of vessels – the rules for this category of aid were tightened significantly, with aid generally required to avoid

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<sup>1</sup> Council Regulation 2369/2002 amending Council Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector; Council Regulation 2370/2002 establishing an emergency Community measure for scrapping fishing vessels; and Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

increasing vessel power or tonnage capacity, or the effectiveness of fishing gear. Though leaving some unfortunate loopholes for 'perverse' subsidies, and despite weaknesses in the monitoring and enforcing the provisions, the rules marked an important first start in restricting aid to projects that were not capacity enhancing.

These reforms to the principal EU fisheries subsidy rules were of a piece with important changes introduced to the new basic CFP Regulation 2371/2002, which sought to strengthen the link between fleet management and public aid, and progressively to reduce the EU's over-capacity. The whole system was to be backed up by more rigorous control and enforcement provisions, with aid conditional upon national compliance with fleet capacity targets ('reference levels'). A third legal instrument (2370/2002) sought to focus additional emergency aid on specific decommissioning required under to-be-agreed recovery plans, thus providing added incentives to agree plans and to ensure their rapid implementation.

Taken as a whole, this new body of subsidy rules was intended as the beginning of the end for the perverse subsidies that had contributed to EU overcapacity and overfishing in the past. As such, the 2002 package presented a turning point in EU subsidy policy, which was largely welcomed by the NGO community, as well as touted by progressive 'green' Member States.

The CFP reform also helped to reposition the European Communities within WTO discussions on fisheries subsidies, moving the ECs from the camp opposing new WTO disciplines into the camp of the demandeurs who were seeking bold new rules. With a series of forward-looking negotiating proposals, the EU not only aligned itself with the large majority of WTO member countries that supported fisheries subsidy reform, but also solidified the position it had sought in Doha as the leading advocate of "trade and environment" issues within the WTO system.

While the 2002 reforms heralded a new era in EU fisheries policy, however, the reforms could never insure against future reversals of the policy. Indeed, the core subsidy changes contained in Regulation 2369/2002 were time limited, running until the end of the current budgetary period (2000-2006). Unfortunately, the future of the 2002 subsidy policy reforms are now already in doubt. As the EU prepares to adopt new fisheries subsidies regulations for the financial period 2007-13, it appears that the EU - facing a new and more difficult political context - may indeed be stepping away from some of the key subsidy reforms secured just a few years ago.

## **4 The European Fisheries Fund – Reversing the trend?**

With the end of the EU's current financial period looming, discussions are now well advanced on a new fund – the European Fisheries Fund (EFF) – running from 2007 to 2013. At the outset of these discussions, the Commission led off with an initial EFF proposal<sup>2</sup> very much in line with the 2002 reforms. The Commission particularly sought

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<sup>2</sup> Proposal for a Council Regulation European Fisheries Fund, 14.7.2004, COM(2004)0497 final.

to enhance the linkage between permissible subsidies and the achievement of stock conservation or wider environmental goals.

Unfortunately, this initial proposal has not proved durable in the face of a political landscape rather different and more hostile to reform than that of 2002, as a result of at least two particular developments:

- First, since 2004 EU enlargement has added new coastal Member States wishing to secure some of the benefits of EU membership in the area of fisheries subsidies. This has effectively added Poland and Estonia to a block of 'pro-subsidy' countries<sup>3</sup> resisting further disciplines and in fact seeking to reverse earlier reforms.
- Second, the sector now faces a worsening economic situation, as increased fuel prices have further eroded the viability of an industry already weakened by overcapacity and stock depletion.

In a sign of wavering in the EU's subsidy reform policies, a recent Commission Communication<sup>4</sup> sets out short term measures intended to help the sector adjust to this latest crisis. In its own terms - which include national aid in the form of loans and guarantees to support rescue and restructuring - the Communication claims to be promoting temporary relief for an industry in crisis, without undermining the long term goal of subsidy reform. The shift in political context, however, raised fears about how this communication will affect the EU's long-term fisheries subsidy policy.

It now seems that these fears of policy reversal were not without basis. After facing tough opposition from a coalition of new and old Member States to its initial draft EFF regulation, a new Council compromise text, dated March 2006, reflects all too well the counter-reformist pressures evident today. Although still faithful to some elements of the 2002 subsidy reforms – such as the end of subsidies for building new vessels or for exporting vessels to third countries – significant changes have been made to the Commission's original EFF proposal. And beyond those changes already accepted by the Commission, many more are being called for by the 'pro-subsidy' group of countries, including a reinstatement of funds for new build and vessel export to third countries. Analyzed by major areas of subsidy reform, the situation is as follows (see also the overview table on page 2)

### **Aid for the construction of new vessels**

The 2002 reforms ruled out aid for vessel construction from 2004 onwards, ensuring also that fishing capacity removed using public aid would not be replaced. On this most basic issue, the 2004 EFF proposal remains faithful to the 2002 reforms, as does the current compromise text. However, the 'pro-subsidies' coalition of Member States is pressing for aid to be available for new builds, including in some cases where public aid has already been used to withdraw fishing capacity. Aid to young fishermen to buy

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<sup>3</sup> The 'pro-subsidies' block now includes France, Spain, Italy, Greece and Portugal, plus Estonia and Poland.

<sup>4</sup> Communication from the Commission on improving the economic situation in the fishing industry, 9.3.2006, COM(2006)0103 final.

new vessels is also being proposed by some Member States. Both changes would be fundamentally at odds with the 2002 reforms.

### **Fleet modernisation and investment**

Building on the important first steps taken by the 2002 reforms, the Commission's original 2004 EFF proposal sought to restrict modernisation or 'investment' aid to a few categories, including modernisation above the main deck for reasons of safety, hygiene, etc, storage of catches no longer allowed to be discarded, within the context of pilot projects and to reduce impacts on the environment. A single phase of gear replacement could be funded within the context of recovery plans, to improve gear selectivity or to meet environmental criteria going beyond that legally required. In general, these limits - although perhaps not as "watertight" as might be ideal - would have maintained the basic direction of the 2002 reforms away from subsidies that effectively increase fishing power.

The compromise text recently tabled by the Council, however, substantially weakens the Commission proposal, allowing: modernisation above and below the deck for safety, hygiene, etc purposes as long as increases in capacity related to tonnage are only above the deck and do not increase catch ability. (The pro-subsidy group would like to go further, calling for aid to support engine replacements and general modernisation above or below the deck - albeit supposedly without leading to increased capacity.) Other changes contained in the compromise text would allow two rather than one gear replacement if associated with selectivity improvements. Aid would also be available (as in 2002) to help compliance with new laws before they become mandatory.

These proposed compromises - including the clearly reform-reversing call by some member states once again to allow subsidies to "modernise" engines—are all couched in language that is meant to suggest fishing power will not be increased. But the reality is that these changes, if adopted, would open significant loopholes in the EFF rules, and could seriously undermine the 2002 CFP subsidy reforms. Given persistent problems as regards under-declaration of EU fleet tonnage and power, the increased fishing ability (technical 'creep') associated with new capacity, and general problems of relying on capacity as a way of controlling fishing ability or pressure, the extension of modernisation aid in the compromise text represents an important weakening of the EFF proposal. The bottom line is that an EFF regulation weakened in these ways would open the door to kinds of public aid that in the past have contributed to overcapacity and overfishing by EU fleets.

### **Permanent cessation of fishing**

One goal of the 2002 reforms was to ensure that aid for "capacity reducing" activities not indirectly wind up supporting new or expanded capacity. Consistent with this, the 2004 EFF proposal would have limited aid such aid to cases where vessels are actually scrapped or permanently reassigned to activities outside fishing non-profitable purposes. The new compromise text softens this to include 'profitable' purposes (e.g.,

the use of vessels in private enterprises) and for the creation of artificial reefs. This could open another crack in the armour of the 2002 reform. Even more disturbing is the proposal by some Member States to reverse outright the 2002 reform that prohibits public aid to the establishment of joint ventures and the export of vessels to third countries. This pre-2002 form of subsidy was among the most pernicious and damaging to fisheries outside EU waters.

### **Temporary cessation of fishing**

The 2004 proposal extended tie up aid beyond recovery plans, to also include emergency measures and management plans. Importantly, this was on the condition that the same amount of capacity tied up was also permanently removed from the fishery, effectively ‘sweetening’ capacity reduction measures. The 2006 compromise text limits aid to recovery plan tie-ups but – crucially – does not require permanent removal of equivalent capacity unless Member States wish to use more than EUR 1 million or 4% of their EFF allocations on tie up schemes. The pro-subsidies block of Member States is moreover seeking to extend ties-ups to cover all types of management plans, which potentially means all EU stocks.

The compromise text is also weak in allowing temporary cessation aid for vessels affected by non-renewal or suspension of fisheries agreements, or where international fishing opportunities have been substantially reduced. This provision was not included in the 2004 proposal.

Particularly in light of the fact that “temporary cessation” and “non-renewal of agreement” payments have in the past been used to help maintain oversized fleets despite the consequences of their own overfishing, the current compromise text concerning temporary cessation aid risks continuing and even rewarding excess capacity, rather than using this as part of a longer term capacity reduction strategy. It represents a step back from the 2002 reforms and the 2004 proposal; acceptance of further changes proposed by the pro-subsidy block would worsen the situation.

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All told, the multiple changes in the recent “compromise” EFF proposal threaten to do substantial harm to the integrity of the EU’s fisheries subsidy disciplines as set out in the 2002 CFP reforms. Importantly, they would open significant new loopholes, and seriously cloud the subsidy regime, making it less rather than more difficult to monitor and enforce. Such backward steps ought to be firmly resisted—and not proposed—by the European Commission, despite the pressure created in particular by the current fuel prices and wider economic context facing the sector. While the economic crisis may merit short term adjustment assistance, such as might be secured through a careful and limited implementation of the recent Communication, it should not be used to secure the long term weakening of the EFF.



## 5 Conclusions

The EU is on the brink of agreeing a new seven year subsidy regime, running to 2013. In the past, it has shown itself to be capable of taking positive, even courageous steps towards disciplining fisheries subsidies. A long history of subsidies to the sector and entrenched views on the importance of such subsidies to the survival of fisheries regions has made reform difficult and slow. The 2002 CFP reforms represented a major turning point, and the EU has since been able to stand firmly alongside the large majority of countries seeking to phase out damaging subsidies in both the WSSD and WTO contexts.

Given the overwhelming weight of opinion in favour of further disciplining fisheries subsidies, and the many years it has taken the EU to try to wean itself off 'perverse' aid schemes, it is vital that current reform discussions build on the 2002 breakthrough; yet they threaten to do the opposite. At stake is not simply how the EU spends its money but also the effectiveness of its entire fisheries and marine policy. It is difficult to imagine how the EU will deliver on its own internal commitments let alone its international targets (such as global fish stock recovery by 2015) if the fisheries subsidy regime is weakened in the way that current negotiations suggest.

A weakened EFF regulation also threatens to undermine the current WTO fisheries subsidy negotiations and the EU's standing there. Much to the frustration of many WTO members, the EU's latest negotiating position<sup>5</sup> is already watering down the welcome and vigorous statements submitted by the EU to the WTO following the 2002 reforms. The EU has an opportunity to lead and to help conclude these important fisheries subsidy discussions, but can do so only succeed if it is sincere - and seen as being sincere - about disciplining its own subsidies. It stands to lose credibility if it pretends to favour reform internationally whilst simultaneously reinstating elements of the old regime at home.

The delay in adoption of the new EFF regulation has also led to pressure for member states to accept a compromise quickly, so that programming for the 2007-2013 can begin. However, it would be a mistake to rush into a bad deal that affects EU policy for years, and could require several further reforms to reverse. If Member States feel that immediate circumstances warrant some flexibility in the EU's approach to subsidy reform, then this should be provided exclusively through a short term arrangement designed to overcome a short term crisis. It should not be allowed to reverse the reforms of 2002 and to undermine EU and international fisheries and marine policies for the best part of the next decade.

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<sup>5</sup> WTO Document No. TN/RL/GEN/134 (24 April 2006).

## 6 Table: EU Fisheries Subsidy Policy Reform - 2002 to 2013

2002 CFP reform agreement - Regulations 2369/2002, 2370/2002 and 2371/2002	2004 – European Commission proposal on a European Fisheries Fund 2007-2013	2006 – EFF proposal compromise text March 2006 [and positions of Member States]	Assessment
<b>Basic Regulation 2371/2002</b>			
Capacity withdrawn using public aid cannot be replaced at all.	No change	No change <b>[Pro-subsidies group EE, FR, EL, IT, PL, PT, ES - a proportion of capacity withdrawn using public aid to be replaceable for purposes of hygiene, safety and working conditions. Member States to decide whether this is through new build or modernisation]</b>	<b>Potentially negative</b>
<b>Amendments to subsidy regime 2000-2006 introduced by Regulation 2369/2002</b>			
Measures adopted should <b>not increase fishing effort</b> .	Operations financed by the Fund shall not contribute directly or indirectly to increasing fishing effort.	Operations financed by the Fund shall not increase fishing effort [some Member States wish this to be segment based.]	<b>Potentially negative</b>
From 2004, eliminate subsidies for the <b>construction of new vessels</b> . Until 2004, such aid is limited to vessels under 400 GT.	New build funding not eligible.	New build funding not eligible. <b>[Pro-subsidies group - funds to be usable for new build. Another group of MSs wishes to see funding for young people to buy first vessels.]</b>	<b>Potentially negative</b>
Aid for <b>permanent cessation</b> of fishing activities through scrapping vessels; and reassignment for non-profitable purposes other than fishing. Aid for <b>export of capacity</b> (including under joint ventures) only until 2004.	Aid for permanent cessation achieved only by scrapping or reassignment for non-profitable purposes.	Aid for permanent cessation achieved by scrapping, reassignment outside fishing but remaining within the EU register, or reassignment to create artificial reefs.  [Some Member States arguing for reinstatement of joint ventures or exports to third countries]	<b>Potentially negative</b>
Aid for <b>temporary cessation</b> for: unforeseeable circumstances, particularly those caused by biological factors – 3 consecutive months or 6 months between 2000 to 2006; where a fisheries agreement is not	Aid for temporary cessation measures for: <ul style="list-style-type: none"> <li>recovery plans, emergency measures or management plans - 1 year with possible extension of 1 year. The measures need to be in line with fishing effort adjustment plans, with at least the same amount of capacity</li> </ul>	Aid for temporary cessation measures for: <ul style="list-style-type: none"> <li>recovery plans - 1 year with possible extension of 1 year;</li> <li>measures taken under emergency plans - 3 or 6 months;</li> </ul>	<b>Negative/potentially very negative</b>

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2002 CFP reform agreement - Regulations 2369/2002, 2370/2002 and 2371/2002	2004 – European Commission proposal on a European Fisheries Fund 2007-2013	2006 – EFF proposal compromise text March 2006 [and positions of Member States]	Assessment
<p>renewed, or where it is suspended – no more than 6 months, with possible additional 6 months if there is a conversion plan;</p> <p>if a recovery or management plan is adopted by the Council or where emergency measures are decided by the Commission or Member States – 1 year with extension of 1 year.</p>	<p>permanently taken out within 2 years;</p> <ul style="list-style-type: none"> <li>natural disaster or other exceptional occurrence not the result of resource conservation measures – 6 months.</li> </ul> <p>Recurrent or seasonal suspension not eligible.</p>	<ul style="list-style-type: none"> <li>non-renewal of fisheries agreements or substantial cuts in opportunities - 6 months with possible extension of 6 months;</li> <li>natural disaster or national closures due to public health or other exceptional occurrence not the result of resource conservation measures - 6 months.</li> </ul> <p>Where Member States want to allocate more than 1 million EUR or 4 % of the national allocation the equivalent capacity needs to be removed permanently through scrapping or moving out of recovery plan areas.</p> <p><b>[Pro-subsidies group - extend aid to all types of management plans, as well as to increase the EFF expenditure for this area.]</b></p>	
<p>Aid for <b>equipment and modernisation</b> of vessels can not concern power or tonnage or increase the effectiveness of gear. That said, tonnage can be increased if this solely concerns improvements made above the main deck for the purpose of improving safety, working conditions, hygiene or product quality. Even then, the ability of vessels to catch fish should not be increased.</p> <p>[Following a separate amendment, Member States can since 2002 grant financial compensation to fishermen and owners of vessels where Community legislation imposes technical restrictions on the use of certain gear or fishing methods; this aid is intended to cover the technical adjustment and may not be paid for more than 6 months.</p>	<p>Investment on board vessels and selectivity is permitted in relation to:</p> <ul style="list-style-type: none"> <li>fishing vessels of 5 years or more, and concerning modernization over the main deck to improve safety on board, working conditions, hygiene and product quality. This can increase the tonnage of the vessel, provided that such modernisation does not increase the ability of the vessel to catch fish;</li> <li>keeping on board catches no longer allowed to be discarded;</li> <li>pilot projects for new technical measures; and</li> <li>reducing impacts on habitats and sea bottom and on non commercial fisheries, excluding fishing gear.</li> </ul> <p>Gear selectivity improvements can be funded if vessel within a recovery plan, is changing method and leaving</p>	<p>Investment in equipment and modernisation permitted in relation to:</p> <ul style="list-style-type: none"> <li>fishing vessels of 5 years or more to improve safety on board, working conditions, hygiene and product quality above or below deck. This can only increase capacity in terms of tonnage and if investment is above deck and does not increase ability to catch fish.</li> <li>keeping on board catches the discarding of which is banned;</li> <li>pilot projects for new technical measures;</li> <li>reducing impacts of fishing on non-commercial species [some MSs want fishing gear also to be eligible];</li> <li>reducing impacts on ecosystems and sea</li> </ul>	<p><b>Negative/potentially very negative</b></p>

Fisheries Subsidies – Will the EU turn its back on the 2002 Reforms?

2002 CFP reform agreement - Regulations 2369/2002, 2370/2002 and 2371/2002	2004 – European Commission proposal on a European Fisheries Fund 2007-2013	2006 – EFF proposal compromise text March 2006 [and positions of Member States]	Assessment
	<p>the fishery concerned to go to fishery where state of resource makes fishing possible. This can only be first replacement of gear.</p> <p>First replacement can also be funded if new gear is more selective, meets recognized environmental criteria and practices going beyond legal standards.</p>	<p>bottom.</p> <p><b>[Pro-subsidies group</b> - 1:1 engine replacement 'with no increase' in fishing capacity; and general modernization aid above or below deck as long as no increase in fishing capacity]</p> <p>Gear selectivity improvements only eligible if vessel affected by a fishing effort adjustment plan within recovery plan, is changing fishing method, and is leaving the fishery to go to a fishery where the state of the resource makes fishing possible OR the new gear is more selective and meets environmental criteria and practices going beyond EU law. Up to two replacements of fishing gear.</p> <p>First replacement of gear also to comply with new EU technical laws, before they are mandatory.</p>	
<b>Emergency aid for decommissioning Regulation 2371/2002</b>			
Funds to be used as additional scrapping aid under recovery plans.	No change	<b>[pro-subsidies group</b> - EFF financing should be made available before end 2006 to cover scrapping and tie ups relating to the fuel crisis].	<b>Potentially negative</b>

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- ensuring that the use of renewable natural resources is sustainable
- promoting the reduction of pollution and wasteful consumption



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