A Symposium on Access
to Environmental Information
and Government Accountability
in Fishing Subsidy Programmes

28-29 November 2000
Brussels, Belgium

Symposium Proceedings

Fishing in the Dark

A Symposium on Access t Environmental Information and
Government Accountability in Fishing, Subsidy Programmes
Sponsored by WWF and the European Policy Centre
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Brussels, Belgium

Symposium Proceedings

January 2001*

*This electronic version is a re-compilation of the Symposium's proceedings reflecting all major documents. Nevertheless, the layout of this presentation is slightly different to the hard copy, as the original electronic version could not be recovered.

WWF's *Fishing in the Dark* symposium was organized by WWF's Endangered Seas Campaign, in conjunction with WWF's European Policy Office. The European Policy Centre acted as co-host and sponsor. On WWF's staff, Karen Flanders was principally responsible for the organizing and production of the symposium, under the supervision of David Schorr. Significant contributions to planning and carrying out the symposium were made by Julie Cator, Leigh Ann Hurt and Julian Scola. Louise Heaps served as the symposium rapporteur, and administrative support was provided by Rebecca Karna, who also helped draft and produce these published conference proceedings. Support for publicizing the symposium was provided by *European Voice.* WWF's Endangered Seas Campaign is supported in part by a generous grant from the David and Lucile Packard Foundation.

WWF's Endangered Seas Campaign aims to guarantee that our children inherit a living planet abundant with fish and other marine wildlife by urging governments, businesses, local communities, fishers and conservation organisations to protect and restore our fisheries.

Specifically, the campaign is working to.

- Safeguard fisheries and marine biological diversity by establishing marine protected areas.
- Reduce wasteful government subsidies that contribute to overfishing.
- Create market incentives for sustainable fishing through the Marine Stewardship Council's new certification initiative.

For further information : www.panda.org/endangered.seas

WWF's European Policy Officer (EPO) is WWF's embassy to the European Union in Brussels. It was set up because WWF recognises the growing impact of the European Union, its laws and policies, on nature conservation not only in Europe but increasingly in the rest of the world. The EPO represents the conservation objectives of WWF's global network to decision-makers in the 'capital of Europe'. The EPO seeks to ensure that the European Union plays an environmental leadership role in world affairs and the European citizens play their full part in reducing damaging impacts on the earth's ecosystem.

For further information: www.panda.org/epo

TABLE OF CONTENTS

Introduction and Summary of the Proceedings

THE NATURE OF THE PROBLEM: TRANSPARENCY IN GOVERNMENT SUBSIDIES TO THE FISHING SECTOR

1. *Evidence of Poor Transparency in Fishing Subsidy Programmes*
   by D avid Schorr, WWF
2. *European Commission's Perspective on the Debate*
   by John Farnell, DG Fisheries
3. *Subsidies to Marine Capture Fisheries: The International Information Gap*
   by Ronald Steenblik and Paul Wallis, OECD

FISHING IN THE DARK: ACCESSING ENVIRONMENTAL INFORMATION

4. *Fishing in the Dark Presentation Summary*
   by Tony Venables, ECAS
5. *Case Study: Fisheries, Transparency and Participation*
   by TERRA, Environmental Policy Centre*
6. *The Application of European 'Right to Know' Laws to Fishing Subsidies* - A Technical Briefing Paper*
   by the Foundation for International Environmental Law and Development (FIELD)

IMPROVING TRANSPARENCY IN THE EU CONTEXT

7. *Position of the European Parliament*
   by Michael Cashmann, European Parliament
8. *Reforming European Union Fisheries Subsidies - A Briefing Paper**
   by Clare Coffey and David Baldock, IEEP
9. *Openness and Transparency: The State of the Debate in the European Union*
   by John Palmer, The European Policy Centre

VIEWS FROM THE FIELD

10. *Effects of Subsidised Distant Water Fleets on the Marine Environment and Local People in Western Africa*
    by Souleymane Zeba and Papa Samba Diouf, WWF-West Africa
11. *From the European Ombudsman's Office*
    by Jacob Söderman, European Ombudsman

Annex 1: Symposium Programme

Annex 2: Participants List

* These papers were commissioned by WWF.

INTRODUCTION

Public access to information about how government policies and programmes affect the environment is a fundamental element of responsible governance. But when it comes to governmental involvement in the fishing industry, this fundamental element is too often missing. In oceans around the world today, many major commercial fisheries are suffering a crisis of overfishing, even as some of the world's leading fishing nations continue to pour billions of dollars (and euros and yen, *etc.*) into subsidies that contribute to excess fishing capacity. Over the past few years, in part in response to an international campaign launched by WWF, the need to reduce and reform harmful fishing subsidies has drawn increased attention from policy makers. There is today general agreement that, at a minimum, governments should ensure fishing subsidies do not encourage overfishing. And in some national and international fora, efforts to subject fishing subsidies to more serious disciplines are under discussion. But among the most significant obstacles to reform is the absence of good and detailed information about how existing fishing subsidies are being applied and used.

Against this background, WWF, in partnership with the European Policy Centre, and with the support of *European Voice*, sponsored a two-day symposium, *Fishing in the Dark*, on 28-29 November, 2000, at the Dorint Hotel in Brussels, Belgium. Close to 80 individuals from nearly 20 countries attended the symposium, representing governmental, nongovernmental, business, and academic sectors. Of particular interest was the unusual mix of experts in fisheries policy with experts in access to environmental information and the public "right to know." The symposium focussed heavily on the situation within the European Union, but also covered other jurisdictions, including the United States.

The symposium provoked a lively discussion. Although there was no intention to reach any consensus or joint statement, the comments from the podium and from the floor reflected - without notable dissent - a broadly shared perception of the need to improve the "transparency" of fishing subsidy programmes. From WWF's perspective, the symposium provided support for the following basic conclusions:

> Access to information about fishing subsidies is a critical issue, not only for those seeking to reduce and reform harmful fishing subsidies, but for all stakeholders concerned with fisheries management policies.
>
> Currently, public access to information about fishing subsidies - and structures for public participation in the setting and administration of fishing subsidies - is far from adequate. In particular, it is not generally possible to obtain information about the specific applications of fishing subsidies sufficient to judge their real impacts on fish stocks or on fishing communities.
>
> While there are some rules and institutional mechanisms in place to promote access to information about fishing subsidies, these are in general poorly implemented and are often inadequate even on paper. Current trends are towards building and strengthening these mechanisms, but there is still little assurance that effective changes will come soon.
>
> The obstacles to improved transparency are both technical and political. Significant work remains to be done to build on existing structures. But more

fundamentally, in many cases a change of institutional culture will be required if real openness is to be achieved.

WWF feels that the symposium reported here shed significant light on the depth of these issues and on their relevance. Traditionally, the areas of fishing subsidies and public access to information are dealt with as separate issues. *Fishing in the Dark* was an original exploration of these two issues together. The symposium began with several questions in mind. Participants and organizers alike wanted to learn about the scale of subsidies to fisheries, the extent of the consequences of these subsidies, the experience that has been gained in efforts to collect information about them, and the reasons for the difficulty in doing so. In the debate and discussion surrounding these questions, several factors contributing to the failure of transparency in fishing subsidies were identified, including institutional divisions within governments; insufficient data collection; inadequate monitoring and reporting; and inadequate structures for public participation in the administration of fishing subsidies. WWF hopes that this symposium makes a positive contribution to addressing these problems, and to putting an end to government subsidized "fishing in the dark".

The present publication collects the written presentations submitted by symposium panellists. A summary of the symposium panel presentations and discussions follows this introduction, as an aid to the reader and a record of the proceedings. Naturally, the summary should *not* be seen as a synopsis of the papers that follow - some of which offer considerable depth - but only of the oral remarks made from the podium. Moreover, this summary does not constitute a consensus document and obviously cannot reflect the complete views and positions of all participants.

Day 1 Tuesday, 28 November 2000

The symposium opened with welcoming remarks from **Tony Long, director of WWF's European Policy Office,** and **John Palmer, director of The European Policy Centre**. Mr. Long chaired the first day of the symposium proceedings.

Panel I -The Nature of the Problem

Panellists in the first panel treated the subject of fishing subsidies and access to information about them in general terms, highlighting both the significance of current efforts to obtain good data, and the limits on those efforts. **David Schorr, of WWF's Endangered Seas Campaign**, presented an overview of the fishing subsidies problem, citing estimates that current fishing fleets worldwide may be as much as two and a half times the capacity that can be used on a sustainable basis, while the World Bank estimates the level of government subsidization at more than 25% of the landed value of commercial fish catches. Governments associated with particularly high levels of subsidization include Japan and the EU, with state involvement in the fishing sector apparently very high in China as well. While WWF does not view subsidization as harmful *per se* (and actively supports government investment in promoting sustainable fisheries), it appears that most fishing subsidies today tend to increase or maintain excess fishing capacity. The current lack of good monitoring and reporting frustrates groups and individuals who are seeking to reform fishing subsidies on the basis of accurate information.

John Farnell, director, Directorate-General for Fisheries of the European Commission, noted that the European Commission agrees subsidies pose a significant issue in the consideration of the future of EU Common Fisheries Policy, and predicted that a forthcoming

paper by the Commission will reflect the view that subsidies may at times contribute to overfishing. Mr. Farnell offered some details about EU expenditures in fisheries. He also agreed on the importance of transparency in fishing subsidies, and welcomed efforts to improve the public flow of information. However, Mr .Farnell expressed the view that the European Commission has nothing to be ashamed of with respect to its own practices in this area, and described some recent and forthcoming efforts by the Commission in this regard. Even while noting that European practices remain susceptible to improvement, Mr. Farnell concluded that transparency in EU to fishing subsidies generally exceeds that of other governments, and closed with the hope that this symposium would encourage improved transparency in other parts of the world.

Ron Steenblik, senior policy analyst, Organization for Economic Co-operation and Development (OECD), reviewed several recent intergovernmental efforts to gather information about fishing subsidies, including a recent Asia-Pacific Economic Co-operation report which Mr. Steenblik quoted in support of the view that the majority of fishing subsidies are currently doing more harm than good. After reviewing existing sources that suggest the massive scale of government subsidization, Mr .Steenblik reported on the challenges faced in finding and collecting data about fishing subsidies from governments. He noted that the results can be highly variable, with important data often found only in obscure reports, if it exists at all. For example, Mr.Steenblik noted that few governments record how tax breaks are applied. He also described inconsistencies and "grey areas" sometimes found in reporting.

Following these first panel presentations, the floor was opened. The ensuing discussion centred around the lack of data on subsidies. One participant asked about the trends of subsidies in the short and long term, and this question sparked debate about the inability to assess trends, to make links between poverty and subsidies, and to analyze the effects of subsidies on local, artisanal fishermen in developing countries. Among the points raised were that without good data, there is an inability to answer these questions; that is even difficult to tell whether the amount of subsidies is increasing or decreasing; and that there is little data available on China, which is known to have had a major upward shift in fish production.

Panel II -Fishing in the Dark

Panellists in the second round of presentations explored the current debate on transparency in the EU and elsewhere. There has been progress in the move towards transparency in EU governmental institutions in the past several years, but access to environmental information remains a problem, as is the case with obtaining information about government subsidies to the fishing sector. **Tony Venables, director of European Citizen Action Service** (an independent Brussels-based advocacy group that works on access to EU documents and transparency), gave a critical review of the posture of "access to information" issues in the EU context. He suggested that despite evident advances in the legal framework, civil servants are becoming more protective of their information as a sort of backlash to the current transparency reform movement. He considered that it should be a priority for EU institutions to pursue a system that establishes a true "open door" policy on public access to information. **Carolina Lasen Diaz, staff attorney at the Foundation for International Environmental Law and Development (FIELD)**, noted that EU citizens are demanding to be kept better informed than in the past, as are citizens around the world. She presented a technical overview of the EU legal frameworks for the access to information, especially environmental information, including the Århus convention, Directive 09/313, the 1993 Code of Conduct, and Article 255 of the EC Treaty. Yet as environmental groups are pushing for and being granted more transparency,

governments are still commonly refusing access to information by invoking a variety of "exceptions" to the transparency rules, including confidentiality of institutional proceedings and protection of public interest.

Karen Flanders, consultant for WWF, made reference to a document prepared for the symposium by WWF entitled *Evidence of Poor Transparency in Fishing Subsidy Programmes*, and reported on WWF' s coordinated effort to obtain information about fishing subsidies from governments across Europe. In the EU, WWF requested Member States to provide drafts of new national planning documents for structural funds in the fisheries sector, as well as detailed information about how such funds were spent during the previous six year period of structural funds. WWF sought information underlying a recent OECD report on government financial transfers, as well as information on state aid (these were requested from several non-EU countries as well). WWF received variable responses to its requests, with a couple of countries providing significant information while others refused to reply or gave very partial responses. WWF believes that countries which have failed to respond fully may not have met their legal obligations under EU law. **Fe Sanchis-Moreno of TERRA Environmental Policy Centre** gave a more detailed description of the requests submitted to Spain by her organization together with WWF- Spain. WWF-Spain has made several efforts to obtain data about fishing subsidies. First, they sought information on payments made under a fisheries access agreement between Spain and Argentina. After repeated attempts, they were finally granted some access. WWF-Spain then joined in WWF's broader European effort to obtain information (as described by Karen Flanders), and additionally requested that the Spanish government grant WWF (and others) an opportunity for meaningful consultation and participation in the course of Spanish decision-making about the application of EU structural funds. These efforts were met first with silence, then with an explicit refusal by the Spanish government. Sanchis Moreno concluded that changing laws to encourage transparency will not succeed without a more profound change in government culture. The legal framework for participation is at least partly in place, but (at least in Spain) the system is not working.

The discussion following the panel touched on a number of topics, with many participants expressing agreement on the need for better information, and on various shortcomings of the current system. Some participants commented on the need to improve the public flow of information on fisheries management generally, and not only regarding subsidies. For example, it would be useful to have better data on capacity and landings as well as on subsidies, and the public should have access to this information as well. Another participant wondered if it would be possible to invoke international law to affect the impact of subsidies on poverty in developing countries, while another added that many practices of fleets operating in other countries' waters are not consistent with the Food and Agriculture Organization Code of Conduct for Responsible Fisheries. Other international agreements that will become useful in the push for increased transparency are the European Community Biodiversity Strategy and the UN Convention on Biological Diversity. Participants also debated using the World Trade Organization as a mechanism to access information. Individuals do not have a right to demand information from the WTO, but the WTO can ask for information from a government. However, it is not the current culture of the WTO for governments to challenge each other aggressively on access to subsidies information, despite the fact that lack of data may impede countries from bringing legal challenges to trade-distorting subsidies. Scott Burns (head of WWF' s Endangered Seas Campaign) clarified that WWF is not opposed to subsidies *per se*, but that current expenditures on fisheries are not in line with sustainable development.

Following the second panel, there was a symposium reception which featured a presentation by **Souleymane Zeba, director of WWF's West Africa Program Office**, on the effects of subsidized distant water fleets in Western Africa. Mr. Zeba described a number of situations in

which impacts are being felt both on the shore and at sea, in particular by local communities and artisanal fishermen. Mr.Zeba urged symposium participants to take seriously the human and environmental consequences of unbalanced fishing policies.

Day 2 **Wednesday, 29** November **2000**

The second day of the symposium opened with a brief recap of the previous day' s discussion by **David Schorr**. Mr. Schorr chaired the second day' s proceedings.

Panel III Comparing Transparency Practices-Norway and the United States

The question of improving public access to environmental information is clearly alive within a number of governments around Europe and elsewhere, although governments sometimes find they face significant challenges in arriving at the optimum policies. **Dag Stai, fisheries attaché at the Norwegian Mission to the EU**, reviewed the situation in Norway. Most information is accessible in Norway, other than that which would threaten public security and that which would call personal confidentiality into question. Since the 1960s, Norway has had annua1 negotiations with the fishing industry. The outcome of these negotiations must be agreed upon by the Norwegian Parliament. The budget lines agreed on are then put into a document and are accessible to the public. Norway also has an institution like the Court of Auditors that audits public spending. Spending for 2001 will be about 15 million Euros (120 million Krone). Overcapacity in Norway is seen as a major problem, despite quotas, and this creates economic pressure to circumvent regulatory measures. A quarter of the structural measures are targeted at reducing the overall capacity of the fleet, and there is discussion about how to do this.

Matteo Milazzo, senior policy advisor, U.S. National Marine Fisheries Service, spoke from his perspective within the U.S. government, and based on his experience as the author of a leading World Bank report on global fishing subsidies. Despite a well-developed culture of access to information in the U.S., Milazzo reported, the problem of transparency in U.S. fishing subsidies persists in at least three ways. First, there is a difference between explicit, budgeted subsidies and indirect subsidies. Tax and lending policies-which form a major portion of U.S. fishing subsidies-are implicit, and it's difficult to get accurate information about the impact of these policies. Another problem is the interagency process in the U.S. government. Not all subsidies programs are administered by the same federal agency, and state and local subsidies programs don't always require approval from the federal government. These conditions contribute to inadequate data. Finally, there are cross-sectoral subsidies that confuse reporting. Other subsidies, such as subsidies to agriculture, may have an adverse effect on fisheries through damage to habitat, but do not get counted as part of subsidies data. Milazzo suggested that government watchdog agencies could play a role in producing an independent expert report and that OECD should continue to play a role in doing economic analysis of fisheries.

Following these presentations, questions from the floor sought additional details about current mechanisms in Norway and the U.S. for stakeholders to participate in the development of fishing subsidies policies. Stai responded that Norway does not have processes exactly like those in the EU *(e.g.,* the "Multi-Annual Guidance Plan"), but that there the annual negotiations with the fishing industry provides avenues for participation. Mr. Milazzo described the use of regional fisheries management councils in the U.S., saying that participation is not a problem for those represented on the councils, but that the composition of the councils (where industry is by far the most heavily represented) has sometimes been the subject of debate. Subsequent questions focussed on the trends in fishing subsidies in Norway, and on whether Norwegian fishing capacity has been exported (as it has been from the EU). Mr. Stai reviewed the large Norwegian subsidies reductions in 1990, and doubted that much Norwegian capacity had been exported.

Panel IV Improving Transparency in the EU Context

The fourth panel focussed on proposed changes to transparency mechanisms in the EU, with an emphasis on increased stakeholder participation and monitoring. **Michael Cashman, member of the European Parliament**, discussed his ideas for amending the newly proposed-EU regulations on access to documents. From his position on the EP' s Committee on Citizens' Freedom and Rights, Justice and Home Affairs, Mr. Cashman has taken the lead in the Parliament in pushing for improved public access. His proposal is an effort to counter the mutual misunderstanding and mistrust that exists in some places between civil society and government. Among other recommendations to strengthen transparency, his proposal reduces the number of exceptions allowing the Commission to refuse access from 16 to 6. Mr. Cashman also proposes that these exceptions be discretionary rather than mandatory. He calls for recognition of a system of classification that would help to coordinate standards among government institutions, and provides a mechanism for the public to request certain information about Member States. Mr.Cashman considered that better transparency will be fundamental to a more effective EU.

Another important step in improving transparency in the European context is the ratification of the Århus Convention. **Fe Sanchis Moreno, of TERRA Environmental Policy Centre**, reported that the Århus Convention guarantees full public access to information, participatory rights, and justice in environmental matters. With ratification expected by the summer of 2001, Ms. Sanchis Moreno reviewed the steps being taken towards implementation in the EU. Among the technical issues in play are the definition of "environmental information" (which Sanchis Moreno sees much improved under the Convention), the trend towards more limited and balanced exceptions, and the reduced time limits for governments to respond to public requests. Ms. Sanchis Moreno concluded that many nongovernmental organizations are optimistic about the trends in the formal rules, but she joined earlier speakers in emphasizing that the practical realities of implementation will require a shift in institutional cultures.

Clare Coffey, of the Institute for Environmental and-Economic Policy, concluded the panel with a review of the mechanisms for implementing the Financial Instrument for Fisheries Guidance (the heart of the EU fisheries structural funds subsidies), focussing on participation, monitoring, and reporting. After reviewing the anatomy of the decision making process, Ms. Coffey offered a critical review of its structure and functioning, finding substantial reasons for disappointment. Processes for requiring attention to environmental reports through "integrated evaluations" were not adequately used. Indicators employed are not giving valuable information about environmental outcomes and fail to focus at a sufficient level of specificity. At the back end of the process, structures for monitoring and reporting remain poor. Ms. Coffey concluded that there remain opportunities for improvement, including through raising the level of reporting and public participation. Action will be required, however, to achieve these.

The discussion following the panel focussed on both political and technical dimensions of the situation in the EU. There was strong interest in hearing Mr. Cashman's predictions for the future of his reform proposals. Mr. Cashman gave reasons to be hopeful as well as cautious, and warned against expecting "perfection." Several participants discussed the quality of information being produced by existing mechanisms, including a recently constructed EU database. There was a general sense that it remains too early to know whether recent developments will lead to substantially better information flow. The relationship between technical and political issues was highlighted by a discussion of whether certain kinds of

internal working documents of the Council, Parliament, or Commission should be available to the public. Mr. Cashman argued for limits here, saying that public servants must be allowed to "brainstorm" without fear that their every thought will be revealed for public debate.

Going to Court -War Stories

Following the fourth panel, **Dr George Berrisch, LLM, of Gaedertz Law Firm** took the podium to describe his experience litigating one of the leading "access to information" cases brought so far in the EU. As a matter of coincidence, the petitioner in that case was WWF. Brought in 1991, the case involved access to information about a decision to locate a government office in Ireland on environmentally sensitive land, with the support of EU structural funds. WWF's efforts to receive documents from the government were met with refusal. At the end of the day, WWF won its court battle-and a ruling that helped establish EU law-but still never succeeded in obtaining the requested documents from the EU, which continued to raise other objections to their release. While giving the symposium a flavor of the technical issues in such a case, Mr. Berrisch described some of the realities that constrain potential litigants, including political considerations and the financial costs of lengthy legal battles. Mr. Berrisch noted that the European Commission has said that access to documents should be given in "99%" of the cases, but that the exceptions sometimes threaten to swallow the rule. He concluded that it is easier to win one battle in the course of a legal action than to win the war, and that current cases point to the need to consider further reform of the many exemptions used by the EU to deny access.

Luncheon Address

Over lunch, the participants heard a presentation by **Olivier Verheecke**, who delivered his remarks on behalf of **EU Ombudsman Jacob Söderman**. Mr. Verheecke reviewed the involvement and keen interest of the Ombudsman's Office in questions of transparency and access to information. The Ombudsman's Office provides the principal alternative to litigation in the EU for citizens to challenge refusaIs by Member States to give access to government-held information.

Following lunch, symposium participants broke into working groups organized around three topics: (1) information needs relating to fishing subsidies; (2) using and building relevant international norms; and (3) increasing transparency in EU fisheries policy. The symposium reconvened in the afternoon to hear a final presentation by John Palmer, and to hear reports from the working groups.

Final Keynote: The Unfinished Battle for Openness and Transparency in the EU

Bringing a wide range of experience in journalism and in politics to the symposium's concluding presentation, **John Palmer, director of the European Policy Centre**, gave a presentation on the past and future of the fight for increased access to public information in Europe. He recollected the substantial evolution towards increased levels of transparency against the background of a "top-down" history of building the EU. Mr. Palmer noted several current challenges. First, he noted the need for more comprehensive provision of records and documents. Some elements of the system are more open than others. The Commission, for example, is relatively open with its documents, particularly in comparison to the Council. The level of practice is variable among Member States as well, with Sweden providing a leading positive example. Mr. Palmer noted imbalances in EU and Member State consultative processes. The level of openness sometimes depends on the character of the person or organizations seeking involvement, with non- governmental environmental groups sometimes among those given less rather than more advance consultation .

Mr. Palmer offered three concluding thoughts: First, that the transparency debate needs to be approached more holistically, noting that the fight for transparency is happening too often on a piecemeal basis. Second, that stakeholders should take advantage of the Swedish EU presidency in 2001. Compared to the other Member States, the Nordic countries are more open to transparency, and Sweden can be expected to establish a new benchmark. Third, that transparency be systematized in a broader constitutional rights setting, with additional protections for citizen access given the character of basic constitutional norms. Mr .Palmer closed with a reference to the importance of NGOs in pushing transparency. He urged groups to ensure that the European Parliament is being fully informed, to bring aboard some of the important regional players, and to use the media to the fullest to ask the right questions.

Working Group Reports

Following Mr. Palmer, participants heard from the three working groups rapporteurs. **Colin Barnes, of the Marine Resource Assessment Group**, reported on Group I's discussion of "specific information needs" related to fishing subsidies. The group discussed the complex nature of the relevant information needs, noting at least six different classes of subsidies and a dozen specific subsidy types. Understanding that both positive and negative subsidies exist, there was a tendency to focus on those related to market distortions. The group agreed that there are some positive impacts of subsidies, but that the overall balance has been negative. Difficulties in analyzing the effects of subsidies arise in part because subsidy impacts are difficult to disaggregate from the impacts of other causes of depleted fish stocks. Moreover, cross-sectoral subsidies further complicate efforts to obtain data. The main challenge appears to be achieving policy coherence, which also requires overcoming institutional divisions within the EU. The group then discussed in some detail which stakeholders and decision makers need access to subsidies information, including a broad range of governmental and nongovernment actors. Some emphasis was given to the need for stakeholders in developing countries to have improved access, particularly recognizing the limits on their resources for obtaining information. The need for regional approaches to information about fishing subsidies was also noted. Regarding specific information gaps, the group focussed on the absence of detailed and specific information about subsidy programs and their impacts. The need for monitoring and evaluating fishing subsidies on a continual basis was also discussed.

Daniel Owen, a private barrister from the U .K., reported on Group II's discussion of the role of international instruments. The group worked to identify existing instruments, and then to discuss potential improvements or reforms. The group focussed principally on the existing

rules within the WTO, and particularly the WTO subsidies code. The group also discussed the Århus Convention in further detail. Before turning to the potential for future reforms, the group discussed the need to achieve full consensus on the operation of the existing codes. With regard to reforms, and without pretending to have reached any consensus, the group generally supported the view that further steps need to be taken to reduce and reform environmentally and socially harmful subsidies. The group discussed whether some development in WTO rules could assist, and focussed on the need to protect the ability of fishermen not only to sell their fish into foreign markets, but to be able to catch fish in the first place. WTO rules that focus on export market distortions could thus grow to look more directly at production distortions. The group also discussed the continuing failure of the WTO subsidy notification system, and recommended reform of the current WTO questionnaire to include environmental impacts within the contents of notifications. With regard to the use of international rules and institutions for dispute resolution the group discussed whether the WTO would be the most appropriate forum for hearing disputes over fishing subsidies, particularly when the focus is on impacts on fish stocks. Some group members felt there must be a strong role for regional fisheries management bodies.

Finally, **Julie Cator, of WWF's European Programme Office**, reported on Group III's discussion of prospective reforms to increase transparency in fishing subsidies in the EU. The group felt the need for increased transparency in fishing subsidies is real in the EU, but it also goes beyond fishing subsidies, into the broader set of information relevant to the Common Fisheries Policy. The group felt that good information is needed to make good policy decisions, especially in the context of adaptive management. Turning to how improvements might be achieved, the group felt that the policy framework is roughly in place, but that implementation has been lacking. The group developed five points for future work: (i) That it is mainly the responsibility of Member States and of industry to collect the necessary data, although the precise data needs require further clarification (as discussed by Group I). The new EU regulations may address some of these needs, but more attention is due. (ii) EU member states need to work to harmonise their information and data collection, making the "goal posts" even for all players. (iii) The new EU access to information regulation now being discussed is very important, and stakeholders should work to ensure it is strengthened and fully applied. (iv) Regarding structural funds, several steps to open the process might be taken, including for example giving the public access to the proceedings of national monitoring committees, ensuring greater stakeholder participation in decision processes, and ensuring that DG-Environment and other relevant Directorates General are better integrated into the process. (v) NGOs have a unique role in pushing the transparency issue, particularly given their relative independence from the EU political process. The group closed its discussion by returning (without reaching conclusions) to the theme of European attitudes towards confidentiality and the prevailing culture regarding openness.

Closing Remarks

David Schorr led off the closing remarks by making three points. First, that this symposium had brought together two distinct communities of policy interest-on fisheries and on access to environmental information-for the first time. Mr. Schorr felt that the discussion over two days clearly indicated the critical link between these two issues, and validated the need for further work on transparency and participation in the context of fishing subsidies in particular. Second, the presentations and discussions clearly revealed that the public debate over fishing subsidies and over access to environmental information have each separately reached critical crossroads in their development. The fishing subsidies issue is now fully in play in Europe and globally. The access to information debate, already further advanced than the fishing subsidies debate, is at the start of a new period of rapid growth. Third, the policy making trends in the two areas are generally positive, with some of the needed infrastructure already in place and with a rough consensus on the proper direction for the future beginning to emerge. But Mr. Schorr did not find in these facts any cause for complacency. On the contrary, while the trends are positive, substantial technical and political challenges remain.

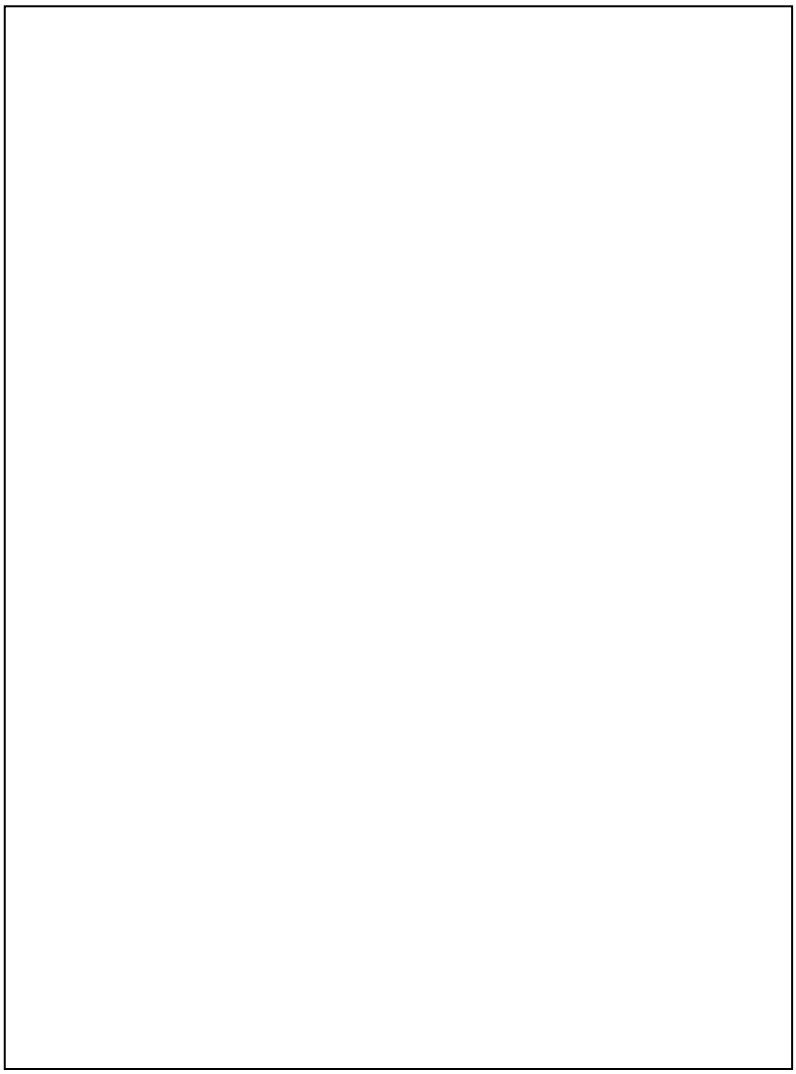
Regarding technical issues, Mr. Schorr noted the complexity revealed by the symposium, and the numerous calls for further work on the issue. He noted the range of concrete ideas that had been brought forward, including proposals to include budgets for improving transparency in specific government programs, calls for renewed litigation to improve existing EU norms, ideas for new reporting and monitoring mechanisms, and proposaIs for stronger international rules. Mr.Schorr suggested that a basic challenge will be to integrate efforts, and to promote integrated institutional solutions. For example, Mr. Schorr pointed out the need to integrate the work being done on fishing subsidies within the FAO with the developing conversation at the WTO.

Mr. Schorr noted some surprise at the relative lack of sharp debate over political issues in the course of the symposium. While some differences of view were clearly revealed, the symposium might leave one with the impression that the principal obstacles to improvement are technical. But Mr. Schorr recalled the remarks that had come repeatedly from the podium and from the floor regarding the need for a change in political culture to achieve real progress in openness. One participant, he noted, had called for intensive training programs for government officers to help acculturate them to a new climate of public exposure. Mr. Schorr felt that these political and cultural challenges remained very real, and looked to the future for opportunities to confront them.

Finally, **Tony Long, director of WWF's European Policy Office**, formally closed the symposium. Mr. Long noted in particular that the months ahead will bring new opportunities to extend work on the themes developed by the symposium. In particular, he noted the intention of the European Commission to bring forward a "green paper" on EU fishing policy. He also noted the importance of the Swedish presidency of the EU to questions of transparency. Mr. Long then congratulated the symposium participants on the quality of their two day discussion, and closed with thanks to the participants, speakers, staff and cosponsors of the event.

Evidence of Poor Transparency in Fishing Subsidy Programmes

A Background Report by WWF



Evidence of Poor Transparency in Fishing Subsidy Programmes

A Background Report by WWF

This report was authored by David Schorr with research assistance by John Virdin and Karen Flanders. It was prepared for WWF's Endangered Seas Campaign, in conjunction with the Sustainable Commerce Program at WWF-US. It was first presented at *Fishing in the Dark*, a symposium to promote improved transparency and accountability in fishing subsidies, held 28-29 November 2000 in Brussels, Belgium.

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Towards Rational Disciplines on Subsidies to the Fishery Sector, September 1998

1. Introduction

Over the past several years, various efforts have been made to examine government subsidies to the fishing industry. Whether these studies have been conducted by governments, environmental groups, international institutions, or scholars, they have all shared one basic characteristic: they revealed that detailed and reliable data about fishing subsidies and their impacts is very hard to find. Sadly, nearly all of the governments that grant significant levels of support to their fishery sectors have failed to give the public good access to information about their subsidy programmes. In some cases, these failures even appear to violate domestic or international legal obligations that require better transparency.

This background report briefly reviews some of the current evidence of poor transparency in fishing subsidy programmes. After a discussion of efforts to collect information about fishing subsidies by the WTO, the World Bank, UNEP, the OECD, the European Court of Auditors, and the U.S. Congress, the final section of this report describes the status of a current initiative by WWF to obtain information about fishing subsidies from the European Union and several of its Member States.

It should be noted that many of the examples given below demonstrate how difficult it has been for investigators even to catalogue the basic types and amounts of subsidies currently in use. For the purposes of ensuring true governmental accountability, or for achieving even modest reforms of existing subsidy programs, substantially more detailed information will be required. Today, it is difficult even to tell how much governments are really paying in aggregate. If policies are to be improved tomorrow—so that their conflicts with the goals of responsible fisheries management are reduced—it will be necessary to know precisely how fishing subsidies are being used, by whom, where, and when. No government today provides information sufficient to answer these basic questions about how billions in taxpayer money is being spent.

Our basic conclusion is stark: whether for lack of will or lack of ability to open their books, governments are hiding the truth about their fishing subsidy programmes from the public.

2. The Experience of Multilateral Institutions

A. The World Trade Organization

One of the most important mechanisms for collecting and disseminating information about fishing subsidies is the so-called "notification obligation" under the World Trade Organization's Subsidies Agreement. This Agreement—which constitutes the leading body of international law disciplining national subsidies—requires that every WTO member formally notify the WTO of each subsidy the government grants. This broad notification requirement is much more than a clerical procedure. It is a fundamental substantive obligation, which the inaugural chair of the WTO Subsidies Committee called "of critical importance to the effective operation of the Agreement."[1] At present, in fact, WTO notifications constitute the single richest source of publicly available information about particular subsidies granted to the fishery sector.

Unfortunately, the obligation to notify the WTO of fishing subsidies is honored mainly in the breach. Two years ago, WWF issued a report that included a careful examination of WTO notifications, concluding that fewer than one fishing subsidy dollar in ten had been duly reported to the WTO.[2] The report singled out Japan as by far the most delinquent, and also noted significant failures to notify by the United States. The EU was praised for its better compliance, but was still found to short in its reporting by as much as $300 million annually.

WWF's report also found that those notifications which have been submitted frequently provide only the barest responses to the WTO's standard questionnaire. In most cases, it has been essentially impossible to know what actual use was made of the subsidy, under what precise legal authority it was granted, or what likely market impact (not to mention impact on fisheries) the grant may have.

In the two years since WWF first accused governments of all but ignoring this important international legal requirement, WTO notifications of fishing subsidies have improved somewhat, although only sporadically. With the exception of one significant notification by the Japanese—who revealed some new data on tax deferral programmes—the level of reporting has remained essentially the same. The retroactive Japanese notification covered only the years 1993 through 1996, and referred only to one out of the multiple subsidy programs the Japanese are widely thought to employ. Since 1998, the Japanese have returned to their practice of omitting monetary amounts from their WTO notifications of their tax deferral programmes.[3]

On a worldwide basis, all of this is evidence of a stunning disregard for the Subsidies Agreement's transparency requirements. The bottom line remains that the vast majority of current fishery subsidies are maintained in outright violation of one of the WTO's central rules for disciplining them.

B. Other Multilateral Institutions

A growing list of intergovernmental bodies have conducted studies of fishing subsidies. All demonstrate the continuing problem with lack of good data.

World Bank — One of the first—and still most authoritative—efforts to review global fishing subsidies was brought forward by the World Bank in 1998.[4] The paper was authored by Matteo Milazzo, an official with the U.S. National Marine Fisheries Service, who collected information from a variety of sources, including information about government budgets that he obtained through U.S. diplomatic channels. Despite working under the auspices of the World Bank, and with what must be considered excellent and extensive data resources, Milazzo concluded that his study was "seriously encumbered by a woeful lack of up-to-date and reliable information."[5] Milazzo further concluded that "[t]ransparency is generally insufficient [and] informaiton on major players like China and most developing countries is woefully inadequate."[6]

United Nations Environment Program — Also in 1998, UNEP brought forward a review of the link between subsidies and overfishing. The report noted that its efforts to estimate levels of subsidization had been "hampered by the lack of transparency in the present global system of fishheries subsidies."[7]

Organization for Economic Cooperation and Development (OECD) — In the fall of this year, the OECD published a new study of fishing subsidies in OECD countries.[8] It is the most significant effort to profile fishing subsidies since the 1998 World Bank paper. The study was based mainly on information provided to the OECD by member governments, in response to questions posed by the OECD Secretariat. While the study is a welcome advance in the international work being done to reveal global fishing subsidies, it appears to have suffered from national reports that varied substantially in their quality. Discrepancies between the subsidies reported to the OECD and those reported or discovered elsewhere raise questions about whether the OECD report is complete.[9] In any case, the information reported in the OECD study remains at a high level of generality. Even when the issue is discussed at an aggregate level, and done

under the auspices of a trusted and government-controlled entity such as the OECD, the flow of information from governments remains less than desirable.

3. National Experiences

A. The EU Court of Auditors Report

In 1998, the European Court of Auditors carried out an audit of an EU subsidy programme that seeks to reduce the domestic fishing capacity of EU fleets by encouraging joint ventures between EU fishermen and foreign interests to use EU vessels for fishing outside EU waters.[10] The audit is, so far as WWF is aware, the only detailed government review of a major fishing subsidy programme available to the public anywhere in the world. It is also an especially interesting audit because the programme in question reflects a candid admission by the EU that its domestic fleets have exceeded sustainable capacity levels. In this sense, it is a programme that has, at least in parochial terms, an objective linked to achieving sustainable fisheries management. On the other hand, the programme also reflects the willingness of the EU to solve its own overcapacity problems in a way that often results in exporting those problems to the waters of other nations or to the global commons.

Whatever the benefits or shortcomings of how this subsidy programme was designed, the Court of Auditors report reveals profound problems with how it has been administered. It found that, despite grants totaling nearly 300 million ECUs[11] from 1991 to 1997, the programme had "practically no effect on the overall fishing activity in Community waters."[12] This result was linked to a remarkable series of failures to administer the subsidy programme in an acceptable fashion, in some cases bordering on the toleration of fraud. Among the specific findings of the Auditors were:

- subsidies granted to support the fishing activities of at least five vessels after these had sunk in marine accidents;

- subsidies granted to vessels that had been inactive for a considerable time prior to receiving subsidies, despite the fact that the subsidies were intended to reduce the level of fishing activities in EU waters;

- subsidies that were granted to vessels that were technically unfit for the fishing activities to be supported by the payments;

- payments (including at least two cases where individual grants were two million ECU or more) to joint enterprises where the joint enterprise was a shell entity, or otherwise could not be considered *bona fide*;

- subsidies granted on the basis of significant misrepresentations in applications for aid submitted by the grantees;

- overpayments and significant miscalculations of aid as a result of mismeasurements of vessel capacity;

- unequal application of the rules governing the subsidy payments among various EU memberstates; and

- subsidies granted to reduce fishing capacity that had itself been created with other EU subsidies totally millions of ECUs, without appropriate recovery of the double payment;

Underlying all of these problems was a markedly insufficient flow of information about how the subsidy programme was being administered. As its leading conclusion at the end of its report, the Court of Auditors wrote: "The major failures detected were due, in no small measure, to poor monitoring and control procedures by the Member States and the Commission."[13] The Auditors even noted that the European Commission currently lacks the ability even to detect all of the assistance granted to any particular ship by EU member states.[14] These clear rebukes to the European Commission and the EU Member States are a stark indication of need for improved transparency in fishing subsidy programmes.

B. The US Congressional Task Force

Across the Atlantic, there has also been a single significant government-sponsored effort to review the administration of fishing subsidies in the United States. In 1996, the U.S. Congress passed a sweeping revision of U.S. fisheries law, with substantially increased attention to fisheries conservation and sustainable management. Realizing that excess fishing capacity was a fundamental concern, and recognizing that subsidies could be contributing to that overcapacity, the Congress ordered the formation of a federal task force to conduct an in-depth study.[15]

The U.S. task force worked for two years, holding a series of hearings across the United States.[16] The task force enjoyed the full support and cooperation of federal and state fisheries officials, and had solid input from the fishing industry, the conservation community, and other interested stakeholders. In July 1999, the task force submitted a 225-page report to the Congress. But despite the task force's level of effort and access to potential information sources, the report is strikingly devoid of hard data about the application of U.S. fishing subsidies. The leading conclusion of the task force report was that it had been unable to obtain sufficient information to carry out its task fully. The report states:

> Throughout its proceedings, and running as a theme through this report, the Task Force constantly came up against data limitations. The available data are simply not adequate to permit proper empirical analysis of the various government programs that affect capacity in the fishing industry.[17]

The task force went on to recommend that U.S. law be revised to require better transparency, and to provide public resources for generating better data about fishing subsidy programmes in the United States.

The task force report appears to have suffered more from the logistical unavailability of information than from a lack of government will to produce it. Much of the data simply is not collected. Other data may exist, but is held in an uncoordinated fashion in dozens of different filing cabinets in local and regional government offices across the country.

This is not to suggest that the United States is free from political constraints on the transparency of its subsidy programmes. The U.S. has not complied adequately with its WTO reporting requirements (*e.g.*, neither of the two main subsidy programmes reported by the U.S. task force have been notified to the WTO in recent years), and even the Congressional task force report gives little attention to some of the more potentially sensitive U.S. subsidies (*e.g.*, the access fee payments made for the benefit of the U.S.'s Pacific Ocean tuna fleet, and the

substantial fuel subsidies available to the U.S. fleet). Despite the fact that U.S. subsidies to its fishing industry appear to be as much as an order of magnitude lower than the aid granted by the biggest subsidizers, improved transparency in the U.S. is clearly needed.

4. WWF's Initiative in Europe

In the past six months, WWF has launched an initiative to seek specific information about fishing subsidies directly from national governments, relying in part on applicable laws granting the public access to certain government held information. The first phase of this initiative has focussed on Europe. Working through our local offices or with local partners, WWF submitted formal written requests for information to relevant government authorities in Finland, France, Germany, Greece, Iceland, Italy, the Netherlands, Norway, Spain, Sweden, and the United Kingdom. While the precise content of WWF's requests varied according to local WWF priorities, the letters sought access to the following:[18]

- Copies of [draft] National Fisheries Development Plans for 2000-06[, with underlying documentation]. (NFDPs are documents prepared by each EU Member State as the basis for its agreement with the European Commission over how the Member State is going to make use of funds from one of the largest EU fishing subsidies programmes—the Financial Instrument for Fisheries Guidance (FIFG). At the time WWF's requests were submitted, proposed NFDPs had been drafted by the Member States and were under negotiation with EU authorities. WWF sought access to these documents in order to be able to provide timely input into this critical decisionmaking process. In some cases, these requests were accompanied by additional efforts to intervene in the NFDP process.)

- Copies of national submissions to the OECD in the course of the OECD's preparation of its recent report, [*title*] (discussed above), along with [documents and information used by the governments in producing those national submissions]. WWF sought this information in order to be able to verify the claims made by governments through their participation in the OECD report. The information compiled for use by governments in responding to the OECD also presents a discrete set of data that should be readily on hand, unlike some other information about fishing subsidies.

- [Information relating to [FIFG] subsidies granted in the past programme period, emphasizing those subsidy types most likely to have an impact on fleet capacity.] WWF sought this information because it would allow an evaluation of some of the most environmentally sensitive subsidies granted during the last six-year period for the administration of the FIFG, and because governments are believed to have compiled at least some of this information for purposes of reporting to the European Commission.

- Information relating to other subsidies to the fishing industry (in the case of EU members, this meant information about Member State "state aid").

With regard to requests to EU Member States, WWF worked with legal experts knowledgeable about the public right to obtain government-held information in Europe to formulate requests in a manner that WWF believes established a legal obligation on the part of the recipients to provide the information requested. In some cases (particularly [Germany, Spain, and Sweden]), WWF's formal letters were preceded by other efforts to obtain specific information about fishing subsidy programs from official sources.

As of 24 November 2000, responses to WWF's requests had varied widely, as follows:

- In five out of the ten EU member cases (France, Greece, Iceland, Italy, and Spain), WWF had yet to receive any written answer, and in some cases had received indications that no information would be forthcoming.[19] In the case of Spain, WWF's efforts to participate as a civil stakeholder in the decisions taken by the Spanish government during its administration of the FIFG have met with a direct refusal. In two recent letters received by WWF-Spain, the Spanish government has declined to provide access to information about the formulation of Spain's National Fisheries Development Plan, and has indicated its refusal to grant WWF (or any other organization representing conservation interests) an opportunity to be consulted in the administration of that plan once it is finalized.

- In three cases (Germany, the Netherlands, and the United Kingdom), WWF received responses that were timely, but that omitted significant portions of the information requested. The Netherlands and the U.K. have refused to provide copies of draft NFDPs. Germany and the Netherlands have claimed that some of the information requested is confidential.[20] None of the three has provided information underlying its OECD submission. Germany has so far been among the most open in informing WWF (and others) about their NFDP process, [sharing drafts] and at least twice seeking formal consultations.

- In two cases, the responses have been both timely and relatively full. Sweden has had an open process for sharing drafts and consulting on the development of its NFDP document [(although it has declined to share the penultimate draft now under negotiation with the European Commission[??]]. Sweden also provided information at the level of payments under specific subsidy programs, despite having at first expressed the need to give due consideration to individual privacy. In Finland, WWF has not been as active seeking to intervene in the NFDP process. However, Finland has responded to WWF's formal written request with [answers that provide substantially more detail than most of the other respondents].[21]

On the whole, with the exceptions of Sweden and Finland, WWF is disappointed with the responses of the EU Member States who received WWF requests. WWF notes that EU Directive 90/313, among other EU laws, appears to have application to these requests. Directive 90/313 grants a broad right of public access to information relating to the environment.[22] The Directive clearly states a time period in which governments must respond to requests for information—a time period that has elapsed for four out of the five governments who failed to provide any response.

Moreover, WWF believes there are good grounds to doubt the legal weight of refusals based on commercial privacy. It is hard to accept the notion that commercial privacy can be properly invoked to keep government subsidy payments secret. These payments are taken from taxpayers, and given to private businesses under programs designed at least in part to produce benefits for the general public. The specific uses of these payments will often make the difference between whether their public objectives are met or missed. And there is solid evidence (*e.g.*, the European Court of Auditors report, discussed above) that when these payments are kept secret, endemic abuses proliferate. Commercial secrecy is generally meant to prevent governments from disclosing facts the government learns about private commercial circumstances. Here, governments are seeking to apply the concept to protect facts that the government *creates* through policies that affect private and public circumstances alike.

In short, while WWF considers it is still at the outset of its initiative to obtain specific fishing subsidies information from selected governments, the response to date indicates a broad unwillingness by governments to allow the public to see the facts about how fishing subsidies are applied in the EU, despite EU laws that appear to require their disclosure.

5. Conclusions

The evidence set forth above is unambiguous. Governments are not telling the public enough about their fishing subsidies. In fact, as the debate over fishing has grown over recent years, there has been no serious denial that improved transparency in fishing subsidy programmes is badly needed. But that transparency is not yet forthcoming. In some cases, there are real practical constraints that must be overcome. Governments too often lack the mechanisms even to be well informed themselves about how their support to the fishing industry is really used. But more generally, there is an almost instinctive desire on the part of governments to keep fishing subsidies hidden. Like many subsidies, they are often perpetuated for the benefit of a politically influential few, while their disclosure would be likely to raise broad public demands for their reduction and reform. It is precisely because revealing information like this can be difficult for governments that there is a growing body of domestic and international law requiring them to do so.

There are many governments who argue that support for the fishing industry is necessary, and that it serves a variety of important public objectives (including, in some cases, the reduction of excess fishing capacity). But the reforms needed to achieve rational and truly beneficial fishing subsidies cannot be accomplished in a silent vacuum. If fishing subsidies can be made publicly defensible, then governments must be prepared to defend them publicly, and to provide the information needed to ensure their accountability.

Endnotes

[1] WTO Committee on Subsidies and Countervailing Measures, *Minutes of the Meeting Held on 22 February 1995*, WTO Doc. No. G/SCMM/1 (5 May 1995), para. L.
[2] Schorr, *Towards Rational Disciplines on Subsidies to the Fishery Sector*, (WWF, September 1998)
[3] The retrospective 1998 Japanese notification is praiseworthy for its willingness to provide data on a fishery-by-fishery basis. Still, the notification raises as many questions as it answers. The total values reported run towards $5 billion annually. The result is that the Japanese appear to have admitted to having a huge subsidy programme that was either ignored or underestimated by all other observers (including the World Bank and the OECD), while many other significant Japanese subsidies that are thought to exist remain wholly unreported by Japan at the WTO.
[4] Milazzo, *Subsidies in World Fisheries: A Reexamination*, World Bank Technical Paper No. 406 (World Bank, April 1998).
[5] *Id*. at p. v.
[6] *Id.* at p. 73.
[7] Porter, *Fisheries Subsidies, Overfishing and Trade* (UNEP 1998) at p. 39.
[8] [cite]
[9] For example, Japanese subsidies that are described in the World Bank report, as well as some that are reported by Japan itself to the WTO, appear not to have been included in information submitted for inclusion in the OECD report. Moreover, the treatment of Japanese subsidies in the case studies section of the OECD report is very thin—limited to a small set of programs that gives no overall picture of Japanese support for the fishery sector. For the U.S., a major tax

deferal subsidy reported by a federal task force on U.S. fishing subsidies is not included in the OECD report.

[10] European Court of Auditors, Special Report No.18/98 (available at http://www.eca.eu.int/EN/reports_opinions.htm) (reviewing a program established in 1990, in accordance with Council Regulation (EEC) No. 3944/90).

[11] The ECU was the currency unit used by the European Communities prior to the establishment of the European Union and the EU single currency agreement. At the time of the Auditor's report, one ECU was worth roughly ___ U.S. dollars.

[12] *Id*. at p. 1 (second ¶ (a)); *see also* ¶ 57.

[13] *Id*. at ¶ 61.

[14] *Id*. at ¶ 30.

[15] *See* Sustainable Fisheries Act of 1996, § 116(b).

[16] Scott Burns, who now directs WWF's Endangered Seas Campaign and was at the time director of the marine program at WWF-US, served as a member of the task force.

[17] *Federal Fisheries Investment Task Force: Report to Congress* (July 1999), p. 157 (copies of the task force report can be obtained by contacting WWF's Endangered Seas Campaign).

[18] In the case of Norway, which is not a member of the EU, the first and third bullets do not apply.

[19] NB—WWF's letter to France was not submitted until November, and so as of the publication of this report the government of France had not yet exhausted the period in which a response is due. In the case of Spain, WWF had made a previous request for a different set of fishing subsidies information (related to subsidies associated with the agreement between the EU and Argentina for access to Argentina's fishing grounds for Spanish fishermen). The Spanish government did provide a portion of the information WWF requested at that time.

[20] In the case of Germany, the claim of confidentiality appears to rest on the supposed confidentiality of private persons who receive subsidies. In the Netherlands, it is so far unclear to WWF whether the confidentiality claimed relates to commercial privacy or to government secrecy.

[21] Norway has also provided WWF with an answer that addresses at least some of the questions WWF raised, particularly with regard to subsidies on vessel construction and modernization.

[22] For a detailed discussion of this Directive, *see* Lasen-Diaz, *The Application of European 'Right to Know' Laws to Fishing Subsidies* (WWF 2000) (included in materials prepared for the *Fishing in the Dark* symposium).

Speech

M. John Farnell

Director, Directorate General for Fisheries of the European Commission

Presentation to WWF Symposium, "Fishing in the Dark", 28-29 November 2000

I. Introduction

I am grateful to have this opportunity to present the Commission's perspective on the work of this Symposium, designed "to promote improved transparency and accountability in fisheries subsidies".

The goal is a worthy one and the Commission subscribes to it fully. Taxpayers should know how their money is being spent. And if they have concerns about the effects of subsidies, they should have the possibility to seek explanations and, if necessary, to challenge them.

In the few minutes available to me, I would like to summarise the Commission's position:

- first, on the role of subsidies in the Common Fisheries Policy; and
- second, on the information that is currently available (or that will shortly be available) about Community and national subsidies to the fisheries sector.

I have three key messages.

- Subsidies to the fisheries sector continue to be important in the CFP (even if probably not as important as some people may believe). Reconsidering their future in the light of the continuing difficulties facing the fisheries sector in Europe is one of the key issues in the debate on the future of the CFP after 2002, which the Commission will launch early next year with a Green Paper;
- The Commission has nothing to be ashamed of in respect of transparency in this area; much information is already available about what we do, and more will be in future. We have nothing to hide. We welcome attempts to obtain even more transparency on this subject.
- At a time when the international community is becoming increasingly concerned with the issue of fishing subsidies, getting better data is a precondition for serious discussion, not only within the EU but in all countries where fisheries is an important economic activity.

II. Subsidies in the Common Fisheries Policy

Taken as a whole, the fisheries sector consumes a significant amount of public money in the EU. In the last 5 years about 1 billion has been injected into the sector every year through Community and national aids (without counting the benefits of favourable taxation or social security treatment or the costs to public authorities of such services to the sector as fisheries management and control or research). That represents a significant proportion of the value of the primary production of fishing and aquaculture within the EU, which is about 9 billion.

But that comparison is a little misleading, as the 1 billion is spread over the whole fisheries sector, onshore as well as at sea. Only about 62 per cent of structural aid to the sector, under the Financial Instrument for Fisheries Guidance (FIFG), has gone to fishing fleets. And of that share, nearly two-thirds has been spent on reducing fishing capacity, mainly by demolition. This leaves about 24% of structural aid, or about 160 million a year, taking Community and national contributions together, which has been used to promote investment in modernisation or renewal of fishing vessels. A further substantial subsidy to the fleet, of about 280 million a year, pays for the right for about 850 EU

vessels to fish outside EU waters under Fisheries Agreements with non-European third countries.

That makes about 440 million a year, or less than half of the direct subsidies to the fisheries sector, which could be alleged to contribute reducing the costs of either investment or fishing activity and thereby contribute to over-fishing. And the amount devoted to fleet modernisation and renewal, 160 million each year, significant as it is, would not go very far if spread evenly among the 100,000 fishing vessels of the entire EU fishing fleet.

Putting the amount of aid into perspective, however, does not mean that the Commission believes that today's subsidies to the fishing fleet are either desirable or sustainable. In the next year's Green Paper on the future of the CFP, the Commission will, I believe, point out how such subsidies can help to undermine what sound fisheries management aims at: survival of the fish, a productive, efficient and competitive fleet and secure jobs in fisheries-dependent areas. We will be recommending that the Community change its approach if it wants to achieve these objectives.

So the Commission is itself seeking to throw more light on the subsidies issue, although subsidies are not the only problem within the CFP and addressing this issue should not be seen as a panacea for all the problems of fisheries management.

III. Transparency about EU subsidies

I would now like to turn to the transparency of EU subsidies to the fisheries sector. We are not "subsiding in dark". A considerable amount of information about subsidies is made publicly available both before and after subsidies are paid.

"Ex-ante" information about the overall volume of Community structural assistance to the fisheries sector under the Financial Instrument for Fisheries Guidance (FIFG) and the amount earmarked for fisheries Agreements can be found in each year's Community Budget and in Council Decisions that conclude each fisheries Agreement or Protocol to an Agreement.

To provide more detailed information in respect of FIFG assistance, the Commission produced in 1995 a summary of the programmes for structural assistance prepared by the Member States, indicating the main regions for which aid is intended and for what purpose (i.e. fleet reduction, fleet renewal, processing, aquaculture, port infrastructure, and so on). For the current FIFG, which runs from this year until 2006, our intention is to put similar information on the DG FISH web-site and to keep it up-to-date whenever the programmes are adjusted. The national programmes themselves are not, however, made publicly available by the Commission (as they are not Commission documents) but may be obtained through national administrations.

As far as fisheries Agreements are concerned, whenever a new Agreement (or a new Protocol to an existing Agreement) is concluded, the Commission provides information indicating the overall cost of the Agreement, the amount to be spent on so-called "targeted actions" (intended to promote local fisheries development), the share of license costs to be borne by vessel-owners, and so on. From this information it is easy to see how much of the EU subsidy is directly related to paying for access rights, and how much is earmarked for the development of the fisheries industries of the coastal state concerned.

A considerable amount of *"ex-post"* information is also made available.

As far as FIFG spending is concerned, the Commission requires from the Member States annual progress reports on each project (there have been 33,000 of them in the 1994-1999 FIFG programme!). This detailed information is now being aggregated by the Commission under the main headings of intervention and will shortly be made available for the years 1994-1998 on the DG FISH Europa web-site. From this data it will be possible to see in which regions Community and national contributions have been spent and on what kind of projects, and to correlate aid expenditure with quantitative "output" indicators, such as tonnage or power of fishing vessels or additional production of aquaculture installations, for example. We are also working on other output indicators, such as employment, but these are more difficult to quantify accurately. This information about actual expenditure will be kept updated until the end of 2002, the closing date for expenditure under the 1994-1999 FIFG programme. We will repeat the exercise for the current 2000-2006 programme.

Again, detailed data on individual projects is not made available, as it belongs to national authorities. You may be aware that this exclusion of access to national data may disappear in future. The Commission's proposal for a Regulation on public access to European Parliament, Council and Commission documents, which has to be adopted before May next year according to Article 255 of the Treaty, now provides for public access to documents "held by" the Institution as well as those drawn up by them. If adopted, this proposal would mean that detailed national reports on aid to the fisheries sector would become accessible. But we still have a long way to go in the negotiations.

Turning to *ex-post* data on fisheries Agreements, there is also a lot of information already in the public domain. The Commission has, for example, just published the results of the exhaustive independent evaluation of its fisheries Agreements, completed last year by IFREMER, which contains extensive information on the cost structure, both for the Community budget and for EU vessel owners, of each Agreement. The forthcoming Green Paper and its accompanying report will contain updated data of the same kind.

Before the negotiations to renew an Agreement, the Commission also provides an evaluation report to the Parliament and the Council, which details expenditure under the Agreement and the actual use of fishing rights under it. This information is not made publicly available as, in the Commission's view, this could prejudice the Community's financial interests; divulging details about the real economic costs of benefits derived from existing Agreements would undermine the negotiating position of the Community.

° ° °

Chairman, I hope I have said enough to show that the Commission provides extensive, if not exhaustive, information about the main Community subsidies to the Fisheries sector.

As far as national aid that is not related to Community aid is concerned (i.e. state aids), the Commission itself is seeking greater transparency from the Member States by requiring, in the new guidelines for examination of state aids in the Fisheries sector (to be adopted by the Commission this week), systematic annual reporting of actual expenditure under national state aid schemes approved by the Commission. We have perhaps not been as thorough as we should have been in monitoring notified aid schemes. But the data we have suggests that national aid outside the co-financing of Community aid is relatively modest; it was 65 million, for example, in 1997, the last year for which we have full figures. We are now carrying out a survey of these national aids, the results of which, like all Commission studies, will be publicly available.

Conclusion

To sum up, then:

- there is already of lot of information which can be exploited to inform the forthcoming debate about fisheries subsidies;
- more such information is on the way;
- the decisions of the European Parliament and Council regarding the proposed Regulation on access to documents could significantly enlarge access to documents provided by Member States.

As a final remark, you might like to know that in the last year we in DG FISH have commissioned two external studies on subsidies to the fishing industry in 18 developed and developing countries outside the EU. Let me assure you, those studies have run into many problems; I remain confident that the Community's transparency in this area, although imperfect, exceeds that of most of our international partners. If your discussion can help to throw more light on what is happening in other parts of the world, we would welcome that.

Subsidies to Marine Capture Fisheries: The International Information Gap

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Abstract: *Intensive efforts have been made during the last four years to collect information on, and to better understand, the size and nature of subsidies to marine capture fisheries. The first results of these efforts were completed, and in most cases published, in 2000. Further work on identifying and measuring subsidies is expected to take place in both national capitals and within inter-governmental organisations. This paper surveys the information that has been reported to date, with a view to identifying remaining information gaps. A possible over-sight role for non-governmental organisations is suggested.*

Keywords: *government financial transfers to fisheries, fisheries subsidies, inter-governmental organisations.*

Introduction

Around the beginning of 1997, prompted by discussions in the World Trade Organisation's Committee on Trade and Environment, several OECD Member countries—led by Iceland, New Zealand and the United States—began a quiet, multi-front campaign to ensure that the issue of fishing subsidies was incorporated into the work programmes of as many inter-governmental bodies as possible. Since then, the Asia-Pacific Economic Co-operation (APEC), the Organisation for Economic Co-operation and Development (OECD) the United Nations' Food and Agricultural Organisation (FAO) and the World Trade Organisation (WTO) have collected information on their member countries' subsidies to the fisheries sector, and in several cases undertaken studies to assess the effects of those subsidies. These efforts, in turn, have been informed by new data-collection efforts and studies at the national level, as well as by non-governmental organisations (NGOs) such as the World Wildlife Fund. The results of that work have begun to emerge over the last year.

These results have been keenly awaited. Subsidies to the fishing sector had previously been discussed and debated in various forums during the six-year Uruguay Round of multilateral trade negotiations, which ended in 1993, and some countries had called for strict disciplines on these subsidies to be included specifically in the Final Act of that round. In the event, fishing subsidies were separated from agricultural subsidies, to which they had been twinned for decades, and subjected to the same

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disciplines and reporting requirements that were applied to other non-agricultural goods: the Agreement on Subsidies and Countervailing Measures (the "Subsidies Agreement").

Under the Subsidies Agreement, subsidies are classified as either *prohibited*, *actionable* or *non-actionable*. Only export subsidies and subsidies contingent on the use of domestic over imported goods are expressly prohibited. (Developing countries have until 2003 to comply with the prohibition on export subsidies). Actionable subsidies—that is to say, those that can be challenged by other WTO members and subjected to accelerated dispute settlement procedures—can in principle be granted or maintained as long as they do not adversely affect the interests of other Members. The Agreement on Agriculture also distinguishes among different categories of subsidies, but it goes one step further by specifying a schedule according to which those subsidies deemed to be most distorting of trade are to be reduced. Some observers have expressed regret that fisheries subsidies escaped similar disciplines during the last trade round.

Nowadays, more than trade in fish products is at stake: people are also concerned about the links between subsidies, over-capacity and the feeble state of many of the world's fisheries. The first major study to draw attention to these links was carried out by the United Nations' Food and Agriculture Organisation (FAO, 1992) employing 1989 data. It estimated that, globally, there appeared to be a $54 billion annual deficit between fishing revenues and costs, most of which was presumed to be covered by subsidies. This was an astounding number, and as a percentage of landed value (around 75%) was even higher than the rate of support being provided to the agricultural sector by the most enthusiastic subsidisers.[2] By the mid-1990s, a draft study being circulated by a researcher at the U.S. National Marine Fisheries Service (Milazzo, 1998) had brought down the global estimate to somewhere on the order of US$14-20 billion a year world-wide—still a significant sum. These studies succeeded in highlighting the problem, but more systematic figures were required to inform multilateral discussions.

This paper has a two-fold purpose: *(i)* to take stock of the information that has been, or could easily be, made available internationally on subsidies related to the prosecution, management or protection of marine fisheries; and *(ii)* to identify significant gaps in that information. With respect to the first purpose, it is necessary to underscore that use of the term "subsidies" as an all-encompassing term is not meant to imply that every government expenditure fails to serve a valid important public interest. As stressed by the Federal Fisheries Investment Task Force in its report to the U.S. Congress (1999, pp. xviii-xix), which group included even government expenditure on the restoration of coastal ecosystems within their broad definition of subsidies, in evaluating any particular subsidy measure it is important to bear in mind the purposes for which the subsidy was originally designed, the current relevance of that purpose, and the effectiveness of the subsidy in meeting that purpose. Second, to note that significant gaps exist in the information on subsidies to fishing does not necessarily imply that the gaps can easily be filled, or that they all merit filling.

National, supra-national and sub-national sources of information on government expenditures

This section surveys some of the national, supra-national (i.e., EU) and sub-national data sources on government expenditure relating to fisheries. Our coverage is indicative of what is available, especially from on-line (via the Internet) documents, but it is not intended to be exhaustive. Our focus is on the governmental agencies[3] with primary responsibility for the management of marine capture

2 . The percentage producer subsidy equivalent for primary agricultural commodities produced in the OECD region during that period was around 40%. See OECD, 2000*a*.

3 . The term "government agency" is used throughout the document as a generic term for ministry, department, agency, etc.

fisheries and the industries that exploit them. In many countries, however, responsibilities are divided among multiple government agencies. Types of programmes typically, though not always, covered by agencies other than fisheries ministries include those that administer insurance, disaster relief, special social protection measures for fishery workers, and harbour construction and maintenance. That, of course, makes the monitoring the influence of government policies and expenditure on fisheries more difficult. Published compilations of national programmes are therefore highlighted because of their great value to researchers.

The EU and its Member states

Expenditure on programmes benefiting the marine capture fisheries sector in the European Union (EU) can either be: *(I)* totally EU-financed; *(II)* co-financed by both the EU and the member States; or *(III)* financed entirely by a member State. Expenditures and budget appropriations by major EU-financed and co-financed programme area are published annually in the "General Budget of the European Union", which appears as a special issue of the *Official Journal of the European Communities* (Series L) in February of each financial year. Recently, the European Commission's Directorate-General for Fisheries posted a web page entitled "Community aid: helping the sector to restructure" (http://europa.eu.int/comm/fisheries/topics/topic_en.htm); the page provides links to several tables summarising multi-annual EU contributions to EU-financed and co-financed programme areas, as well as a table setting out financial transfers to the fisheries sector provided by member State governments (i.e., excluding the Community's contribution) in 1997.

Several EU Member states, such as Finland, Germany (1999), The Netherlands (2000), Portugal (1998; 2000) and Sweden, regularly report some government expenditures on their fisheries sectors in the statistical bulletins, annual reports, or budget statements of their fisheries ministries; some of these reports are also published on-line. France's Ministère de l'Agriculture et de la Pêche publishes a comprehensive report that is entirely devoted to its public expenditures relating to the maritime fishing industry and mariculture (France, 2000). Tracking down information on some other countries' fisheries budgets can require considerable effort, however, and good comprehension of the local language.

Another source of information on member-State aids, particularly those financed entirely by the individual member States (Type III), is the European Commission's Directorate-General for Competition. Each year DG-Competition publishes lists of measures relating to State aids in the Annexes to its *Annual Report on Competition Policy*. Table 1 shows a typical entry from the 1998 report, which is available on-line (http://europa.eu.int/comm/competition/annual_reports/1998/).[4] No details are provided on the measures: for those, the interested reader must obtain a copy of the relevant *Official Journal* (usually, Series C or L), which is available in microfiche format in many large libraries.[5] The reporting process does not cover all *existing* state aids in any given year—only those for which approval from DG-Competition had to be sought, usually when the measures are newly introduced, renewed or substantially modified—but it is a valuable resource nonetheless.

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4 . The number of programmes reported in any given year depends in part on the funding cycle of the EU's Multi-Annual Guidance Programmes for the fisheries sector. The report for 1999, for example, contains more entries than the 1998 report.

5 . Issues of the *OJ* are also available on-line for 45 days after publication at http://europa.eu.int/eur-lex/en/oj/index.html, for those who have the time to trawl through each one of them on a daily basis —one cannot search them by subject.

Table 1. **Measures relating to state aids in the fisheries sector in 1998 that the European Commission considered compatible with the common market[1]: Italy**

Decision number	Date of decision	Description of measure	*Official Journal* code	Date published in the *OJ*
334/A/96	2.3.1998	Aid for fish canning factories (Sicily)	*OJ* C 130	28.4.1998
N 923/96	6.7.1998	Aid to the fisheries and aquaculture sector (Sardinia)	([2])	([2])
N 819/97	18.8.1998	Investment in bluefish businesses (Abruzzi)	*OJ* C 330	28.10.1998
N 825/97	15.5.1998	Aid for mollusc fishermen (Abruzzi)	*OJ* C 192	19.6.1998

1. Without opening an investigation under Article 88(2) of the EC Treaty.
2. Not published.
Source: European Commission, Directorate for Competition (1999), Part 2, Chapter III, Section D, p. 9.

The European Commission provides also more up-to-date information on Commission decisions relating to state aids. For example, a search on the word "fish" on DG-Competition's *Official Journal* link (http://europa.eu.int/comm/competition/state_aid/oj/) yielded "Commission Decision of 28 June 2000 on the aid scheme provided in Region of Sicily, Law No 23 of 28 March 1995 'Rules applicable to credit guarantee groups for small and medium-sized enterprises'—fishery sector" (*OJ*, Series L 259/62, 13.10.2000). The aid scheme under investigation concerned a mechanism to support fishery enterprises by facilitating their access to credit and certain financial services (factoring, leasing, collective guarantee). The Commission considered that the aid scheme was incompatible with the common market for two reasons: *(i)* the public contribution to the funds was to be free and unlimited in time; not only was it not to be confined to start-up enterprises but also successive injections of capital were planned in order to maintain the public contribution at a minimum of 50% of fund assets; and *(ii)* the Commission did not have enough information to assess the scheme. That information was subsequently provided, which showed that in fact *no* application for aid from the funds for fishery sector group risks had ever been received—i.e., the scheme had never actually been applied. Since the law in question had effectively expired, its reactivation would require new legislation and would have to be the subject of a new notification to the Commission. Case closed.

More user-friendly information is hinted at for the future. In its *Annual Report* for 1999, for example, D-G Competition has stated its intention to give priority to increasing the transparency of both its own and its member States' state aids. Among the practical measures it envisages is to set up a "state aid register." And, "in the interest of increasing efficiency of State aid control", it pledges to follow up more systematically its recovery orders concerning illegal aid.

Other countries

Information on what governments in other countries spend in support of their maritime fisheries industries can usually be obtained from some published source—again, if one knows where to look, and can read the language. A few fisheries ministries publish annual reports that contain information on funds they have dispersed and collected. For other countries, one has to dig through published budget

statements. Table 2 lists a selection of on-line documents for five fishing nations that are members of both APEC and the OECD. Other countries also publish on-line versions of their fisheries ministries' budgets. That for Norway's Ministry of Fisheries (Fiskeridepartementet), for example, can be found at http://odin.dep.no/fid/norsk/publ/statsbudsjett/index-b-n-a.html (in Norwegian).

Table 2. **Selected on-line documents relating to fisheries subsidies for five countries that are members of both APEC and the OECD**

Country	Report title	Information and level of detail	URL
Australia	*Portfolio Budget 2000-01*	Expenditure on fisheries research and administration by Agriculture, Fisheries and Forestry Australia	http://www.affa.gov.au/corporate_docs/about_affa/budget/992000/partc/outcome_resourcing.html
Canada	*Fisheries and Oceans; Part III – Report on Plans and Priorities (2000-2001Estimates)*	Expenditure plans by objective (e.g., "Gathering of fisheries related data", "Conserving Canada's fishery resources", etc.) for Fisheries and Oceans Canada	http://www.tbs-sct.gc.ca/tb/estimate/20002001/rFO____e.pdf
Mexico	*Anuario Estadístico de Pesca 1999*	Financing of the fisheries sector by FIRA-FOPESCA and BANCOMEXT (in Spanish)	http://beta.semarnap.gob.mx/pesca/ (tables 5.11 and 5.12)
New Zealand	*Annual Report for the Year Ended 30 June 2000*	Expenditure by "output class" (advice, enforcement, prosecution, etc.) by the Ministry of Fisheries	http://www.fish.govt.nz/information/00annual/fp07.htm
United States	*NOAA FY 2000 Budget Request*	Actual and requested expenditure by detailed NOAA programme area, including the National Marine Fisheries Service (NMFS)	http://www.publicaffairs.noaa.gov/budget2000/

In the United States, the Congressional Research Service (CRS) has since 1984 carried out periodic compilations of U.S. Federal agency programmes with relevance to living aquatic resources and the protection of aquatic habitats. The most recent of these (Buck, 1995*b*) describes the activities of 44 separate agencies, and in many cases provides estimates of their budgets for the previous decade. Although a lot of the activities described in the CRS report concern objectives remote from marine capture fisheries, some are quite important to the sector. The U.S. Coast Guard (an agency of the Department of Transportation), for example, shares responsibility with the National Marine Fisheries Service (an agency of the National Oceanic and Atmospheric Administration in the Department of Commerce), for enforcing the provisions of federal laws pertaining to marine resources in U.S.

waters.[6] The CRS's estimated cost of the Coast Guard's share of enforcement activities in 1994 was $147 million.

In 1996 the U.S. Congress ordered a more in-depth survey of subsidies to the nation's marine capture fisheries, and created a special task force to carry it out. The Federal Fisheries Investment Task Force (1999) combined expertise from a wide range of groups—federal and state government staff, academia, the fishing industry, and conservation organisations—and had unprecedented access to information. Its mandate was broad: to investigate a wide array of federal government programmes, not just those of the National Marine Fisheries Service, which affect capacity in the U.S. fishing industry. That it did. However, it constantly ran up against data limitations, noting in the conclusions to its final report that the available data were simply not adequate to permit proper empirical analysis of the government programmes they investigated. Other data were known to exist but were "held in an uncoordinated fashion in dozens of different filing cabinets in local and regional government offices across the country" and therefore unable to be compiled within the time allowed for completing the study (Schorr, 2000).

Sub-national governments

In a number of countries expenditures relating to the fisheries sector are shared among two or more levels of government (from local to national). In those with federal systems especially, expenditures on the fisheries sector by sub-national authorities may be significant in some cases. Thanks to the expanding practice of publishing budget information on-line, some information on State and Provincial expenditure can now be obtained via the Internet. Table 3 provides a small sample of links to on-line documents produced by selected State or Provincial governments of Australia, Canada and the United States.[7] Some of the documents relate to budgets for the entire State or Provincial government, usually broken down by department or ministry. Others are annual reports or similar documents prepared by the fisheries departments or ministries themselves.

The information provided by these documents varies considerably in terms of both usability and detail. The on-line documents produced by Fisheries Western Australia (whose net cost to government of services to commercial fisheries is less than $10 million annually) and the U.S. State of Alaska (which spends around $40 million a year in managing its commercial fisheries), are especially well-presented. A handy feature of Alaska's is that it matches expenditure by programme area with funding sources (General, Federal, and other); such information helps to avoid double-counting when adding up state and federal support. Several governments report only aggregate expenditures, however, and then often only by financial accounting category—i.e., operating expenses, depreciation, and so forth—rather than by programme. Financial accounting aggregates are of very little value for the analysis of policy impacts, particularly in cases where an agency's responsibilities include inland sport fisheries and, commonly, other natural resources.

6 . Specifically, the Magnuson Fishery Conservation and Management Act; the Marine Mammal Protection Act; the Endangered Species Act; and the Marine Protection, Research, and Sanctuaries Act.

7 . Other links to State or Provincial governments can be found by searching under "Regional Institutions", by country, on the "Worldwide Governments on the WWW" web site: http://www.gksoft.com/govt/en/world.html

Table 3. **On-line documents with budget information for selected maritime states and provinces in Australia, Canada and the United States**

Country & Province	Department or Ministry	Document name	URL
Australia			
New South Wales	NSW Fisheries	*Annual Report 1998/99*[1]	http://www.fisheries.nsw.gov.au/pages/general/9899report.htm
Victoria	Dept. of Natural Resources and Environment	*Annual Report 1999-2000* (see the Financial Report and Appendices, in PDF format)	http://www.nre.vic.gov.au/about/00report/financesummary.htm
Western Australia	Fisheries Western Australia	*Annual Report 1999-2000* (see p. 77 in the Financial Statements)	http://www.wa.gov.au/westfish/annualreport/ar2000/index.html
Canada			
British Columbia	Ministry of Fisheries[2]	*Annual Report for 1999-2000*	http://www.bcfisheries.gov.bc.ca/Pdf/Fisheries_Annual_Report_1999_2000.pdf
		Performance Plan for 2000 (see p. 28 for programme expenditures)	http://www.bcfisheries.gov.bc.ca/Pdf/Performance_Plan_2000.pdf
Newfound-land and Labrador	Department of Fisheries and Aquaculture	*Estimates 2000-01* (all Departments; see pp. 114-121 for Fisheries and Aquaculture)	http://www.gov.nf.ca/Budget2000/download/Estimates.pdf
United States			
Alaska	Department of Fish and Game	*FY2002 Governor's Operating Budget* (see pp. 9 and 10)	http://www.gov.state.ak.us/omb/2002site/Budget/F&G/2002F&Gcover.html
California	Department of Fish and Game	*2000-2001 Final Budget Summary* (all Departments)	http://www.osp.dgs.ca.gov/Publications/GovernorsBudget/govsup_finalbuget01.asp
Maine	Dept. of Marine Resources	*2000-2001 Departmental Funding Breakdown* (all Departments)	http://janus.state.me.us/budget/homepage.htm
Washington	Department of Fish and Wildlife	*WDFW Proposed 1999-2001 Budget and Request Legislation—Preliminary Draft*	http://www.wa.gov/wdfw/dftbudgt.htm

1. Includes information on applications approved from Trust Funds (e.g., A$0.5 million from the Commercial Trust Fund for the monitoring of major fish stocks); see p. 74.
2. In March 2000 the Ministry of Fisheries was merged with the Ministry of Agriculture and Food, forming the Ministry of Agriculture, Food and Fisheries. Future accounts will report expenditure for the combined agency.

Tax expenditures and other off-budget subsidies

Some of the most important government subsidies to the fishing industry are provided implicitly and do not appear in the budgets of the responsible ministries. Yet, unlike some budgetary expenditure, few if any off-budget subsidies promote resource conservation goals. In the main, they are meant to lower costs faced by the industry.

The most common are those extended through the tax system in the form of concessions (e.g., special capital-depreciation measures), credits, exemptions and rebates, and are referred to collectively—and confusingly—in the public finance literature as *tax expenditures*. Also common are government interventions that lower the cost of borrowing: concessional loans from government-owned banks, subsidies to commercial banks to lower interest rates paid by particular borrowers, and government-guarantees against default on commercial loans. Obtaining data on the value of these (generally off-budget) subsidies can be difficult. Only a few countries, such as Australia (which provides rebates on taxes paid on diesel fuel consumed by off-road engines), include them explicitly in their portfolio budget statements.

In some countries, sector-specific tax expenditures are administered by the tax authorities themselves. Japan's Ministry of Finance, for example, operates a scheme that grants an additional capital depreciation of 16% for fishing boats for five years beyond what is normally allowed under the tax code.[8] The tax concession may sound trivial, but in Japan's notifications to the WTO (see next section) in 1996 and 1998 (when the additional capital depreciation was 20%) it was listed as being worth between 500 billion and 600 billion yen (around $4.2 billion) annually (Table 4). In the United States, the Federal Fisheries Investment Task Force identified several provisions of the U.S. federal tax code that have benefited commercial fishing—most notably the Capital Construction Fund program, which since the early 1970s has allowed fishermen to defer paying federal income tax on profits from fishing if the money was set aside in a special account that would be used later to purchase or reconstruct a fishing vessel—but was unable to quantify their subsidy equivalents (Federal Fisheries Investment Task Force, 1999).

8 . The scheme is related to Japan's "Plan for Structural Improvement of Small and Medium-Sized Fishing Enterprises under the Scheme of Extraordinary Law on the Reconstruction of Fishing Industry". *See* "Updating Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures—Japan." WTO Document No. G/SCM/N/60/JPN, 20 October 2000.

Table 4. **Value to Japan's fishing industry of the "Additional Depreciation on Fishing Boats" measure (millions of yen)**

Fishery	1991	1992	1993	1994	1995	1996
Medium-trawl fishery	119 223	92 809	86 910	86 826	84 577	75 806
Large-trawl fishery in East China Sea	30 023	30 685	22 120	20 771	14 569	11 187
Pelagic skipjack and tuna fishery	221 316	234 460	241 931	195 021	173 156	176 892
Offshore skipjack and tuna fishery	68 545	72 310	66 210	54 684	49 055	48 977
Surrounding net [purse seine] fishery	267 005	225 414	220 609	207 993	214 571	206 149
Medium-sized squid jigging fishery	27 573	22 768	19 415	24 444	23 228	23 785

Sources: World Trade Organisation, "Updating Notifications Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures: Japan", Communication dated 28 August 1996, from the Permanent Mission of Japan (WTO Document No. G/SCM/N/16/JPN, 19 September 1996), p. 17; WTO, "New and Full Notifications Pursuant to Article XVI.1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures: Japan", Communication dated 29 July 1998, from the Permanent Mission of Japan (WTO Document No. G/SCM/N/38/JPN, 17 August 1998), p. 78.

International data sources

Inter-governmental organisations—organisations funded by their member countries—are technically secondary sources for most information on subsidies, but often the information reported to them is otherwise difficult to obtain. Members of the World Trade Organisation (WTO), since the Organisation was formed in 1995, have been required under the rules of that organisation to report information on subsidies on an annual basis. The Asia-Pacific Economic Co-operation (APEC) forum, the United Nations' Food and Agricultural Organisation (FAO) and the Organisation for Economic Co-operation and Development (OECD) work more by consensus, and whatever information on subsidies has been reported to them has been provided voluntarily in response to decisions by standing committees within those organisations to collect such data.[9]

The WTO

Under Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM), which formed part of the *Final Act Embodying the Results of the Uruguay Round of Multinational Trade Negotiations*, WTO Members must notify any subsidy (as defined in Article 1 paragraph 1), that is specific within the meaning of Article 2 (including specific but non-actionable subsidies). The notification is supposed to include the form of the subsidy, its amount, its policy objective or purpose, its duration, and statistical data permitting other Members to assess its trade effects. Full notifications are required every three years, and "updating notifications" during the intervening years. All notifications and updates are posted on the WTO's document diffusion web site (http://www.wto.org/wto/ddf/ep/public.html). In order to find information on fishing subsidies for a particular country, however, one has to know the code of the corresponding document. Helpfully, the

9 . For a more complete overview of the work on fisheries subsidies undertaken by these organisations in the past see Steenblik and Munro (1999).

WTO Secretariat has published periodic guides to members' notifications on fishing subsidies since 1998 (WTO 1998 and 1999), and expects to produce an update in 2001. In-between times, the best way to find information is to search through the document archive on a keyword, such as "fisheries."

Article 26 provides for regular surveillance of notifications by the WTO's Committee on Subsidies and Countervailing Measures. New and full notifications are examined at special sessions of the Committee, held every third year; updates are examined at each regular meeting of the Committee. Moreover, under Article 25 (paragraphs 8 through 10), any Member, at any time, may make a written request for information on the nature and extent of any subsidy granted or maintained by another Member, or for an explanation of the reasons why a specific measure has not been notified.

Many critics of the SCM process have contended that compliance with it remains, in the words of David Schorr, "profoundly unsatisfactory." Schorr (1998: 154) has estimated that somewhere in the neighbourhood of just 7-8% of global fishery subsidies granted in 1996 that should have been notified to the WTO actually were notified. His latest (2000) assessment is that WTO notifications of fishing subsidies have improved somewhat over the last two years, albeit only sporadically. Some of these disclosures have been prompted by the use of Article 25.8 and Article 25.10 procedures. And additional information on subsidies has been provided through written questions and answers on subsidy programmes provided within the context of the SCM Committee's special sessions.[10]

It is worth noting that even the measures that do get reported are not necessarily regarded as subsidies by the countries who implement them. For example, Japan notes at the beginning of its updated notification: "In this notification, Japan has included certain measures which may not constitute 'subsidies' under Article 1 of the Agreement and certain subsidies which may not be 'specific' under Article 2 of the Agreement in order to achieve the maximum transparency with regard to the relevant programmes and measures effective within its territory." This caveat is consistent with Article 25.7, which states that "notification of a measure does not prejudge either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself."

APEC

The Asia-Pacific Economic Co-operation forum was established in 1989 and has since become the primary vehicle for promoting open trade and practical economic co-operation in the region. APEC's membership includes all the major economies of the Pacific Rim. Work related to fisheries is carried out by the Fisheries Working Group.

The Fisheries Working Group set out nearly four years ago to study fisheries sector trade and investment liberalisation in the areas of tariffs, non-tariff measures, investment measures, and subsidies. Its first study, which looked at tariffs, was completed in 1999 (Grady *et al.*, 1999). A second one, which looks at non-tariff measures (including subsidies), got underway during the second half of 1999, and was circulated in draft form in June 2000.

10. The Committee's procedures for reviewing the new and full notifications for 1998 are described in Document No. G/SCM/18, 27 April 1998. These written questions and answers are contained in a series of documents with the symbol "G/SCM/Q2/XXX", where XXX represents the official three-letter code for the country whose subsidy measures are being questioned, and can be accessed through the WTO's web site.

That report (PricewaterhouseCoopers, 2000) contains an inventory of support programmes in the fisheries sector for 19 of APEC's twenty-one economies. Its 162 entries are classified within six categories, or "modalities":

- Direct assistance to fishers and fisheries workers
- Lending support programmes
- Tax preferences and support for insurance
- Support for capital and infrastructure
- Marketing and price support
- Fisheries management and conservation

Although expenditures are not itemised for all the documented measures, the authors of the report were able to calculate approximately a total dollar value for the APEC programmes and subsidies it identified. (Lacking sufficient data, the research team had to make an educated guess as to the amount of government expenditure involved for several programmes in order to derive this total.) Their estimate of just under $13 billion for APEC (which region accounts for 85% of the world's fish catch on a tonnage basis) places it in line with Milazzo's (1998) global estimates of subsidies to the fisheries sector, once allowance is made for inflation, the very approximate nature of the data, and excluded countries.

The OECD

The OECD's membership of 30 nations includes 24 countries that engage in maritime fishing. The Organisation's work on fisheries is carried out mainly by and for its Committee for Fisheries. The Committee has produced inventories of financial support (1965, 1971 and 1980), and economic assistance (1993) to the fishing industry in the past. But its most recent work on government financial transfers (GFTs) to the fisheries sectors of its Member countries marks a new, more systematic effort, to define and to shed more light on the issue.

Part of that work was carried out in the context of a three-year study, *Transition to Responsible Fisheries* (OECD, 2000*c*).[11] Table 5 shows that the study reached an estimate of $6.3 billion in OECD government financial transfers to the fishing industry in 1997. The bulk of the transfers fall under the label "general services", which is a catch-all category that includes expenditures by governments to support prices (e.g., by withdrawing fish from markets), expenditures on infrastructure that benefit the sector as a whole (in contrast with cost-reducing transfers that benefit individual fishers directly), as well as expenditures on research, management and enforcement. The study defines a "government financial transfer" as the monetary value of on- and off-budget government interventions associated with fisheries policies.

9. The tables from which the numbers are derived were initially prepared for the OECD's annual *Review of Fisheries in OECD Countries* (OECD, 2000*b*). Appearing in the *Review* increased the likelihood that the series would be continued, and indeed the information on GFTS reported in the latest (2000 edition) of the *Review* is currently being updated, with publication expected in the early part of 2001.

Table 5. **Estimates of Government Financial Transfers to marine capture fisheries in the OECD: 1997[1] (US$ million)**

	Direct payments (A)	*Cost-Reducing Transfers (B)*	*General Services (C)*	*Total Transfers (D)*	*Total Landed Value (TL)*	*(A+B)/ TL*	*D / TL*
Australia[2]	5	7	11	24	259	5%	9%
Canada	252	18	135	405	1 621	17%	25%
European Union[3]	366	358	710	1 434	9 324	8%	15%
Belgium	-	3	2	5	99	3%	5%
Denmark	20	-	62	82	521	4%	16%
Finland	3	2	21	26	29	18%	90%
France	22	14	104	139	756[4]	5%	18%
Germany	8	3	52	63	194	5%	32%
Greece	12	-	38	50	387	3%	13%
Ireland	5	3	96	104	220	3%	47%
Italy	24	5	64	92	1 749	2%	5%
Netherlands	4	-	32	36	466	1%	8%
Portugal	32	0	34	66	319[4]	10%	21%
Spain	205	81	59	345	3 443[4]	8%	10%
Sweden	9	-	45	54	129	7%	42%
United Kingdom	23	4	101	128	1 012	3%	13%
Iceland	-	18	18	36	877	2%	4%
Japan	25	22	2 899	2 946	14 117	0%	21%
Korea	30	59	253	342	4 929	2%	7%
Mexico	-	-	17	17	1017	-%	1%
New Zealand	-	-	17	17	475[5]	-%	4%
Norway	3	62	98	163	1 343	5%	12%
Poland	-	-	8	8	215	-%	4%
Turkey	-	1	27	29	212	1%	13%
United States	21	194	662	877	3 644	6%	24%
OECD Total	**702**	**740**	**4 856**	**6 298**	**38 032**	**4%**	**17%**

Notes: **"-"** means zero; **0** means that the value is less than 0.5 of the unit of measure.
1. The table does not reflect any assessment of whether individual transfers programs have positive or negative implications for fisheries resource sustainability. Therefore, proper care should be applied in interpreting this summary information. Figures are rounded up.
2. Commonwealth fisheries only.
3. Values for the European Union are the sum of the transfers for the member States (i.e., including the Community's contribution to those States), plus payments for access to third-country waters, which are not allocated among the member States but, rather, added to the EU's total figure under "cost-reducing transfers".
4. Does not include national landings in foreign ports.
5. 1996 figure.
Source: OCED 2000*c*.

While the definition of GFTs encompasses expenditures by regional and local, as well as central governments, time and resources did not permit the collection of data at the sub-national level. Neither did the study include any estimates of market price support—i.e., "the annual monetary value of gross transfers from consumers and taxpayers to producers arising from policy measures creating a gap

between domestic market prices and border prices of a specific … commodity" (OECD, 2000*a*). Market price support *is* included in the OECD's classification scheme, but the data-collection exercise was carried out at the aggregate, national level, whereas MPS must be built up from estimates of price differentials for particular fish or their products. MPS is, however, being examined in the OECD's current work programme.

FAO

A major area of work for the FAO Fisheries Department is the promotion of policies and fisheries management practices that lead to sustainable fisheries. Naturally, therefore, the Department takes an interest in the effects of subsidies on fisheries. Thus collection and analysis of information on subsidies has formed a part of the Department's general mandate since its inception. In recent years FAO Members have again emphasised the importance of work in this area.

This interest was reflected in the endorsement by the FAO Council in 1999 of an International Plan of Action for the Management of Fishing Capacity (IPOA). The IPOA calls upon its member States "[w]hen developing their national plans for the management of fishing capacity, … [to] assess the possible impact of all factors, *including subsidies*, contributing to over-capacity on the sustainable management of their fisheries, distinguishing between factors, *including subsidies*, which contribute to over-capacity and unsustainability and those which produce a positive effect or are neutral" (paragraph 25; emphasis added).[12] Strictly speaking, compliance with the Plan is voluntary.

Currently, the Fisheries Department is assembling information that should facilitate discussion and help its Members to reduce the controversies surrounding subsidies and fisheries. The information to be provided by the Department will be factual, not normative, in nature. Three topics are being studied: the effects of subsidies on trade in fish and fish products; the effects of subsidies on sustainability of wild fish stocks; and a review of the various concepts of fisheries subsidies. The work on the first two topics is taking the form of global literature reviews.

An FAO Expert Consultation on Economic Incentives and Responsible Fisheries was held in Rome from 28 November–1st December 2000 to review the results of the work achieved to date. The Report of the Expert Consultation is due to be submitted to the 24th Session of the FAO Committee on Fisheries (meeting 26 February-2 March 2001), which will consider the report and provide guidance regarding any further work.

Summary of the information collected to date

In sum, work in national capitals and in inter-governmental organisations (IGOs) over the last four years has yielded:

- several national case-studies of the effects of government support policies on the behaviour of the fishing industry;

- several inventories of a large number of current national government programmes, particularly of OECD and APEC member economies (which grouping includes the vast majority of the world's fishing nations);

12 . Article 45 of the IPOA specifies the role of the FAO with respect to data collection and analysis.

- estimates of the government expenditures on most of these programmes, for 1996 and 1997 in the case of the OECD countries[13] (and some historical data for those countries that produced case studies for the *Transition* report);

- emerging consensus among a large number of countries on a classification system for subsidies that is based on objective criteria (what the measures are tied to), rather than their ostensible aims (e.g., to improve the lot of fishermen).

Combining the numbers reported by the OECD and APEC studies, one can also arrive at a *very* rough estimate of global government financial transfers to the fishing industry towards the end of the 20th century: around $15 billion a year. This sum is derived by adding the $12.9 billion estimate from the APEC study to the $1.7 billion estimated by the OECD for non-APEC economies, and rounding up the result to account for the rest of the world.

The information gaps

While it is clear that there now exists a much better picture of support to the world's fishing industries, it is still nowhere near as developed as it is for agricultural commodities, or for particular energy industries, such as coal (*see* OECD 2000a; IEA 2000). For one, the data that have been reported are in almost all cases aggregated at the level of the fishing sector, not individual fisheries. Ideally, to be useful for empirical analysis of their effects on trade and resources—e.g., in a form that could be incorporated into bio-economic models—information on support needs to be available at the same level of detail as information relating to other variables, such as management.[14] However, there are considerable practical barriers to producing fishery-level estimates of support, especially for multi-species fisheries and fisheries prosecuted by fleets from more than one country. Still, policy makers are crying out for better guidance on which subsidies are having the greatest "perverse" affects on fish stocks, and that means, at a minimum, identifying—if only in qualitative terms—which subsidies benefit which fisheries.

Some support measures *are* fishery-specific, such as the measures described in the last two rows of Table 1. But many other measures, especially those that are used to reduce the costs of inputs (fuel, ice, bait, borrowed capital), are not. Rules of thumb could be applied to apportion the total values of these measures to individual fisheries—e.g., on the basis of an expenditure survey—but the results would only be approximate. As with so many things in life, good enough may have to suffice when perfection is not attainable.

Market price support

Market price support (MPS), while not necessarily fishery-specific, *is* specific to particular commodities. MPS could be significant for some fish species and countries, especially those that maintain high barriers to trade. But, so far, no comprehensive attempt has been undertaken to measure

13 . In contrast with the subsidy estimates reported by other IGOs, which are generally available on-line for the cost of the time and paper it takes to down-load them, those available from the OECD are contained in formal reports, which must be purchased in paperback or electronic-book form. The *Transition* study costs FF 340 ($50), the two-volume *Review of Fisheries,* FF 800 ($129).

14. As Garcia and Newton (1995) have pointed out, fishing pressure has not been evenly spread over species. Historically, the pattern has been one of initial heavy exploitation of high-valued species, or ones that are easy to catch, followed by the exploitation of successively lower-value species.

MPS on even a national basis; rather, the data reported so far relate almost exclusively to government expenditure, and some off-budget items.

Measuring MPS has previously proved tricky, however, in part because of the difficulty of determining a reference price that can be compared with a domestic price. As the OECD's Committee for Fisheries concluded at the end of its study of "Economic Assistance to the fishing industry" (OECD, 1993):

> The problem of establishing an external reference price for raw fish is in general greater than for agricultural products. The difficulty stems from the fact that fishery products are highly perishable and heterogeneous. Raw fish is comparable to fresh fruit and vegetables, for which PSEs [producer subsidy equivalents] have in general not been calculated. International trade is limited such that a world market price is difficult to observe. Another complication is that the harvesting and the processing sectors are often vertically integrated so that the domestic price for the raw fish is not readily observable. The effect on raw fish prices in the harvesting industry as a result of support to the processing industry may differ considerably, depending, *inter alia*, on the possibilities of trade in raw fish. This effect represents a serious problem of validity.

Indeed, it was largely because of its previous arduous experience with MPS that the Committee decided at the beginning of its 1997-2000 study on government financial transfers (OECD, 2000*c* and 2000*d*) *not* to require its members to measure that element of support. However, it agreed to return to the issue in its current work on market liberalisation.

The limitations of MPS notwithstanding, for some countries, and for some fisheries, a rough estimate of it could in theory be calculated by comparing the landed price of domestically caught fish with the same price less the prevailing import tariff. A considerable amount of information on tariffs is available on-line, including the United Nations Conference on Trade and Development's TRAINS database (http://cs.usm.my/untrains/trains.html) and APEC's on-line Tariff Database (http://www.apectariff.org/). A quick perusal of the APEC database, for example, shows that several of its members apply just one or two tariffs (typically within the range of 3% to 20%) for most species of fish and stages of preparation (i.e., chilled, frozen, canned); Australia's and New Zealand's import tariffs are zero; most of Canada's, except for a few crustaceans and molluscs, are also free. In some cases, however, tariffs are not what limits trade: sanitary measures, for example, may apply.

Budgetary and off-budget support

In any case, there is still work that could be done to improve the data on budgetary and off-budget support. We doubt that any organisation or individual that has been involved in the latest data collection efforts would claim that the data on government expenditure are complete. Certainly data on off-budget assistance is not. A quick perusal of either the APEC or the OECD tables, for example, reveals that only a small number of countries (Australia, Ireland, Norway and the United States) have included the value of fuel-tax concessions (exemptions and rebates from diesel fuel) in their numbers. Yet virtually every maritime country in the world provides such tax concessions in one form or another.

There remain also a number of grey areas relating to the recovery of government expenditures through user fees.[15] Countries that do recover some of their costs of general services (usually for fisheries

15 . See Adersen *et al.* (1998) and Wallis and Flaaten (2000) on the economic implications of charging users for government services.

research, management and enforcement activities), such as Australia, Canada and New Zealand, tend to report these revenues in their tabulations of programme expenditure. Much more difficult to ascertain is the degree of cost-recovery from the use of infrastructure, especially improved harbours. Many governments support investment in ports and harbours, and indeed some of these investments aids are included in the expenditure data they have provided to international organisations. But gross expenditures are a poor measure of the subsidy-equivalent of access to publicly financed infrastructure—not to mention ancillary services, such as those provided by harbour authorities in the form of navigation aids, administration and fire protection. On the one hand, vessels engaged in activities other than fishing, such as tourism, often share harbour facilities with fishing boats. On the other, current investments in fisheries infrastructure may be considerably lower (or higher) today than they were in the recent past. Ideally, one would like to be able to compare what owners of fishing vessels are actually charged for using improved harbours with what they would pay were they apportioned their fair share of the costs borne by governments. Realistically, however, deriving such an estimate for all the fishing ports in any country with a long coastline would be a huge task.

Sub-national support

As noted earlier, national and international compilations of subsidies to the fisheries sector have so far largely ignored measures financed by sub-national governments. Extending data-collection efforts to the sub-national level could provide some useful insights into spending patterns. But the number of sub-national governments with independent spending authority in the area of marine capture fisheries is large: there are six states and one coastal territory in Australia, seven coastal provinces in Korea, six coastal provinces and two territories in Canada, twenty-three coastal states in the United States, and around forty coastal prefectures in Japan. And for several reasons, effort spent on compiling a comprehensive inventory of sub-national expenditures would soon encounter diminishing returns:

- Firest, based on the information contained in the documents listed in Table 3, it would appear that a large share of expenditure by sub-national governments on fisheries—perhaps a higher proportion than at the national level—supports fishing only indirectly, through general services such as monitoring, enforcement and research.

- Second, the amount of the expenditure involved is often small.

- Third, the data are sometimes simply not available, or are in a form that is of limited usefulness.

Nonetheless, such information may be essential when investigating the links between subsidies and fishing effort or capacity in certain fisheries. In the interest of making the researcher's job easier, sub-national governments might be persuaded to make their expenditures more transparent, accessible and easier to link to bio-economic variables.

Un-taxed resource rents

Some people have suggested that un-taxed resource rent should also be included in the accounting.[16] Resource rent accrues to a fishing industry when its net revenues exceed the normal returns to factors of production. In particular, the argument relates to rent generated by governments not charging

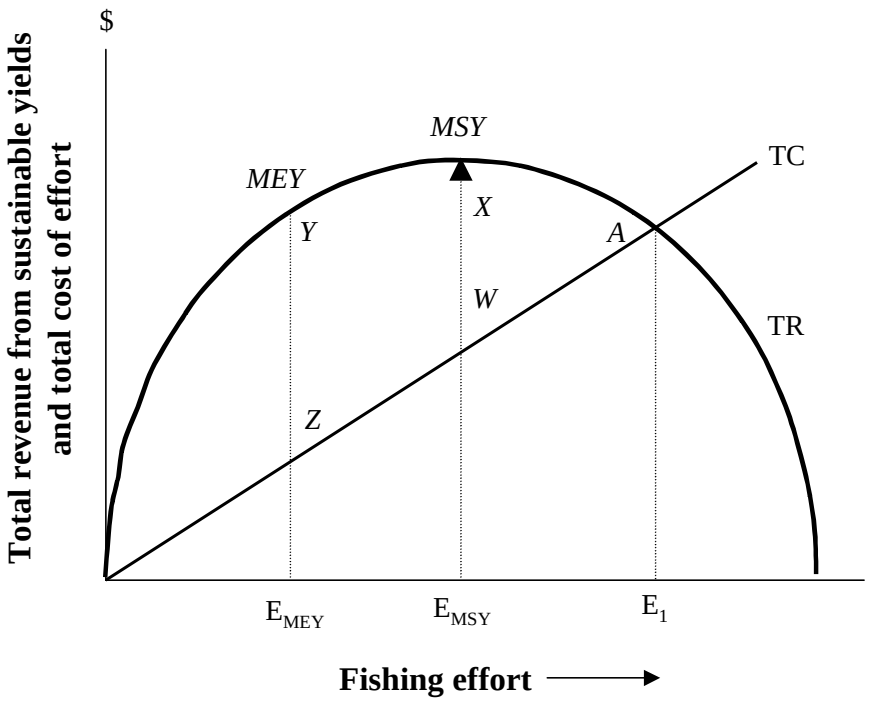
16. Both Millazo (1997) and Stone (1997), for example, have suggested that unrecovered resource rent should be counted as a subsidy.

fishers for preferential access to the resource. Rents can be earned at effort levels up to the point that total revenues (*TR*) equate with total costs (*TC*)—point *A* in Figure 1. The point at which rents are greatest is called maximum economic yield (*MEY*), which is usually at a lower level of effort than maximum sustainable yield (*MSY*). As long as there are no barriers to entry, however, any resource rent available when a fishery is first developed generally gets dissipated by additional activity, either by new entrants or expanded effort by incumbents (from E_{MEY} to E_{MSY} to E_1 in the diagram).

Management instruments that allow individuals to engage in profit-maximising behaviour, such as individual quotas (transferable and non-transferable) and exclusive area-use rights, may move fishing effort back to a level at which rents are again generated. But these rents tend to become quickly capitalised into asset values—e.g., the price of quota—if they are not taxed away by the government. And they are generally *not* taxed, except indirectly through income tax.[17] It is fair to say, nonetheless, that the reluctance of governments to tax a portion of the resource rent that could potentially be earned from domestic fleets is a missed opportunity. (The opportunity is less often missed when foreign fleets are provided access—often they *are* charged a fee.) But if the management instruments do not create conditions for the generation of resource rent to begin with, it is hard to justify counting that foregone revenue as support to the industry.

Figure 1. Rents in a biologically stable fishery

(effort relationship)



17. Russia may soon become the exception to this rule. If measures announced by the country's State Fisheries Committee go into effect, as planned, in January 2001, fishing vessels—domestic as well as foreign—operating in the Okhotsk, Bering and Japan seas would have to pay in aggregate around 5.8 billion roubles ($200 million) a year for the right to fish in those waters. The measures are opposed by those working in the industry, who are calling for new subsidies. See the *TASS News Agency* article, < http://www.worldcatch.com/page/WC_Article_View.wc?priority=9&Featured=False&wvx=md&id=3110 > reported by *WorldCatch* (14.12.00).

Source: Flaaten and Wallis (2000).

Supporting data

Finally, and we cannot stress this too strongly, information on subsidies is of little value for policy analysis without corresponding biological and economic data on the fishery. Data on the status of fish stocks and on landings could always be improved, but it is generally good. Some countries, however, still maintain very little information on the size and nature of their fishing fleet and the people employed on them. Buck's (1995a) commentary on the United States may be particular to that country, but the situation it describes is not unique:

> Fishery managers, in many cases, lack adequate information on the number of commercial fishing vessels, much less on their value, fishing capacity, estimated operating costs, and other features. Some have suggested that a national registry of all fishing vessels should be developed. In addition, standardized ways for better measuring or estimating, in a comparable manner, the amount of capital invested in diverse fisheries as well as fishing effort, regardless of gear and vessel configurations, would assist in cross-fishery analyses.

In its report to the U.S. Congress four years later, the Federal Fisheries Investment Task Force (1999, p. xxviii) recommended that when legislation establishes or funds programmes affecting the fishing industry, part of the mandate and budget authorisation should provide for "the generation of adequate data to permit the quantitative evaluation of the capacity and subsidy effects of the programs." That seems to us the kind of advice that other governments should consider as well.

Some reflections on the role of NGOs

The foregoing discussion leads to several observations. First, the process of developing useful information on subsidies at the international level (not to speak of *disciplining* them) can take many years to bear fruit. Second, because these processes have been partly driven by concerns over trade, government budgets and competition, they can be delicate. Third, nobody should be surprised that the resulting estimates are not perfectly consistent across countries, nor complete.

While we would not wish to belittle the problem of information gaps, we would rate them secondary to one over-riding concern: making information available to the general public in the first place. For the moment, countries will carry on reporting data on subsidies to the WTO, and the OECD will continue to compile national tables of government financial transfers. But that work will proceed only as long as there is sufficient interest in the information, both within Member country governments and in the wider world.

Inter-governmental organisations, like the OECD, of course enjoy certain advantages when it comes to obtaining and publishing data on national public expenditure. For one, their staff members are often familiar with the data sources, since many of the same reference material is relied on for information that they use for other purposes.[18] Second, they may have established contacts in governments who can point them (sometimes discretely!) to where they should look. Third, they are generally trusted by their main clients—their Member governments—to be fair and to treat them on an equal basis. Such

18. Institutions also like to differentiate themselves by developing particular competencies. In the case of the OECD, and of its Directorate for Food, Agriculture and Fisheries in particular, one of those areas of expertise is the measurement of government support.

questions of trust and balance weigh heavily when the issue under investigation is internationally sensitive.

Inter-governmental organisations are, however, encumbered by one basic reality. And that is, at the end of the day, they must secure permission to publish. In the case of information on subsidies, that means that grey areas are subject to discussions between the Secretariat and individual member countries that in the end may be arbitrated within consensus-seeking committees.

NGOs that have developed an understanding of subsidies, such as the World Wildlife Fund, can help keep IGOs and national governments on the straight-and-narrow by scrutinising their work closely. Indeed, their knowledge, if used judiciously, can serve as a check and balance in any future efforts to discipline subsidies. Generally, any multilateral regulatory regime requires three components: a norm building process; a formal set of legal obligations (or a set of common principals and criteria, in the case of non-binding arrangements); and an apparatus for monitoring and enforcement. At this stage in the development of international relations, law-making and enforcement are still privileges of sovereign governments. But in democracies, at least, civil society and the press can and often do influence the norm-building process and contribute to monitoring in an informal way (Steenblik, 1998).

Environmental NGOs have recently had, and will continue to have, an influence on regional, national and international dialogues over subsidies. And through their investigative work they will no doubt shed light on subsidy policies that may have escaped the attention of the multilateral institutions formally charged with monitoring them—as the WWF has done already. NGOs may wish to take a further step and participate more directly in the norm-building process for ensuring transparency on, and moving toward disciplines for, subsidies. They could seek to do this in two ways:

- Co-operating with a like-minded alliance of governments. Such co-operation could involve jointly funded work programmes, workshops, agreements on strategies in multilateral forums—governmental and non-governmental.

- Forming an alliance with key fisheries companies. The fishing industry has enormous political clout in fisheries policy development. While the relations between some NGOs and fisheries corporations may not always be amicable, economic logic would suggest some long-run convergence of views—i.e., both want there to be fish in the sea. Furthermore, the industry may see some marketing advantages in being seen to behave responsibly. Such engagement by NGOs may make government's task easier when it is exploring the possibilities for subsidy reform.

NGOs can help in other ways. Subsidies that raise an industry's revenues or lower its costs persist, in part, because they are seen as a way of transferring tax money back to local taxpayers. The problem is that there is usually a disconnect between who pays for and who receives them, which encourages the diversion of public money into projects even when they are not really needed. Yet making the transition from dependence on, to independence from[19], subsidies can be frightening for workers employed in a supported industry. There is therefore an important job to do in educating people and policy makers, not only about the potential long-run benefits of subsidy reform, but also about ways to make the transition to a more sustainable future less painful. Answering the question of "How do we get there from here?" is perhaps as important as identifying to where we want to get.

19. Independence from subsidies does not necessarily mean zero government expenditure on anything to do with the fisheries sector.

There are undoubtedly more areas in which organisations such as the WWF and other segments of civil society could contribute towards the process of policy reform. The WWF, at least, has made its willingness to continue making such a contribution abundantly evident.

References

Andersen, Peder, Jon G. Sutinen and Kathy Cochran (1998), "Paying for fishery management—economic implications of alternative methods of financing management." In *IIFET'98 - Tromsø: Procedings*, Volume 2 (Arne Eide and Terje Vassdal, eds.), pp, 439-447. Tromsø, Norway: The Norwegian College of Fishery Science, University of Tromsø, Norway for the International Institute of Fisheries Economics and Trade.

Buck, Eugene H. (1995*a*). *Overcapitalization in the U.S. Commercial Fishing Industry*. Issue Brief No. 35-296 ENR (22 February 1995). Washington, D.C.: U.S. Congressional Research Service. http://www.cnie.org/nle/mar-6.html

_____ (1995*b*). *Federal Agency Programmes in Living Aquatic Resources and Aquatic Habitat Protection*. Report No. 95-937 (15 August 1995). Washington, D.C.: U.S. Congressional Research Service. http://www.cnie.org/nle/wet-3.html

European Commission, Directorate-General for Competition (1999). *European Community Competition Policy—XXIXth Report on competition policy, 1998*. Part 2: Report on the application of the competition rules in the European Union. Luxembourg: Office for Official Publications of the European Communities. See Part 2, Chapter III, Section D, "List of State aid cases in other sectors." http://europa.eu.int/comm/competition/annual_reports/1998/

_____ (2000). *European Community Competition Policy—XXIXth Report on competition policy, 1999*. Luxembourg: Office for Official Publications of the European Communities. http://europa.eu.int/comm/competition/annual_reports/1999

FAO — United Nations Food and Agricultural Organisation (1992). *The State of Food and Agriculture: World Fisheries and the Law of the Sea: A Decade of Change*. Prepared by the FAO Fisheries Department with the assistance of Francis Christy (Revised 1993). Rome: FAO. pp. 129-182.

Flaaten, Ola and Paul Wallis (2000). "Government Financial Transfers to Fishing Industries in OECD Countries." Paper presented to the Tenth Biennial Conference of the International Institute of Fisheries Economics and Trade, July 2000, Corvallis, Oregon. http://www.oecd.org/agr/fish/publications.htm

Federal Fisheries Investment Task Force (1999). *Report to Congress*. Washington: Government Printing Office. http://www.nmfs.noaa.gov/sfa/ITF.html

France, Ministère de l'Agriculture et de la Pêche (2000 and previous years). *Les concours publics aux Pêches et maritimes et aux cultures marines, 1994-1999*. Paris: Ministère de l'Agriculture et de la Pêche, Bureau des concours publics à l'agriculture.

Garcia, S.M. and C. Newton (1995). "Current Situation, Trends and Prospects in World Capture Fisheries." Paper prepared for the Conference on Fisheries Management, Seattle, 1994.

Germany, Bundesministerium für Ernährung, Landwirtschaft und Forsten (1999). *Jahresbericht über die Deutsche Fishwirtschaft 1999* [Annual Report on German Fisheries 1999]. Bonn: BELF. (To order go to http://www.bml.de/ click on "Fischwirtschaft", then "Jahresbericht über die Deutsche Fischwirtschaft 1999").

Grady, Patrick, Gordon Munro, Paul MacNeil, Alex Fekete and Gong Xue (1999). *Free Trade and Investment in the Fisheries Sector of the Asia-Pacific Region: An Economic Analysis of Tariffs*. Ref: F98/CP/00267 (Report to APEC). Ottawa: Global Economics Ltd. http://www.apecsec.org.sg/download/pubs/fish_eco_anly.exe

International Energy Agency (2000). *Coal Information — 2000*. Paris: OECD Publications.

Milazzo, Matteo (1998). *Re-examining Subsidies in World Fisheries*. World Bank Technical Paper No.406. Fisheries Series. Washington, D.C.: World Bank.

Netherlands, Ministerie van Landbouw, Natuurbeheer en Visserij (2000). *Rijksbegroting LNV 2000*. Den Haag: Sdu Uitgevers (http://www.minlnv.nl/infomart/begrot/2000/ and click on "Bilagen 6. Subsidies").

OECD — Organisation for Economic Co-operation and Development (1965, 1971 and 1980). *Financial Support to the Fishing Industry*. Paris: OECD Publications.

_____ (1990). Memorandum of the 66th Session of the Committee for Fisheries. Paris, September.

_____ (1993). "Economic assistance to the fishing industry: observations and findings." Document No. AGR/FI(93)11/REV1, 3 November 1993. http://www.oecd.org/agr/fish/doc/ObsFind.pdf

_____ (2000*a*). *Agricultural Policies in OECD Countries — Monitoring and Evaluation*. Paris: OECD Publications. (To purchase: http://electrade.gfi.fr/cgi-bin/OECDBookShop.storefront/EN/product/512000041P1)

_____ (2000*b*). *Review of Fisheries in OECD Countries*. Volume 1: Policies and Summary Statistics. Paris: OECD Publications. (To purchase: http://electrade.gfi.fr/cgi-bin/OECDBookShop.storefront/EN/product/532000011P1)

_____ (2000*c*). *Transition to Responsible Fisheries—Economic and Policy Implications*. Paris: OECD Publications. (To purchase: http://electrade.gfi.fr/cgi-bin/OECDBookShop.storefront/EN/product/532000021P1)

_____ (2000*d*). "Transition to Responsible Fisheries—Government Financial Transfers and Resource Sustainability: Case Studies." Document No. AGR/FI(2000)10/FINAL. http://www.oecd.org/agr/fish/doc/fi0010fe.pdf

Portugal, Instituto Nacional de Estatistica (1998). *Pescas em Portugal—1986-1996*. (To purchase: http://www.ine.pt/prodserv/catalogo/catpubt.asp?Cod=F)

Portugal, Instituto Nacional de Estatistica (2000). *Estatísticas da Pesca—1998*. (To purchase: http://www.ine.pt/prodserv/catalogo/catpubt.asp?Cod=F)

PricewaterhouseCoopers (2000). "Study into the Nature and Extent of Subsidies in the Fisheries Sector of APEC Members' Economies." Draft Report—End Module 4: Synthesis. Report No. 07/99T. Prepared for the Fisheries Working Group of Asia Pacific Economic Co-operation.

Schorr, David (1998). *Towards Rational Disciplines on Subsidies to the Fishery Sector*. Washington, D.C.: WWF, September. http://www.panda.org/seachange/fisheries/pdf/09.subsidies_q8.pdf

Schorr, David with John Virdin and Karen Flanders (2000). “Evidence of poor transparency in fishing subsidy programmes—a background report by WWF. Paper presented to the *Fishing in the Dark* symposium, Brussels, Belgium, 28-29 November 2000. http://www.fishing-in-the-dark.org/downloads/evidence.doc

Steenblik, Ronald P. (1999). “Subsidy reform: doing more to help the environment by spending less on activities that harm it.” In *Imagine Tomorrow’s World*, Proceedings of the IUCN's 50th Anniversary Symposium, Fontainebleau, France, 3-5 November1998. Gland, Switzerland: World Conservation Union. http://biodiversityeconomics.org/pdf/topics-35-02.pdf

_____ (1999). “Previous multilateral efforts to discipline subsidies to natural resource based industries.” In *The Impact of Government Financial Transfers on Fisheries Management, Resource Sustainability, and International Trade*, report of the Proceedings of the PECC Workshop held on 17-19 August 1998, Manila, Philippines (M. Riepen, ed.). Singapore: Pacific Economic Co-operation Council. http://www.oecd.org/agr/Documents/prev-eff.pdf

Steenblik, Ronald and Gordon Munro (1999). "International Work on Fishing Subsidies—An Update." In *The Impact of Government Financial Transfers on Fisheries Management, Resource Sustainability and International Trade*, report of the Proceedings of the PECC Workshop held on 17-19 August 1998, Manila (M. Riepen, ed.). Singapore: Pacific Economic Cooperation Council. http://www.oecd.org/agr/fish/publications.htm

Stone, Christopher (1997). “Too Many Fishing Boats, Too Few Fish: Can Trade Laws Trim Subsidies and Restore the Balance in Global Fisheries?” *Ecology Law Quarterly*. Vol. 24:505-544.

Wallis, Paul and Ola Flaaten (2000). “Fisheries management costs: concepts and studies.” Paper presented to the Tenth Biennial Conference of the International Institute of Fisheries Economics and Trade, July 2000, Corvallis, Oregon. http://www.oecd.org/agr/fish/publications.htm

WTO — World Trade Organisation (1998). “GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry—Note by the Secretariat.” 9 March 1998. Document No. WT/CTE/W/80 http://www.wto.org/wto/ddf/ep/public.html

_____ (1999). “GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry—Note by the Secretariat.” 21 September 1999. Document No. WT/CTE/W/80/Add. http://www.wto.org/wto/ddf/ep/public.html

WWF (1997). *Subsidies and Depletion of World Fisheries: Case Studies*. Endangered Seas Campaign. Washington, D.C., April. http://www.panda.org/seachange/fisheries/report.htm

_____ (1998). *The Footprint of Distant Water Fleets on World Fisheries*. Godalming, Surrey, United Kingdom: WWF International, Endangered Seas Campaign http://www.panda.org/seachange/fisheries/report.htm

_____ (1999). *Underwriting Overfishing*. Issue Summary No. 1. Endangered Seas Campaign. Washington, D.C. http://www.panda.org/resources/publications/water/overfishing.

Fishing in the Dark

A Symposium sponsored by WWF and The European Policy Centre
28-29 November 2000

Summary of the presentation to be given by Tony Venables
Director of ECAS

ECAS (Euro Citizen Action Service) is an independent Brussels based structure with 150 members – all NGOs and including WWF – working in three areas:

- Advice to NGOs about fundraising and lobbying with the EU Institutions
- Advice to citizens about their rights and promotion of European citizenship
- Access to EU documents and transparency more generally

We were set up 10 years ago. Our aim is to create a better balance among 14,000 lobbies around the EU between public interest and commercial lobbies. There has been progress. Some organisations like WWF are more than a match for the business lobby, and the number of European NGO active in Brussels and Strasbourg has more than trebled over the last decade. But, there is a long way to go – and perhaps particularly on the issue of transparency, an issue which is everyone's responsibility and no-one's. Indeed, we particularly welcome this conference because there are too few NGOs and other interests involved. To involve more environmental, public health or consumer groups, the only way is to take specific issues. This conference should be a model therefore for others.

In my presentation, it will not be necessary to go into the draft regulation on access to documents: Michael Cashman Rapporteur in the European Parliament will do that much better. My intention is rather to describe, as an outside observer, the climate in which the EU Institutions are approaching the legislative challenge of legislation, not just codes, under Article 255 of the Amsterdam Treaty.

1. **The Commission**. With the Commission there is a paradox. The dramatic events of 1999 have put reform and openness on the agenda. Romano Prodi has opened up – to an extent – minutes of Commission meetings and his own correspondence. But, the resignation of the last Commission has also created something of a backlash. Much is made of the "space to think" and that the Amsterdam Treaty is an opportunity to tighten up current practice with codes of conduct. The problems of all legislation in this area are particularly well highlighted by the Commission proposals: it is possible to give with one hand (and there are some improvements) but to take away with the other (with a longer list of exceptions).

2. **The European Parliament**. The report by the Parliament is a marked improvement on the Commission proposal, but there is some way to go before the Institution becomes a really effective watchdog:

    - It was by passed by a Council decision to amend its own code and introduce a block exemption for documents on defence;

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- It is not clear how firm a line will be taken in the negotiations with the Council, with some political groups more ready to compromise than others;
- There may be a dilemma for organisations like ECAS or WWF – if genuine freedom of information for citizens is unobtainable, can we rely on the trend towards regimes of special access for MEP's – or rather certain MEP's?

3. **The Council of Ministers**. To some extent, the conference may illustrate a link between access to information about fisheries subsidies and the more general picture. In the Council of Ministers on the general regulation, positions are far apart between the so-called "transparency group" of countries and the others. The lack of consensus is such that ECAS was refused, so far, access to any documents relating to the Council's legislative deliberations. We are beginning to have serious doubts about claims by the Institutions that there is a 90% success rate with requests for documents. There is no independent evidence that people actually received what they wanted. What difference can the Swedish Presidency make when the legislation is adopted before May next year?

In conclusion, I want to highlight:

- The importance of this issue for NGOs and citizens, as essential to a "right to be heard";
- That this is a priority too for European Institutions the legitimacy of which depends on having an open door policy towards requests for information and complaints;
- The dilemma for environmental organisations which at first sight would do better to rely on the directive on access to environmental information and the Aarhus convention rather than the draft regulation – but the environmental issues cut across other policies.

"Case Study: Fisheries, Transparency and Participation"

Prepared for WWF/Adena by TERRA, Environmental Policy Centre

20th November 2000

Ref.: F/2000/004

Title: "Case Study: Fisheries, Transparency and Participation"

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Table of Contents:

1. Introduction: "Endangered Seas" and transparency
2. Access to environmental information
   2.1. Legal regulation of access
   2.2. Future development of the regulation
   2.3. Request for access to information
   2.4. Legal analysis of the request
3. Public participation
   3.1. Legal situation and future development
   3.2. Request for participation and responses
   3.3. Analysis of the situation
4. Conclusions
5. Bibliography

1. Introduction: "Endangered Seas" and transparency

In response to its serious concern about the situation that is being created by overfishing in the seas of our planet, the association WWF launched its worldwide "Endangered Seas" campaign, whose aim is to contribute to the protection and restoration of fishery resources. The campaign invites governments, companies, local communities, fishermen and conservation organizations to:

- safeguard fishery resources and marine biodiversity through the establishment of protected marine areas,
- reduce anti-economic government subsidies that support overfishing, and
- create market incentives that favour sustainable fishing.

Among the campaign's activities related with reducing the subsidies that support overfishing, the terms "transparency and participation" have become key issues in the campaign. Community and State aid which supports unsustainable commercial fisheries plays a decisive role in the promotion of fishing fleets that surpass the capacity of existing fishery resources. This aid leads to situations of fishery overexploitation and unsustainable fishing practices which eventually lead to the disappearance of numerous species and affect marine biodiversity[1].

And yet, despite the decisive importance of these subsidies, the public does not have easy access to information about their approval and there is a lack of adequate systems for public participation in decision-making in this respect. For this reason, part of the WWF's worldwide "Endangered Seas" campaign is focused on improving "transparency and participation" in relation with aid and subsidies to the fisheries sector. The campaign aims, on the one hand, to make information accessible and to allow a knowledge of the decisive data and aspects of the issue, while on the other hand providing adequate spaces for public participation in decision-making, thus facilitating debate and the adoption of more suitable measures for reducing the negative effects that some subsidies are having on the state of the seas.

In the European Community, the activities of the "Endangered Seas" campaign in relation with the transparency of fishery subsidies involve, on the one hand, the obtainment of information about subsidies in the twelve countries in which WWF has offices, and on the other hand the holding of an international symposium which will focus on analysing the results obtained and on debating proposals to improve the situation.

WWF/Adena is one of the offices that carries the greatest weight in these activities, in recognition of the importance of the Spanish fishing sector in the European Community. Transparency and participation have also been key issues for WWF/Adena since the beginning of its activities in relation with fisheries. Its work in this respect has been focused, first of all, on access to the information necessary to carry out its activities regarding fishery subsidies, and secondly on requesting participation in decision-making processes related with the use of Structural Funds in

[1] WWF Briefing Report on the European "Right to Know" Laws to Accessing Information on Fisheries Subsidies. 2000. FIELD. (Pending publication)

the fisheries sector. These lines of work are based, in the case of access to information, on the existence in the European Community since 1990 of the Directive on Freedom of Access to Information on the Environment[2], which aims to facilitate public access to all the information in the hands on the administration concerning the state of the environment and measures that may affect this. And in the field of public participation, its work is based on the regulations applicable to the Structural Funds, which since 1993 include the consideration of environmental variables in the use of these funds and invite the participation of social and economic partners in the planning, execution and evaluation of the use of the funds[3].

2. Access to environmental information

The availability of information on the state of the environment is necessary in order to guarantee that environment-related decisions are taken in an appropriate way. Access to environmental information is a key element for advancing towards sustainable development, as has been internationally acknowledged:

- Principle 10 of the Rio Declaration[4],
- 4th and 5th Environmental Action Programme[5] [6], and
- Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters[7].

All persons share responsibility for the state of the environment. Without public access to environmental information it is impossible to set up adequate systems for public participation. And without public participation it is not possible to assure the effectiveness of environmental policies, and hence the attainment of sustainable development.

2.1. Legal regulation of access

In the scope of the European Community, the European Parliament in 1985 took the initiative to regulate access to environmental information, and on 7th June 1990

[2] Directive 90/313/EEC, of June 7, on the freedom of access to information on the environment. OJ L 158, of 23 June 1990.

[3] Council regulation (EEC) no. 2081/93 of 20 July 1993 amending Regulation (EEC) no. 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments. Council Regulation (EEC) no. 2082/93 of 20 July 1993 amending Regulation (EEC) no. 4253/88 laying down provisions for implementing Regulation (EEC) no. 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments. And finally, Council Regulation (EC) no. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds.

[4] Principle 10 of the Rio Declaration (1992 Earth Summit) establishes that the attainment of sustainability is dependent on three basic pillars: access to environmental information, public participation and access to justice.

[5] The 4th Framework Environment Action Programme considers the need to regulate free access to environmental information in the European Community.

[6] The 5th Framework Environment Action Programme, "Towards Sustainable Development", establishes that all actors must participate in the attainment of sustainable development.

[7] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Signed in Aarhus, Denmark, on 25th June 1998. See web site: www.unece.org.

approved the Directive on freedom of access to information on the environment[8], which obliges public administrations to make available to the public any information on the environment that is requested. Transposition of the Directive was to be effective in the Member States by 31st December 1992 at the latest.

In our country the basic regulation on the right of access to environmental information is established by the Law on Freedom of Access to Information on Environmental Matters[9], which transposes the aforementioned Directive. Provisions on access to environmental information also exist in Murcia Region[10] and in the Basque Country[11].

The State law was recently amended in several aspects, including the appeal procedure following refusal of access[12]. It should also be mentioned that in the application of legislation regarding access, particular attention must be paid to the provisions of the Law on the Juridical Regime of the Public Administrations and the Common Administrative Procedure[13], as well as its recent amendment[14], which is applicable for all that is not regulated by legislation on access to environmental information.

In short, the Law on Freedom of Access to Information on Environmental Matters establishes the following regulation:

a) Environmental information is understood to be[15]: information relating to the state of water, air, soil, fauna, flora, land and natural sites, and the interaction between these elements. Information relating to the activities and measures that affect or may affect the aforementioned elements. And also that relating to plans, programmes and measures for the management and protection of the environment and actions or measures for environmental protection. This information may be found in any format: written, visual, oral, electronic, etc.[16].

b) Access may be requested by natural or legal persons who are nationals or residents in any of the States comprising the European Economic Space[17], and by the nationals of a State that recognizes the same right to Spanish nationals[18].

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[8] Directive 90/313/EEC, of 7th June 1990, on freedom of access to information on the environment. OJ L 158, of 23 June 1990.

[9] Law 38/1995, of 12 December, "sobre Libertad de Acceso a la Información en Materia de Medio Ambiente". BOE no. 297 of 13/12/1995.

[10] Law 1/1995, of 8 March, "sobre Protección del Medio Ambiente en la Región de Murcia". BOE no. 78 of 3/04/1995.

[11] Law 3/1998, of 27 February, "General de Protección del Medio ambiente del País Vasco". BOPV of 27/03/1998.

[12] Law 55/1999, of 29 December, "sobre Medidas Fiscales, Administrativas y del Orden Social". BOE no. 312 of 30/12/1999.

[13] Law 30/1992, of 26 November, "de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común". BOE no. 285, of 27/11/1992. Correction of errata in BOE no. 23 of 27/01/1993.

[14] Law 4/1999, of 13 January, amendment of Law 30/1992, of 26 November, "de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común". BOE no. 12 of 14/01/1999. Correction of errata in BOE no. 16 of 19/01/1999 and BOE no. 30 of 4/02/1999.

[15] Art. 2 of Law 38/1995.

[16] Art. 2.1 of Law 38/1995 and art. 2 of Directive 90/313/EEC.

[17] The European Economic Space is comprised by the fifteen Member States of the European Union plus Iceland, Liechtenstein, Norway and Switzerland.

c) Any public administration that has responsibilities and possesses information relating to the environment is obliged to respond to requests for information, with the exclusion of those bodies that act in the exercising of judicial or legislative capacity[19]. Thus, the central administration, the administration of the different autonomous regions, and local administrations are obliged to respond to requests for environmental information.

d) The applicant can choose the format in which he/she wishes to receive the information[20]. If the requested information is available in different formats, it will be provided in the format specified in the request for information.

e) The provision of the requested information may be charged for, applying the corresponding legislation on administrative charges[21]. However, the cost applied may not be unreasonable or suppose an obstacle to access.

f) The time limit established for the notification of resolutions regarding access to environmental information is a maximum of two months, counting from the date upon which the request is received in any of the registers of the administrative body competent to resolve[22].

g) Access to information may be refused in a series of taxative cases, though the general principle is that of free access to environmental information[23]. Access may be excepted when the requested information affects:

- actions, in the exercising of competencies not subject to administrative law, of the State government, autonomous regional governments or local corporations;
- the investigation of crimes, if the divulging of this information may threaten the protection of the rights and liberties of third parties or the investigations that are being carried out;
- commercial and industrial confidentiality;
- national defence, public security or international relations;
- matters that have been or are subject to judicial or administrative sanctioning procedures, including inquiries or actions of a preliminary nature;
- intellectual property;
- the confidentiality of personal data and files;
- data provided by a third party not under the legal obligation to do so;
- data whose disclosure could increase the risk of damage to the environment to which it refers.

Access may also be refused, as applicable, when the request:

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[18] Art. 1 of Law 38/1995.
[19] Art. 2.2 of Law 38/1995.
[20] Art. 5.1 of Law 38/1995.
[21] Art. 5.2 of Law 38/1995, as amended by Law 55/1999.
[22] New art. 4.1, according to the recent reform of Law 55/1999.
[23] Art. 3 of Directive 90/313/EEC.

- implies supplying unfinished documents or data;
- refers to internal communications or deliberations of the public administrations;
- is manifestly unreasonable, or
- is formulated in too general a manner, it being impossible to determine what information has been requested.

When any of the taxative causes is applied to except access to information, and it is possible to separate the parts of the requested information that are subject to exception from the parts that are not, the information which is not subject to exception will be supplied, i.e. the requested information will be partially supplied[24].

h) In the event that access to information is refused, this must be reasoned, i.e. with an explanation of the grounds upon which access is totally or partially refused[25]. Lack of express resolution generates the effects of positive administrative silence, i.e. in the event of no express resolution, access to information is considered to be granted, as is set out in the Law on the Juridical Regime of the Public Administrations and the Common Administrative Procedure, applicable in this case[26].

i) Total or partial refusal of access to the requested information can be appealed against by means of an appeal to the immediately superior authority, if the body that decrees the resolution has a hierarchical superior. Otherwise it is possible either to lodge an optional request for review or to appeal to the administrative court, as established in Title VII of the Law on the Juridical Regime of the Public Administrations and the Common Administrative Procedure[27].

Though recent years have seen very important advances in this field, considerable efforts are still necessary in order to guarantee the correct and fluent exercising of the right to access to environmental information. In November 1999 the Commission, on the basis of the reports delivered by the fifteen Member States, the complaints it had received, and the parliamentary requests and questions dealt with, issued a report on experience gained in the application of the Directive[28]. Among the most problematic aspects of application of the Directive, mention may be made of the following:

- the definitions of information and of public authorities obliged to respond,
- the lack of adoption of practical arrangements that allow information to effectively be made available,
- the broad interpretation of exceptions,
- non-compliance with the obligation to respond,
- the time limit established for responding to requests,

[24] Art. 3.2 of Law 38/1995.
[25] Art. 4 of Law 38/1995, as amended by Law 55/1999.
[26] Art. 43 of Law 30/1992, of 26 November.
[27] Art. 4.3 of Law 38/1995, as amended by Law 55/1999.
[28] Commission Report to the Council and the European Parliament on Experience Gained in the Application of Council Directive 90/313/EEC, of 7 June 1990, on freedom of access to information on the environment. COM(2000) 400 final. Brussels, 29.06.2000.

- the acceptance of administrative silence, especially if this is understood as negative administrative silence,
- the procedure for appealing against refusals, which is not always sufficiently quick and cheap, and
- the high cost of some administrative charges applied to persons requesting information.

As the Commission's report underlines, numerous obstacles are detected in the Member States when analysing the experience gained in the application of the Directive. In Spain the following are particularly worthy of mention:

- the lack of information to applicants regarding the body that is competent to supply the information,
- non-compliance with the time limit established for resolving requests,
- the numerous cases of administrative silence that have been detected,
- the difficulty in accessing information in supposedly "sensitive" cases, which are liable to obtain a high level of social response,
- the lack of "available information" on matters in which the competent authority is obliged to compile data and information,
- the broad interpretation of some of the exceptions that are established, without internal criteria regarding interpretation or application, leading to different decisions even within the same department,
- the type of appeal established, and finally
- the difficulties, within the responsible bodies themselves, to adequately provide the services requested or to respond to demands for information. At times the delay in responding or the lack of response is more a question of internal organization, or relationships between bodies with different competencies or territorial areas, than the non-existence of information.

More specifically, some of the problems detected by the Commission with regard to the transposition of the Directive in our country gave rise to the opening of two infringement proceedings by the Commission against Spain, one of which has reached the European Court of Justice, and has been the cause of the recent amendment of the Law on Freedom of Access to Environmental Information in December of last year[29].

2.2. Future development of the regulation

As a result of the above report prepared by the Commission on experience gained in the application of the Directive, and the ratification process of the Aarhus Convention, the Commission has presented a proposal for the reform of the Directive[30]. The objective of this proposal is:

- to correct the deficiencies detected in the practical application of the Directive,

[29] The aforementioned Law 55/1999, of 29 December, "sobre Medidas Fiscales, Administrativas y del Orden Social".

[30] Proposal for a Directive of the European Parliament and of the Council relating to public access to environmental information. COM(2000) 402 final, of 29.06.2000.

- to adapt access to environmental information to the contents of the provisions of the Aarhus Convention,
- to adapt the Directive to technological advances and thus give rise to a "second generation" Directive which takes into account current systems for the creation, collection, storage, transmission and dissemination of information.

The proposal supposes incorporating, among others, the following changes into the current system:

a) A more exhaustive and explicit definition of the concept of environmental information, which clearly includes[31]: emissions, discharges and other releases into the environment, as well as information relating to genetically modified organisms. Express reference is also made to human health and security insofar as these are or can be affected by the state of the environment. Finally, it also incorporates the definition of cost-profit analyses and other economic analyses used in the framework of activities and measures that affect or can affect the environment.

b) With regard to the authorities responsible for supplying environmental information, the expression "*with responsibilities for the environment*" disappears, which in the future should avoid restrictive interpretations concerning the authorities that are obliged by these provisions[32].

c) It maintains the non-inclusion of any restriction regarding who can request information, simply providing a definition of applicants as: "*any natural or legal person who requests environmental information*"[33].

d) The maximum time limit for "*making available*", which replaces the expression "*responding to the request*" of the applicant is now 1 month, extendible for a maximum of one further month provided that "*the volume and complexity of the information*" requested makes it impossible for the responsible authority to respond within one month[34].

e) Many of the existing exceptions are qualified in order to avoid broad interpretations, and it is added that in each case "*the public interest served by the disclosure shall be weighed against the interest served by the refusal. Access to the requested information shall be granted if the public interest outweighs the latter interest*"[35].

As has been seen, the new proposed Directive on access to environmental information incorporates into Community legislation the provisions of the Aarhus Convention on access to environmental information, a Convention which Spain signed on 25 June 1998, whose ratification process is currently nearing completion[36],

[31] Art. 2 (1) of the proposed Directive.
[32] Art. 2 (2) of the proposed Directive.
[33] Art. 2 (3) of the proposed Directive.
[34] Art. 3 of the proposed Directive.
[35] Art. 4 of the proposed Directive.
[36] In Spain, the Council of Ministers meeting of November 17 agreed to submit the Aarhus Convention to the Parliament to be ratified.

and which will make it obligatory to set out provisions that permit wider access to environmental information in improved conditions.

2.3. Request for access to information

During the course of its activities in the "Endangered Seas" campaign, and with the aim of obtaining the information necessary for its initiatives in relation with fisheries, in early August 2000 WWF/Adena addressed a request for access to environmental information to the Directorate General of Fisheries Structures and Markets[37] of the Spanish Ministry of Agriculture, Fisheries and Food (MAPA), requesting access to the following information:

First of all, it requested information about the interventions of the Financial Instrument for Fisheries Guidance (FIFG), in relation with both the new programming period (2000-2006) and the previous period (1994-1999). The FIFG is one of the Community funds with structural aims which are created in the framework of economic and social cohesion policy[38], and whose purpose is[39]:

- to contribute to achieving a sustainable balance between fishery resources and their exploitation;
- to strengthen the competitiveness of structures and the development of economically viable enterprises in the sector;
- to improve market supply and the value added to fisheries and aquaculture products;
- to contribute to the revitalization of areas that depend on fisheries and aquaculture.

Specifically, WWF/Adena requested access to the following information:

- National Fisheries Development Plan, which will be co-funded by FIFG funds for the period 2000-2006. This document includes data relating to the scheduling of the programme's economic contributions and a list of the regional, national and Community contributions or other resources aimed at each area of assistance[40], Pluriregional Operational Programme of Objective 1 Regions.
- Expenses incurred by the different measures financed by the FIFG in the 1994-1999 programming period, with a detailed breakdown of the sums provided by Community, Spanish and privately financed funds, if applicable.
- Also in relation with the previous programming period (1994-1999), detailed information about the allocation of funds under two types of specific measures included in FIFG financing:

  1.- Adjustment of capacities
  2.- Renewal and modernization of the fishing fleet.

[37] Dirección General de Estructuras y Mercados Pesqueros.
[38] Title XVII of the European Community Treaty.
[39] Council Regulation (EC) no. 1263/1999, of 21 June 1999, relating to the Financial Instrument for Fisheries Guidance. OJ L 161, of 26 June 1999.
[40] Annex I of Regulation (EC) 2792/1999, of 17 December 1999, which defines the categories and conditions for structural interventions in the fisheries sector. OJ L 337 of 30 December 1999.

- List of all the projects funded by the fishing fleet renewal and modernization measures in the period 1994-1999, including in each case the name and address of the beneficiaries and a description of the project.

Secondly, information was requested in relation with State aid to the fisheries sector, in order to obtain a complete overview of fishery subsidies. More specifically, the following was requested:

- Copy of the national reports submitted in 1998 and 1999 to the Organization for Economic Cooperation and Development (OECD), as contributions to the study on governmental financial transfers in the fisheries sector, and the documentation upon which these reports were based.
- The report relating to State aid to the fisheries sector, submitted to the European Commission and used as a source for the Eighth Survey on State Aid in the European Union.

And finally, as a follow-up to a previous application[41], the request was also included for access to a series of documents referring to the transfer of fisheries capacity from the European Union to Argentina, and in particular the application of the "second generation" Fisheries Agreement between Argentina and the EU[42]. The information requested in this respect was as follows:

- Financial contributions of the European Union to the Argentine Government throughout the period of validity of the Agreement, in the framework of the Technical and Scientific Cooperation projects envisaged in section 4 of article 4 of the Agreement, and the general characteristics of each of the projects financed with the assistance of these Community contributions.

- How control is achieved over the mixed companies benefited by public subsidies, and in what circumstances the Spanish Administration considers that non-compliance with the characteristics of the initial project would justify total or partial recovery of the aid granted.

- What Community legislation is considered to be applicable to this type of situation.

The present request, as well as other previous applications, was always accompanied by telephone conversations and interviews with the persons responsible for supplying the requested information. These persons have always shown their willingness to process the applications. Though the final results have been variable, the time limits established for notifying their resolution have always failed to be observed.

[41] Request for information prior to that considered in this case study, presented by WWF/Adena in December 1999 to the Directorate General of Fishery Structures and Markets of the Spanish Ministry of Agriculture, Fisheries and Food.

[42] Agreement between the European Economic Community and the Argentine Republic on Relations in Sea Fisheries. Signed on 30 November 1992 but in force since 1994. The EEC approved the agreement and incorporated it into the acquis communautaire by means of Regulation 3447/93, of 28 September 1993. In force since May 1994. OJ L 318 of 20/12/1993.

With regard to the specific request in question, it should be noted that at the end of the maximum time limit legally established for notification of the resolution, i.e. two months from its presentation before the competent body[43], no express notification has been received. This, in strict application of the provisions relating to administrative silence, would indicate a case of administrative silence of a positive nature, i.e. the lack of express resolution is the equivalent of a positive response, which grants access. Therefore WWF/Adena's request has been accepted, but it has not however yet been provided with the requested information.

2.4. Legal analysis of the request

This heading analyses, on the one hand, the application's conformity with the legal provisions in force regarding access to environmental information, and on the other hand, the situation that has arisen due to the lack of response by the competent authority:

Can WWF/Adena request access to environmental information?

WWF/Adena is a non-governmental organization and is registered as a public charity, i.e. it has legal personality and as such is recognized the right to request environmental information without being having to prove an interest[44].

Is the information requested by WWF/Adena environmental information?

The information requested in the application considered in this case study refers to funding granted to the fisheries sector. More specifically, it alludes to aid and subsidies granted either through Structural Funds or other types of State aid, for the financing of projects and actions in the framework of different plans and operational programmes in the sea fisheries sector. These are measures that have a clear effect on fishery resources, i.e. on the state of marine fauna and biodiversity. This therefore clearly within the definition given by the Law on Freedom of Access, as this request refers to information relating to "*activities and measures that affect or may affect the state of these elements of the environment*", with fauna being one of the elements mentioned[45].

The European Court of Justice stated its opinion in the case of Wilhelm Mecklenburg versus Kreig Pinnerber regarding the need to make a broad interpretation of the definition, and to include any "*act* (of the administration) *which may affect or protect the state of any of the sectors of the environment to which the Directive makes reference*"[46].

Has the request been addressed to the competent authority?

[43] Art. 4 of Law 38/1995, as amended by Law 55/1999.
[44] Art. 1 of Law 38/1995.
[45] Art. 2 (1) a) of Law 38/1995.
[46] Case C-321/96, sentence of 17 June 1998.

The request for information was addressed to the Directorate General of Fisheries Structures and Markets, which depends on the General Secretariat of Sea Fisheries[47], of the Spanish Ministry of Agriculture, Fisheries and Food. Among others, the functions of this directorate general are[48]:

- general economic planning of the fisheries sector,
- basic management of the fisheries sector,
- administration of the Structural Funds of the Financial Instrument for Fisheries Guidance, and
- planning of the fishing fleet.

This is therefore the competent body of the administration, and that which has access to the information referred to in the request for access considered in this case study.

What situation has been created by the lack of express resolution within the time limit?

In the absence of an express resolution, the provisions regarding administrative silence established by the Law of the Juridical Regime of the Public Administrations and the Common Administrative Procedure[49] are applicable. In this case the administrative silence is assumed to be positive[50]. The obligation to issue an express resolution still persists, but in any case the subsequent resolution may only be issued in the sense of confirming the content of the assumed act, i.e. the granting of access to all the information requested[51]. Furthermore, resolution by administrative silence has, for all effects and purposes, the consideration of being the administrative act that finalizes the procedure[52].

Thus, WWF/Adena has received a positive response to its application, but has not obtained real access to the requested information, since such access has not been provided by the Directorate General of Fisheries Structures and Markets.

In this situation WWF/Adena has requested a "*certificate of acknowledgement of administrative silence*"[53] from the Directorate General of Fisheries Structures and Markets, with which it will subsequently demand from this body the supply of all the information granted by virtue of administrative silence.

As an obvious result, the lack of response to applications for access to environmental information and the consequent activation of the mechanism of "positive silence", which has incidentally recently been amended due to the appeal lodged against Spain before the European Court of Justice, is highly cumbersome, since it supposes the formal granting of the information, by a presumed act, though this information does not really reach the hands of the applicant. This is a complicated and unpractical situation which almost certainly deters many persons from continuing to try to obtain access.

[47] Secretaría General de Pesca Marítima.
[48] Information taken from the web site: www.mapya.es/org/pags/pesca.htm
[49] Law 30/1992 of 26 November.
[50] Art. 42 (2) of Law 30/1992.
[51] Art. 43 (4) of Law 30/1992.
[52] Art. 43 (3) of Law 30/1992.
[53] Art. 43 (5) of Law 30/1992.

If the information is not supplied after the issuing of certification of the presumed act, a contentious-administrative appeal may be lodged. At the same time it is also possible to demand disciplinary responsibilities against the persons responsible for resolving the application and who failed to comply with the time limit set out to that end[54], as well as the use of the "complaints and suggestions book", and thus the intervention of the General Inspection of Departmental Services and Sectorial Inspections[55].

3. Public participation

The principle of "co-responsibility" is of key importance for public participation. In fact, it is the reason why the establishment of systems and procedures that guarantee public participation in environment-related decision-making is recognized to be necessary for the attainment of sustainable development. Principle 10 of the Rio Declaration is a reflection of the consensus achieved in this respect[56]. In the same way the European Community, in its 5th Environmental Action Programme, establishes the need for all the actors involved to participate in the achievement of the programme, which incidentally is entitled "Towards Sustainable Development". Without the active participation of all the actors and the putting into practice of the principle of co-responsibility it is impossible to talk of the effectiveness of environmental policy and legislation. Such has been the international recognition and agreement in this respect that in 1998, during the 4th Pan-European Environment for Europe Conference, the Aarhus Convention, relating to Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[57], was opened for signing. This Convention has the aim of "*contributing to the protection of the right of every person, of present and future generations, to live in an environment adequate to his or her health and well-being*"[58], through recognition and protection of the rights of access to information, public participation in decision-making and access to justice in environmental matters.

3.1. Legal situation and future development

In our legal system, besides the constitutional recognition[59] of the right of all persons to participate in public matters, there is no specific regulation governing public participation in environmental matters. Nevertheless, there are numerous provisions

[54] Art. 42 (7) of Law 30/1992.
[55] Royal Decree 208/1996, of 9 February, which regulates administrative information services and citizen services. BOE no. 55 of 4 March 1996.
[56] Principle 10 of the Rio Declaration recognizes that to achieve sustainability it is necessary to ensure access to environmental information, public participation and access to justice.
[57] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Open to signatories in Aarhus, Denmark, June 25, 1998. Web page: www.unece.org.
[58] Art. 1 of the Aarhus Convention.
[59] Art. 23 (1) of the Spanish Constitution 1978.

that establish procedures for public participation in decision-making in matters that affect the environment[60].

In the case in hand, relating to public participation in the use of the Structural Funds, participation is regulated at Community level in the Regulation which sets out general provisions on the Structural Funds[61].

In 1993, with the reform of the Structural Funds regulation, the environmental variable is incorporated in the programming, execution and evaluation of the use of the funds. For the first time, the new regulations demand the performance of an environmental impact assessment of the programmed development actions, and the participation of environmental authorities in the different stages of use of the funds.

The regulation approved in 1999 maintains the need to integrate the environment in economic and social cohesion policy. Thus, the new Regulation establishes that the actions financed by the funds will contribute, among other things, to protecting and improving the environment. It commits Member States and the Commission to guaranteeing that environmental protection is integrated in the definition and application of the funds, requiring fulfilment of the principle of compatibility, i.e. that the operations of the funds have to adapt, among other things, to the protection and improvement of the environment[62].

Together with this, it reiterates the need to incorporate social and economic actors as partners in the use of the funds, in application of the partnership principle[63]. Community actions are conceived as a complement to national actions and must be approved in close coordination between the Commission itself and the Member State in question. The State will, "*within the framework of its national rules and current practices*", designate the different public authorities, as well as the social and economic partners, with whom the Commission will put into practice the partnership principle[64].

Moreover, "*in designating the most representative partnership at national, regional, local or other level, the Member State shall create a wide and effective association of all the relevant bodies, according to national rules and practice and taking account of the need to promote equality between men and women and sustainable development through the integration of environmental protection and improvement requirements*"[65].

And "*partnership shall cover the preparation, financing, monitoring and evaluation of assistance. Member States shall ensure the association of the relevant partners at the different stages of programming, taking account of the time limit for each stage*"[66].

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[60] Sanchis, F., Díaz, J.L., Fernández, M. 1998. Spain in: "Doors to Democracy. Current Trends and Practices in Public Participation in Environmental Decisionmaking in Western Europe. The Regional Environmental Centre. Hungary: pp 143-163.
[61] Council Regulation (EC) no. 1260/1999.
[62] Arts. 1, 2 (5) and 12 of Council Regulation (EC) no. 1260/1999.
[63] Art. 8 of Council Regulation (EC) no. 1260/1999.
[64] Art. 8 (1) of Council Regulation (EC) no. 1260/1999.
[65] Art. 8 (1) of Council Regulation (EC) no. 1260/1999.
[66] Art. 8 (2) of Council Regulation (EC) no. 1260/1999.

Further on, the Regulation considers in some detail certain aspects relating to the participation of social and economic partners:

- before the presentation of the plans to the Commission it must make consultations with them[67],

- furthermore the plans will have to include how they are to be consulted[68],

- provisions on the application of the Community support framework will also include provisions relating to the participation of the partners in the monitoring committees[69],

- and, the partners will also be consulted when the monitoring committees are being set up[70].

In short, it is necessary to consult the social and economic partners in the preparation of the plans, and also in the creation of the monitoring committees whose mission is to control and evaluate the execution of the plans and programmes. However, the Regulation alludes in these aspects to "national rules and current practices", which leaves a broad margin for arbitrary interpretation by each Member State as to what form this participation will actually take.

At this point it is important to note the signing of the Aarhus Convention by all the EU Member States. And though the Convention has not yet come into force, it is nevertheless a fact that all the signatory States are engaged in their respective ratification processes[71], as is the Commission itself, given that the European Community is also a signatory to the Convention. Ratification work implies the adaptation of existing legislation to the provisions of the Convention, which, as has previously been pointed out, aims to guarantee the rights of access to information, public participation and access to justice. And specifically, under the heading of public participation, it also regulates participation in the elaboration of plans, programmes and policies relating to the environment[72]. For this participation the Convention demands that the following aspects be guaranteed:

- that reasonable time limits be provided, allowing the public sufficient time to be informed and to participate effectively in the work throughout the decision-making process[73],

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[67] Art. 15 (2) of Council Regulation (EC) no. 1260/1999 sets out that "*plans shall be submitted by the Member State to the Commission after consultation with the partners, who shall express their views within a period of time consistent with the deadline set in the second subparagraph*".

[68] Art. 16 (1) (d) of Council Regulation (EC) no. 1260/1999 says that plans submitted under Objectives 1, 2 and 3 shall include among other issues: "*an account of arrangements made to consult partners*".

[69] 17 (2) (d) in fine of Council Regulation (EC) no. 1260/1999: "*Each Community support framework shall include: (...) (d) the provisions for implementing a Community support framework including: (...) - arrangements for involving the partners in the Monitoring Committees described in Article 35; (...)*".

[70] Art. 35 of Council Regulation (EC) no. 1260/1999.

[71] In Spain, following the decision of the Council of Ministers' meeting of November 17 to submit the Aarhus Convention to the Parliament, it is envisaged that this will occur in the first semester of 2001.

[72] Art. 7 of the Aarhus Convention.

[73] Art. 6 (3) of the Aarhus Convention.

- that participation should begin early in the procedure, when all the possibilities and solutions are still open and the public can exert a real influence[74],

- finally, that the ultimate decision should take into account the results of the public participation procedure and that these be incorporated in it[75].

As has been mentioned above, the Commission has also set about the task of adapting the aspects of Community legislation covered by the Convention to its provisions, and thus, in addition to the aforementioned reform of the Directive on Freedom of Access to Information on the Environment, it is also revising the Directives relating to environmental impact assessment, integrated pollution management and control, and all the Directives that affect decision-making related with the environment. Together with this, it is envisaged that specific regulations will be prepared to provide for all matters regarding participation which are not contemplated in sectorial regulations.

Pending its ratification, which is currently under way, the Convention should inspire a broader interpretation of all the provisions adopted in order to allow public participation in decision-making related with the environment.

3.2. Request for participation and responses

In parallel with the activities carried out in connection with access to environmental information within the worldwide "Endangered Seas" campaign, WWF/Adena has requested participation in the use of the Structural Funds dedicated to support to the fisheries sector, i.e. development actions financed by the FIFG. Thus it first asked to be consulted during the phase of elaboration of plans, and subsequently to be admitted as a partner and to participate in the monitoring committees.

The first request was addressed in writing in June 2000 to the Subdirectorate General of Structural Fund Management[76], of the Spanish Ministry of Agriculture, Fisheries and Food. This request proposed that WWF/Adena be considered a partner in the phase of elaboration of plans and operational programmes, with the aim of participating in the process and thus being able to transmit a series of considerations concerning the existing proposals.

The response to this request was made in an interview that was held in September with the Subdirector General of Structural Funds for Fisheries. In summary, this official informed WWF/Adena, firstly, that the plans were already in the process of negotiation in the Commission, and thus it was too late to respond to its request, and secondly, that responsibility regarding the procedures for consultation and participation in the monitoring committees lay exclusively with the Treasury Ministry[77], which for its part had issued clear instructions in this respect to the rest of

[74] Art. 6 (4) of the Aarhus Convention.
[75] Art. 6 (8) of the Aarhus Convention.
[76] Subdirección General de Gestión de los Fondos Estructurales.
[77] Ministerio de Hacienda.

the competent authorities. Thus, in his opinion, WWF/Adena should address its request to that ministry.

In September a second written request with a similar content to the first was addressed to the Directorate General of Community Funds and Territorial Funding[78], of the Treasury Ministry.

An interview was also held in October with the Programmes Coordinator of the Subdirectorate General of Regulations and Institutional Cooperation[79] of the Ministry of the Environment[80], with the aim of reiterating WWF/Adena's request to participate in the Structural Funds process. The result of this interview was to identify the Treasury Ministry as being absolutely responsible for consultation and participation processes.

In October the second request was once again submitted to the Directorate General of Community Funds and Territorial Funding of the State Secretariat for Budgets and Expenditure[81] of the Treasury Ministry. This second request had not obtained a response. This time the request was also included to participate in the monitoring committees and to access the instructions regarding the composition of these committees which are elaborated and distributed by the Treasury Ministry.

Finally, also in the month of October, an interview was requested with the Director General of Community Funds and Territorial Funding, in order to discuss the aforementioned requests for participation in the process.

In November responses were received to the two requests sent in October; the first concerning participation in the monitoring committees and access to the instructions regarding their composition, and the second requesting an interview to discuss the matter. The response received from the Treasury Ministry may be summarized as follows:

- environmental integration in the execution of the programmes is "*sufficiently assured*" through the participation of the environmental authorities, which in the new period will be permanent members of the monitoring committees,

- the "*mass presence of environmental associations*" is scarcely operative, especially considering the "*markedly technical character*" of the meetings of the monitoring committee and the fact that each environmental association "*could accentuate different aspects of environmental policy*" which it would be difficult to deal with in these meetings.

3.3. Analysis of the situation

In conclusion, participation in Spain in the process of the planning, execution and evaluation of the Structural Funds is as follows:

[78] Dirección General de Fondos Comunitarios y Financiación Territorial.
[79] Subdirección General de Normativa y Cooperación Institucional.
[80] Ministerio de Medio Ambiente.
[81] Secretaría de Estado de Presupuesto y Gastos.

- the participation of social and economic partners is achieved at central level through the Economic and Social Council (CES)[82], and at regional level through the different economic and social councils and committees. These regional councils and committees are comprised by representatives from trades unions and business associations, and include no organization representing environmental interests;

- the interests of environmental protection in the use of the Structural Funds, guaranteed by the regulations that rule the funds, is assured through the participation of the Network of Environmental Authorities[83]. The representatives in this network include the environment officials appointed by the autonomous regional governments and by the Ministry of the Environment, as well as the authorities responsible for the Structural Funds of the Ministry of Economy and Treasury[84], the Ministry of Agriculture, Fisheries and Food, and the Ministry of Employment and Social Affairs[85]. Their meetings also include the participation of representatives of the European Commission. No organization representing environmental interests is included in the Network of Environmental Authorities.

The aforementioned Regulation establishes, with regard to the partnership principle, that Member States will follow their "*national rules and current practices*", both in the designation of partners and in the establishment of the specific formulae for participation. However, these rules and practices have not satisfactorily fulfilled many of the Regulation's provisions.

First of all, the need to integrate the environmental variable in the use of the funds has been clearly established since 1993. In this respect the regulations establish some strictly defined provisions, leaving others open to arbitrary interpretation by the Member States. In our country this led to the establishment in 1997 of the Network of Environmental Authorities. The door, even then, was closed to public participation through the participation of environmental organizations who are not represented in this network, and which do not participate in its meetings or in its thematic workshops[86]. It should also be noted that only for this new programming period the Network of Environmental Authorities will participate as a permanent member of the monitoring committees, which will supposedly lead to greater integration of environmental viewpoints in the use of the funds. Thus, only the CES, at central level, and the different economic and social committees and councils in the different autonomous regions, can be considered instruments for public participation. These councils and committees represent certain social interests, though not all, and do not include representatives of environmental interests.

Secondly, it is interesting to mention at this point the analysis that the CES itself makes of its participation, in the two opinions approved in relation with the Regional

[82] Regulated by Law 21/1991, of 17 June, on the creation of the Social and Economic Council. BOE no. 145 of 18 June 1991.
[83] Red de Autoridades Ambientales. Formally established on 4 September 1997 at the meeting of the Monitoring Committee of the Community Support Framework 1994 -1999.
[84] Ministerio de Economía y Hacienda.
[85] Ministerio de Trabajo y Asuntos Sociales.
[86] 1996-1999 Report of the Network of Environmental Authorities. Web site: www.mma.es.

Development Plan 2000-2006, concerning Objective 1 and 2 regions respectively[87]. This analysis suggests that "*the rules and current practices*" in our country cannot be considered sufficient to satisfy demands relating to the principle of coordination as it is set out in the Regulation. The CES mentions the following aspects:

- The request for an opinion from the CES on the Structural Development Plan 2000-2006 for Objective 1 regions was made with such short notice that it was impossible to make an analysis of the breadth and depth that this issue merits. Thus the CES considers that this practice in particular cannot be considered a sufficient complement to the partnership principle.

- Both opinions mention that participation must take place from the preparatory work on the plan, and not be limited exclusively to remitting the plan to the CES once it has been elaborated. They consider that this practice also fails to respect the established criteria on the partnership principle, which in the new regulation goes beyond that of simple information and consultation[88].

- Both opinions also draw attention to the fact that the drafting of the plan does not clearly establish what will be the procedures for consultation or the way in which the partners will participate in these, thus going against what is demanded in the Regulation[89].

- And finally, both opinions dedicate a special heading to the partnership principle, referring to a previous report, from 1995, in which specific proposals were made for improving what they consider to be the deficient practical application of the partnership principle[90].

Conclusions

Access to the information requested in this case under study is guaranteed in the framework of the legislation currently in force. From a legal analysis of the request it is seen that it complies with all the requirements concerning the applicant, the body competent to provide a response and the type of information requested. All the aspects of the request are in accordance with the provisions of the Law on Freedom of Access to Information on Environmental Matters.

The lack of response by the administration competent to resolve is one of the possibilities regulated by the aforementioned law. However, both the Directive, the Law on Freedom of Access, and the Law on the Juridical Regime of the Public Administrations and the Common Administrative Procedure stress the need for persons requesting access to environmental information to receive the corresponding response. This takes on an even greater importance when analysing the reasons for

[87] CES Opinion on the Regional Development Plan 2000-2006 regarding Spanish Objective 1 regions under the European Structural Funds, of 13 October 1999. CES Opinion on the Plan 2000-2006 regarding Spanish zones under Objective 2 of the European Structural Funds, of 21 June 2000.
[88] Art. 8 (2) and 15(2) of Council Regulation (EC) no. 1260/1999.
[89] Art. 16 (1) (d) of Council Regulation (EC) no. 1260/1999.
[90] Report 4/1995, of 20 September 1995, regarding application of the partnership principle to economic and social partners in Community structural policy.

the existence of legislation relating to access to environmental information. The reasons are to facilitate the first step towards strategies for the attainment of sustainable development, which will only be possible with the participation of the different actors that share responsibility for the state of the environment. And this participation cannot take place in our society without an informed public, with much greater levels of communication about the state of the environment and the consequences of current consumption and production patterns.

The lack of response to this request for information shows that the systems for access to information are not working correctly, and there continues to be a need to work harder in order to adequately fulfil the obligations and responsibilities set out in the legislation on free access to environmental information.

With regard to participation, in the case study it has been clearly established that despite the clear intention of the reform of the regulations that rule the Structural Funds to incorporate the environment in the use of the funds, and to guarantee a broader interpretation of the partnership principle, this is not yet occurring in our country. On the one hand, because not all the partners have spaces to participate –this is obvious in the case in hand with regard to social organizations that represent environmental interests. And, on the other hand, because the way in which the parties recognized as social partners are participating is greatly removed from the provisions of the Regulation, and their participation is thus converted into a simple formality and not a true participation process.

As the 5th Environmental Action Programme underlined, the current state of the environment is simply a symptom of a real problem, that of our current production and consumption models. It is necessary to achieve drastic behaviour changes on the part of the different actors involved, who are all responsible in a shared way for the environmental situation. We need effective environmental policies, which will only be achieved with the participation of all.

Environmental information must thus be accessible, and furthermore accessible within a prudent time frame which guarantees its utility, because one of its aims is to provide a basis for public participation in environmental decision-making. It is true that the application of the legislation that has been presented here implies a change in behaviour and the perception of information and its flows, both on the part of the authorities responsible for supplying information and of the public, but it is also true that these changes are possible and that their effects are also highly positive for all involved and for the environment itself.

Compliance with the obligations arising from this legislation means paying special attention to dissemination and training by the administrations responsible for supplying information, and the incorporation of criteria of transparency and attention to the public requesting access to this information. Furthermore a range of measures must be adopted to permit the establishment of adequate mechanisms and which allow the effective resolution of these requests.

In order to collaborate in this task, WWF/Adena is preparing a proposal, addressed to the Spanish Ministry of Agriculture, Fisheries and Food, on “better conditions for

access to environmental information", which will contribute to the process for making the right of freedom of access to environmental information a reality.

And finally, it must be assured that all the actors involved in the use of the funds participate actively, in the way set out in the provisions of the Regulation and taking as the guiding principle the provisions of the Aarhus Convention. This participation does not necessarily mean an "avalanche of organizations" who come to interrupt the "technical" work being carried out by the responsible authorities. We must avoid this type of mistrust which is transmitted by the responses to the requests for participation made by WWF/Adena, drawing attention to all the positive aspects of public participation in decision-making processes affecting the environment. And take into account that the important thing is the willingness to collaborate, and from that starting point it is not complicated to include adequate formula to satisfy the legitimate desire to participate.

Bibliography

- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. 1999. ECE-UN

- CES opinion on the Regional Development Plan 2000-2006 regarding Spanish Objective 1 regions under the European Structural Funds, of 13 October 1999.

- CES opinion on the Plan 2000-2006 regarding Spanish zones under Objective 2 of the European Structural Funds, of 21 June 2000.

- Directive 90/313/EEC, of 7 June, on the freedom of access to information on the environment. OJ L 158, of 23 June 1990.

- FIELD. 2000. WWF Briefing Report on the European "Right to Know" Laws to Accessing Information on Fisheries Subsidies. London. (Pending publication)

- Report from the Commission to the Council and the European Parliament on the Experience Gained in the Application of Council Directive 90/313/EEC of 7 June 1990, on Freedom of Access to Information on the Environment. COM(2000) 400 final, of 29 June 2000.

- Ley 38/1995, de 12 de diciembre, sobre Libertad de Acceso a la Información en Materia de Medio Ambiente. BOE núm. 297 de 13/12/1995.

- Ley 55/1999, de 29 de diciembre, sobre Medidas Fiscales, Administrativas y del Orden Social. BOE núm. 312 de 30/12/1999.

- Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común. BOE núm. 285, de 27/11/1992. Corrección de errores en BOE núm. 23 de 27/01/1993.

- Ley 4/1999, de 13 de enero, de modificación de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del

Procedimiento Administrativo Común. BOE núm. 12 de 14/01/1999. Corrección de errores en BOE núm. 16 de 19/01/1999 y BOE núm. 30 de 4/02/1999.

- Ley 21/1991, de 17 de junio, por la que se crea el Consejo Económico y Social. BOE núm. 145, de 18/06/1991.

- European Community Programme of Policy and Action in relation to the Environment and Sustainable Development. “Towards Sustainable Development”. COM (92) 23 final. Vol. II. 20/05/1992.

- Proposal for a Directive of the European Parliament and of the Council on Public Access to Environmental Information. COM(2000) 402 final, of 29.06.2000.

- Real Decreto 208/1996, de 9 de febrero, por el que se regulan los servicios de información administrativa y atención al ciudadano.

- Council Regulation (EC) 1263/1999, of 21 June 1999, on the Financial Instruments for Fisheries Guidance. OJ L 161 of 26 June 1999.

- Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds. Official Journal L 161 of 26/06/1999.

- Sanchis, F. 1999. Buenas prácticas en el acceso a la información ambiental. Guía para las administraciones públicas. TERRA, centro para la política ambiental. Madrid. (ISBN 84-923776-2-3)

- Sanchis, F., and others. 1998. Doors to Democracy. Current Trends and Practices in Public Participation in Environmental Decisionmaking in Western Europe. The Regional Environmental Centre. Hungary.

The Application of European 'Right to Know' Laws to Fishing Subsidies

A technical briefing report by the Foundation for International Environmental Law and Development (FIELD)

This report was commissioned by WWF's Endangered Seas Campaign in conjunction with the Sustainable Commerce Program at WWF-US. It was first presented at *Fishing in the Dark*, a symposium to promote improved transparency and accountability in fishing subsidies, held 28-29 November 2000 in Brussels, Belgium. The views in this paper are those of the author and do not necessarily reflect those of WWF.

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The Application of European 'Right to Know' Laws to Fishing Subsidies

Table of Contents

PREFACE 4

EXECUTIVE SUMMARY 6

1 INTRODUCTION 11

2 ACCESS TO DOCUMENTS OF EU INSTITUTIONS 11

2.1 Decision 94/90: Access to Commission Documents 13
2.2 Right of access to EU documents: New legislation 15
2.3 Experience in accessing EU documents 17
2.4 The EU Ombudsman 20

3 EUROPEAN COMMUNITY: ACCESS TO ENVIRONMENTAL INFORMATION 20

3.1 Directive 90/313 on the freedom of access to information on the environment 21
3.2 The review of Directive 90/313: New Commission proposal 24
3.3 The Aarhus Convention 27

4 DO FISHERIES SUBSIDIES FALL WITHIN THE SCOPE OF "ENVIRONMENTAL INFORMATION"? 28

4.1 Environmental integration 29
4.2 The Convention on Biological Diversity 30
4.3 The Aarhus Convention 30
4.4 Interpretation 31

5 EUROPEAN COMMUNITY: INFORMATION ON FISHERIES SUBSIDIES 32

5.1 The EU Financial Instrument for Fisheries Guidance (FIFG) 32
5.2 State aid 34
5.3 The Common Fisheries Policy 34

6 CONCLUSIONS 35

APPENDIX I: 'DIRECTIVES,' 'REGULATIONS,' AND OTHER INSTRUMENTS OF EU RULEMAKING 38

APPENDIX II: CHART SUMMARISING EXISTING LEGISLATION 40

APPENDIX III: COMPARISON OF PROPOSED REGULATION ON ACCESS TO EU DOCUMENTS WITH PROPOSED DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION 45

APPENDIX IV: COMPARISON OF CURRENT LEGISLATION WITH PROPOSED LEGISLATION - A TECHNICAL SUMMARY (AS OF 30 OCTOBER 2000) 49

APPENDIX V: OVERVIEW OF THE FINANCIAL INSTRUMENT FOR FISHERIES GUIDANCE (FIFG) 52

APPENDIX VI: ACCESS TO INFORMATION IN FIVE MEMBER STATES 54

1. FRANCE 54
1.1 Legislation on access to information 54
1.2 Interpretation and application of French legislation on access to environmental information 55
1.3 Fisheries subsidies in France 56
1.4 General conclusions on the level and effectiveness of the implementation of these laws 56
2. UNITED KINGDOM 57
2.1 Legislation on access to information 57
2.2 Interpretation and application of UK legislation on access to environmental information 57
2.4 General conclusions on the level and effectiveness of the implementation of these laws 61
3. ITALY 61
3.2 Interpretation and application of legislation on access to information 62
***Case law** 63*
3.3 EU Fisheries subsidies in Italy 64
3.4 General conclusions 64
4. SPAIN 64
4.1 Legislation on access to information 64
4.2 Interpretation and application of legislation on access to environmental information 65
4.3 Fisheries subsidies in Spain 67
4.4 General conclusions 67
5. THE NETHERLANDS 68
5.1 Legislation on access to information 68
5.2 Application and interpretation of the legislation on access 69
***Case law** 70*
EU Fisheries subsidies to The Netherlands 71

PREFACE

The Importance of Transparency in Fishing Subsidy Programmes

Public access to information held by the government is a basic element of every functioning democracy—it is essential for ensuring government accountability, and is a precondition of meaningful participation by civil stakeholders in the development of public policy. Where governmental transparency is lacking, the common results are bad policies, waste, and fraud.

Transparency is particularly important in the management of natural resources, where the government is charged simultaneously with allowing (and even promoting) the commercial exploitation of the environment and with preserving the environment for future generations. The case is especially strong in the marine fishery sector. Here, virtually the entire resource is subject to public jurisdiction, with many fisheries transboundary in character or belonging to the global commons. Marine resources also reside far from view, beyond the sight of all but the few people charged with their protection, and the many more engaged in their exploitation.

Public accountability is also critical wherever the government provides financial support for private commercial activity. It is common knowledge to legislators and bureaucrats alike that, without transparency, subsidies are frequently "captured" by special interests which can sometimes display greater skill at lobbying for payments than at providing the benefits their subsidies are intended to produce.

These fundamental needs for transparency converge in the realm of government subsidies to the commercial fishing industry. Every year, some of the world's leading fishing nations provide billions of euros (and yen, dollars, *etc*.) to their fishing fleets. A recent World Bank study suggests these payments amount to 20-25% of the value of the fish brought to port annually.[1] This massive government support persists while many of the world's leading fisheries face a crisis of depletion, and when the world's fishing fleets are estimated to be up to two and a half times larger than needed to achieve sustainable levels of fishing.[2] The link between fishing subsidies and depletion has been recognised by the World Bank, the U.N. Food and Agriculture Organisation, and the World Trade Organisation, among others.[3]

Unfortunately, the strong public need for information about fishing subsidies has not been met. The design and implementation of fishing subsidy programmes remains, as a general matter, a matter handled behind closed doors. In some critical instances, the failure of governments to reveal facts about fishing subsidies amount to violations of existing legal norms. In other cases, regulations requiring transparency are weak or non-existent.

This paper reviews the legal context for public access to information about fishing subsidies in the European Union. The focus on Europe is justified in part because the EU and its Member

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[1] Milazzo, *Subsidies in World Fisheries: A Reexamination*, World Bank Technical Paper No. 406 (World Bank, April 1998).

[2] FAO, *The State of the World Fisheries and Aquaculture—1998* (FAO 1999)

[3] *See, e.g., Milazzo, supra fn 1; The International Plan of Action for the Management of Fishing Capacity* (UN FAO 1999); WTO Committee on Trade and Environment, *Environmental Benefits of Removing Trade Restrictions and Distortions*, (WTO/CTE/W/67) (WTO 1997).

States provide some of the world's biggest fishing subsidies. The EU also has a relatively advanced legal regime to protect the public's "right to know", against which the transparency of its fishing subsidies can be judged. Moreover, as economic and political integration proceeds in Europe, access to governmental information is a topic of intense public interest. But this focus on Europe is not meant to imply that the EU especially deserves criticism. On the contrary, despite severe shortcomings, the EU has in many ways provided better transparency of its fishing subsidies than other major subsidising countries. A critical review of the situation in Europe can, therefore, inform a broader debate about access to information about fishing subsidies.

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WWF

November 2000

Executive Summary

A. Scope of this paper

The rights of citizens in the European Union to gain access to government-held information about fishing subsidies is governed by a complex patchwork of legal instruments at the supranational level of the EU itself and at the national (and in some cases sub-national) level within EU Member States. Given time and resource constraints, this paper is limited to a review of the predominant instruments in place at the EU level (although Appendix VI reviewing legislation in five EU Member States is supplied as an illustrative aid). Moreover, a comprehensive treatment of the transparency of fishing subsidies would require a discussion of: (i) the laws governing the ability of citizens to request information held by the government; (ii) the mechanisms requiring proactive government monitoring and reporting; and (iii) the procedures guaranteeing consultation and involvement of civil stakeholders in the administration of subsidy programmes. This paper concentrates on the first of these categories—the citizen's "right to know"—while giving some treatment to the other two themes in passing.[4] It should be noted that the subject matter treated in this report is undergoing rapid change, and that the information included in this paper is accurate as of 30 October 2000.

B. The legal instruments discussed

Under current EU rules, there are separate legal instruments governing access to information held by the EU Council of Ministers, the European Commission, the European Parliament, and the various Member States.

- **Regarding information held at the EU level**, this paper focuses principally on the European Commission, since the Commission (and its subsidiary Directorates General) is the EU institution most likely to hold significant information about fishing subsidies. In addition, the paper briefly covers current rules governing access to information held by the European Council of Ministers and by the European Parliament. For the Commission, the principal governing law is **Commission Decision 94/90**. This Decision, like parallel decisions covering the Council of Ministers (Decision 93/731/EC) and the European Parliament (Decision 97/632), governs access to "documents". The Commission and Council decisions are intended to implement the principles of a previously adopted joint Code of Conduct on public access to Commission and Council documents. The two general principles are: (i) to ensure the widest possible access to documents held by the Commission and the Council; and (ii) to define `Documents' as written text which contains existing data. The list of grounds for refusing access allowed by the Decisions also came from the Code of Conduct.

- **Regarding information held at the Member State level**, the most relevant EU law is set forth by **Directive 90/313**, which establishes the rules for public access to "information on the environment" held by Member States.

[4] For a more expanded treatment of monitoring, reporting, and consultation in one of the major EU fishing subsidy programmes, *see* Coffey, *Reforming European Union Fisheries Subsidies* (WWF/IEEP 2000).

Because Decision 94/90 covers "documents" generally, and Decision 90/313 covers environmental information, the legal issues surrounding their interpretation, scope, and application are quite distinct.

This paper also touches on the recently adopted **EU Regulation 1159/2000**, which requires EU Member States to undertake certain proactive steps to publicise information about EU "Structural Funds," which include the majority of EU fishing subsidies. (Regulation 1159/2000 has, however, only slim effect on the duty of government institutions to respond to citizen requests for information, and so is treated only briefly.) All of the foregoing EU instruments are discussed in light of **Article 255** of the EC Treaty, introduced by the Treaty of Amsterdam (the EU treaty that amended the 1957 EC Treaty and the 1992 Treaty on the European Union), which establishes that all citizens (and resident natural and legal persons) of the EU have a qualified "right of access" to documents held by EU institutions.

In addition to discussing current law, the paper covers several instruments that are already shaping the future of access to information about fishing subsidies in the EU. The matter is currently in a high state of flux. At the most general level, the right of public access to governmental information in the EU is under review, partly as a consequence of Article 255 of the EC Treaty and its request for regulation, and partly as an important component of the EU's efforts to improve its broader information policy and bring the EU 'closer to the citizens'. The principal vehicle for this review is **proposed Regulation COM(2000)30**, which will create a unified regime for public access to "documents" of the Council, the Commission, and the Parliament alike.

At a more specific level, the European Union and its member states are now in the process of implementing a new international treaty—know as 'the **Aarhus Convention'**—governing public access to environmental information (among other environmental rights). After briefly introducing the relevant aspects of the Convention, the paper discusses p**roposed Directive COM(2000)402**, which will replace current EU legislation on access to environmental information and by which the Aarhus Convention will be implemented within the EU.

Finally, at the most specific level, the paper briefly touches on discussions currently underway within the European Commission to amend the rules governing the examination and evaluation of "state aid" (*i.e.*, subsidies paid by EU Member States themselves) in fisheries and aquaculture.

C. Some legal conclusions

This paper draws a series of conclusions both about the current state of EU law on access to government information, and about the current trends in the law. The main conclusions of the paper in each of the main areas discussed are set out below.

Access to Documents Held by EU Institutions

1. **The right of EU citizens to gain access to documentary information held by EU institutions is clearly enshrined in EU law.** The basic right of access to documents of EU institutions is broadly construed, and could easily cover many important forms of information about fishing subsidies. The term "document" is given a wide definition by the applicable Decisions.

2. **However, EU laws governing access to documents held by EU institutions suffer from several weaknesses**, including:

    (a) **The laws have not been thoroughly used or tested.** Although the pace of public requests for information is growing rapidly, they still remain relatively infrequent. Moreover, the precise boundaries of current law have not been subject to much judicial interpretation. Thus, despite a legal regime that is well-advanced legislatively, the right of access to government information in the EU is still young, and in some senses underdeveloped.

    (b) **The laws have several important gaps**, including:

        (i) **Information created by a third party is excluded.** This exclusion covers information created by anyone other than the EU institution in question, unless that information has been incorporated into an EU document. This exclusion could affect, for example, information about fishing subsidies submitted to an EU institution by a Member State, or by the recipient of a fishing subsidy.

        (ii) **Formal exceptions to the right of access to documents of EU institutions are broadly written.** The two types of exception most likely to interfere with access to documents containing information about fishing subsidies are the exceptions protecting **private commercial secrecy**, and the exceptions protecting the **confidentiality of government process**. The law also contains a sweeping exception for **protection of the "public interest."** The few court cases that have construed these exceptions have tended to narrow them somewhat by insisting on careful balancing of the interests protected by the exceptions with the imperative to achieve transparency. Still, the lack of case law leaves these exceptions open to broad interpretations.

3. **A draft EU regulation would have both positive and negative impacts on the current laws governing access to documents held by EU institutions.** A significant advance under the proposed regulation would be an end to the exclusion for third party documents, including documents supplied to the EU by Member States. On the other hand, the definition of "document" would be narrowed to exclude many internal EU documents currently accessible under existing law. The list of exceptions would be extended to include 'the economic interests of a specific natural or legal person'.

4. **Reaction from civil society stakeholders suggests that the draft regulation falls short of citizens' expectations in the EU.** Moreover, elements of the draft regulation are in tension with more advanced laws at the national level within some Member States, and may also be inconsistent with obligations accepted by the EU and its Member States under the Aarhus Convention.

Access to Environmental Information

1. **EU Directive 90/313 creates a broad mechanism for every EU natural or legal person to gain access to "information relating to the environment" from their national, regional and local authorities.** This directive is so far the only law

trying to harmonise access to government information among EU Member States—a clear indication of the importance of the environmental "right to know." It is broadly drafted, and has been interpreted by the EU Court of Justice to establish a presumption in favour of access.

2. **EU Directive 90/313 suffers from some gaps, and some unanswered questions**, including:

(a) **The law does not apply to information held by EU institutions**, although the directive is very broad in covering institutions at the Member State level.

(b) **The definition of "information relating to the environment" has not been fully clarified.** The definition is broadly drawn to include not only information about environmental conditions, but also about "activities or measures adversely affecting, or likely to affect" environmental conditions. The Court of Justice has also indicated this term should be broadly interpreted. Nevertheless, the precise bounds of this definition are still largely untested.

(c) **The formal exceptions to the right of access are potentially broad.** The listed exceptions include analogues to the "private commercial secrecy" and "confidentiality of government process" exceptions associated with access to EU documents. The scope of these two exceptions has yet to be litigated. The single case that has so far construed any of the exceptions under Directive 90/313 suggests that the EU courts are more likely to take a narrow "strict construction" approach than the broader "balancing" approach associated with jurisprudence under the decisions governing access to EU documents. However, the law remains highly uncertain nonetheless as these considerations of 'narrow interpretation' and 'taking into account the public interest served by disclosure ' have not been included in the draft legislation on access to EU documents.

(d) **Various significant procedural issues remain unresolved**, such as the interpretation of a government's obligation "to respond" to requests for information.

3. **Information about fishing subsidies should be considered "environmental information" within the meaning of Directive 90/313.** Despite the uncertainties discussed above, a simple and solid case can be made for including information about fishing subsidies. First, there is little doubt fisheries management is matter "relating to the environment," as made clear by the terms of: (a) EU policies on environmental integration; (b) the EC Biodiversity Strategy; (c) the global Convention on Biological Diversity; and (d) the EU Common Fisheries Policy. Second, there is broad recognition that fishing subsidies are having an impact on fisheries management, as well as on the biological health of the oceans.

4. **A new proposed directive, intended to implement the Aarhus Convention, should strengthen public access to environmental information in the EU**, including by:

(a) **Strengthening the definition of "environmental information."** The draft includes more a precise definition that clarifies and may broaden the existing definition. For example, coverage of "administrative measures" will be explicit (to date it is

established only by case law)—clarifying that many actions related to fishing subsidies would be included.

(b) **Broadening the definition of the "public authorities" covered**, including private parties engaged in providing public services.

(c) **Restricting the "commercial secrecy" exception** to cases where confidentiality is provided for by law to protect a legitimate economic interest.

Access to Information within EU Fishing Subsidy Programmes

1. **Two recent developments relating to the administration of subsidies programmes within the EU give additional support to the public's right to know about fishing subsidies.** While not strictly related to the "right to know" about government information (and thus not treated in detail in this paper), these developments bear further investigation. They are:

   (a) **The recently adopted EU Regulation 1159/2000**, which requires all EU Member States to take proactive steps to inform the public about the administration of EU Structural Funds (which include the largest class of EU fishing subsidies). The principal objective of this regulation is to inform the public of the role played by the EU (in co-operation with Member States) in granting subsidies, and to inform potential recipients of the availability of the subsidies. This Regulation intends to both inform and 'advertise' the uses and benefits of EU funds vis-à-vis EU potential grant recipients and the general public. This is the first time that specific legislation on information and publicity requirements on the use of the EU Structural Funds has been passed, marking a first step in tackling the culture of secrecy that has surrounded many of the uses of these public funds.

   (b) **The current review of "state aid" in the fishery sector**. "State aid" is EU nomenclature for subsidies provided by Member States outside of the context of any EU subsidy programme. In principle, State aid is considered incompatible with the EU common market although it is allowed in specific areas and 'sensitive sectors', including shipbuilding. Currently, the European Commission is reviewing State aid in the fishery sector, and will propose new guidelines for their examination and evaluation.

1 Introduction

Despite the importance in size[5] and impact of these subsidy regimes, there is a remarkable lack of transparency regarding information about governments' support to the fisheries industry.

The link between subsidies in the fisheries sector and overfishing is now broadly recognised. The call for an effective reform of fisheries subsidies regimes world-wide needs to be sustained on accurate information on the amount, allocation and use of the public funds involved.

This report analyses the existing legislation on 'Right to Know' and access to environmental information both at EU and Member State level, in a selection of countries (see Appendix VI). The paper focuses on existing and forthcoming legislation on access to information held by EU institutions as well as access to environmental legislation. This paper also includes a section with a brief overview of information on fisheries subsidies in the EU. Various appendixes comparing the current and proposed regimes on access to EU documents and environmental information close this report. There is an annex to this report describing the current legislation on access to information in selected Member States[6].

2 Access to documents of EU institutions

Introduction

The right of access to information in the EU has antecedents in European legislation (Swedish law dating back to the XVIII century) and also outside Europe, with the US 1966 Freedom of Information Act (amended in 1974)[7].

The need to introduce legal provisions to make the working of the EU institutions more open and transparent for the European citizens was recognised in the early 1990s. Firstly, by the declaration on the right of access to information annexed to the Maastricht Treaty (1992), and secondly, by the statements made at the Birmingham, Edinburgh and Copenhagen European Councils[8] where the principle of giving citizens the greatest possible access to information was reaffirmed. As a result, the Council and the European Commission adopted a joint Code of Conduct on public access to Council and Commission documents in December 1993[9].

The principles contained in the joint Code of Conduct were implemented by two separate Decisions: Decision 93/731/EC on public access to Council documents, and Decision 94/90/EC on public access to Commission documents. In 1997, the European Parliament adopted a similar Decision (Decision 97/632) on public access to European Parliament documents[10]. More detailed complementary legislation and guidelines followed to: clarify the scope of these Decisions[11], set

[5] $1.4 billion in 1997, OECD.
[6] France, Italy, The Netherlands, Spain and the UK.
[7] Hallo, R.E. 'Access to Environmental Information in Europe', Kluwer Law, 1996.
[8] Held in October 1992, December 1992 and June 1993, respectively.
[9] Official Journal L 340, of 31 December 1993.
[10] Official Journal L 263, of 25 September 1997.
[11] Communication on improved access to documents (OJ 1994 C 67, p.5). Council Code of Conduct of 2 October 1995 on public access to the minutes and statements in the minutes of the Council acting as legislators.

up a public register of Council documents[12], and set fees to cover the administrative costs of responding to information requests[13].

Council documents

To date, the Secretary-General of the EU Council has published two reports on the implementation of the Decision on public access to Council documents, covering 1994-95 and 1996-97 respectively. The reports show that the number of documents requested increased virtually tenfold over the two two-year periods[14]. The most frequent ground for refusing access to Council documents, according to the Second Report, has been the protection of the confidentiality of the Council's proceedings, with 44% of the refusals in 1994-95, raising to 68% in 1996-97. Article 4(2) of the Council Decision establishes that access to Council documents may be refused to "protect the confidentiality of the Council's proceedings". This remains an important gap in the EU efforts to improve citizens' access to information, as Council meetings are held closed to the public and votes of Member States are kept secret.

On the reasons given for refusing access, the Second Report states that protection of commercial and industrial secrecy was only used in 2% of the refusals in 1994-95 and 0.5% in 1996-97. In relation to fisheries subsidies, this situation could be explained by the fact that only 3% of the applications to the Council in 1994-95 (and 4% in 1996-97) were related to agriculture and fisheries matters. In this sense, the European Commission, as enforcer of EU legislation, plays a much more important role in the allocation and management of EU fisheries subsidies.

Despite the declarations of the European Council on transparency and access to documents in the early 1990's and the 1994 Council Decision, EU citizens had to wait eight years for the public register of Council documents to be established and operational. This register can be accessed through the internet[15], but it is limited to references of Council documents from 1 January 1999. References to classified documents are only included since 1 January 2000[16].

The Treaty of Amsterdam[17] introduced a new Article 255 in the EC Treaty, giving citizens the right to access European Parliament, Council and Commission documents. Pursuant to this new article, public access to documents has, for the first time, an explicit legal basis in the EU treaties:

"*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have* ***a right of access*** *to European Parliament, Council and Commission documents, subject to the principles and conditions to be defined*." (emphasis added)

The proposed regulation on access to EU documents is a direct consequence of this new right now included in the EC Treaty, as it requires further legislation to be adopted within to two years (ie. by 1st May 2001).

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[12] Guidelines for a public register of Council documents, adopted by the Council on 19 March 1998.
[13] Council Decision relating to fees in the context of public access to Council documents (96/C 74/02). European Parliament Bureau Decision of 13 April 1998 on fees to be paid for delivery of very large documents (OJ L 135, 8.5.1998).
[14] From 378 to 3,325 documents. First and Second reports on the implementation of Council Decision 93/731/EC on public access to Council documents (July 1996 and June 1998, respectively.).
[15] http://register.consilium.eu.int. Requests can be sent by electronic mail to access@consilium.eu.int
[16] Council Decision of 6 December 1999 on the *improvement* of information on the Council's legislative activities and the public register of Council documents.
[17] Adopted in 1997. It entered into force on 1 May 1999. The Treaty of Amsterdam amended the 1957 Treaty establishing the EC (the EC Treaty) and the 1992 Treaty on European Union.

EU Charter of Fundamental Rights

The European Council has recently adopted an EU Charter of Fundamental Rights which includes the 'right of access to documents' as its Article 42. This article closely follows the wording of Article 255 of the EC Treaty[18].

The proposed regulation on access to EU documents is a direct consequence of this new right now included in the EC Treaty, as it requires further legislation to be adopted within to two years (ie. by 1st May 2001).

The EU Charter will be proclaimed at the Nice European Council in December 2000. According to the French EU Presidency, the Charter will initially have a 'political declaration dimension' (ie, will not be legally binding). Decisions on the legal status of the text and whether it should be incorporated into the EU Treaties will be taken by the European Council. There is currently no timetable on when these discussions will be held.

2.1 Decision 94/90: Access to Commission Documents

Commission Decision 94/90[19], on public access to Commission documents, develops and applies the principles, definitions and exceptions set up by the 1993 joint Code of Conduct to improve access to documents.

According to the joint Code of Conduct, the widest possible access must be granted to documents held by the Commission and the Council. It defines the term "document" as any written text, whatever its medium, which contains existing data and is held by the Commission or the Council. This excludes documents written by institutions, natural or legal persons outside the Commission. Importantly, it also excludes information provided by Member States, which is not accessible until it becomes part of a document issued by an EU institution.[20] This exception is relevant in relation to fisheries subsidies, as information on state aid submitted by the Member States to the Commission will not be accessible to EU citizens until the data is included in a Commission document.

Any internal Commission document falls under the scope of Decision 94/90, whether it has been published or not, including preparatory documents and other explanatory material. With regard to internal documents, the Commission's *Citizen's Guide on Access to Documents* specifies that these are documents 'which either have not been finalised or are not intended for publication". It also gives the following examples of 'internal documents':

- Preparatory documents on Commission decisions and policy initiatives such as preliminary drafts, interim reports, draft legislative proposals or decisions;
- Explanatory documents or other kinds of information such as statistics, memoranda or studies which form the background to Commission decisions and policy measures.

[18] '*Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to European Parliament, Council and Commission documents'.*

[19] As amended by Commission Decision 96/567/Euratom, ESCS, EC of 19 September 1996.

[20] "*Where the document held by an institution was written by a natural or legal person, **a Member State**, another Community institution or body or any other national or international body, the application must be sent direct to the author*", Code of Conduct on public access to Commission documents, annexed to Decision 94/90 (emphasis added).

Exceptions
According to the *Citizen's Guide* and the Code of Conduct, if the document requested has been written by a third party, including a Member State as noted above, the Commission cannot grant access and will indicate to whom the application must be made.

Furthermore, the joint Code of Conduct establishes the following exceptions to the right of access to EU documents. Commission and Council officials may deny a request for information on the basis of protecting:

- the public interest (public security, international relations, monetary stability, legal proceedings, inspections and enquiries);
- the individual and of privacy;
- commercial and industrial secrecy;
- the financial interests of the Community;
- confidentiality, if it has been requested by a supplier of information or, if the supplier is a Member State, because that country's legislation requires it;
- confidentiality of the Commission's internal deliberations.

The protection of the confidentiality of an institution's proceedings and the protection of the public interest have been criticised by EU citizens and organisations as being too general and therefore, too open to abuse.

Procedures
Regarding the procedure for access to information, the Commission Decision establishes that applications must be made in writing to the Commission headquarters or the Commission offices in the Member States. The Commission then has one month to answer, accepting or rejecting the application. If the Commission decides to reject an application it must notify the applicant of the possibility of lodging an appeal to the Secretary-General of the Commission for review of the decision, within one month.

However, failure to reply to a request for information within one month is deemed to constitute a refusal of information. Also, failure to reply to the application for review, within one month, is considered a refusal. Such refusals are against the joint Code of Conduct, which requires that the grounds for rejecting a confirmatory decision are explained, as well as and the means of redress (e.g. Judicial proceedings[21], complaint to the Ombudsman[22]).

Documents may be provided either by a copy sent to the applicant at his or her expense[23] or by consultation on the premises of the Commission. In addition, documents may be transferred electronically, whenever this is feasible. The applicant is not allowed to use the documents for commercial purposes without the Commission's prior authorisation.

The European Commission has published a guide on its current procedures, available in its website[24]. '*Access to Commission Documents. A Citizen's Guide'* explains the procedure and how to approach the Commission to request documents, and it also details the exceptions under which access can be denied. In addition, the Commission has adopted a 'Code of Good Administrative Behaviour' for its relations with the public[25]. The new Code will be binding from 1 November

[21] At the EC Court of First Instance.
[22] The European Ombudsman investigates complaints about maladministration by institutions and bodies of the European Community. (See section 2.4 below).
[23] EUR 10, plus EUR 0.036 per sheet of paper of documents exceeding 30 pages.
[24] http://europa.eu.int/comm/secretariat_general/sgc/citguide/en/citgu.htm
[25] Adopted on 13 September 2000. See Commission press release IP/00/999, of 13 September 2000.

2000 and will guide the staff and inform the public of the standards of service they are entitled to expect in their dealings with the Commission.

Application
The Secretariat-General of the Commission has published some statistics on access to Commission documents[26]. According to this document, the number of requests for access to documents as nearly halved since 1997 (756 requests in 1997, and 408 in 1999). The rate of documents disclosed has also decreased (91.9% in 1997, and 82.8% in 1999), with half of the requests in 1999 having been refused on the grounds of 'protection of the public interest'. It is also of interest that 50% of requests were considered inadmissible as they referred to 'non-Commission documents'. This information highlights the need for clear guidelines and strict interpretation of (i) the most used exception by the Commission to refuse access: the protection of the public interest, and (ii) the authorship rule to determine where the document requested is a 'Commission document' under Decision 94/90.

2.2 Right of access to EU documents: New legislation

According to the EC Treaty, implementing legislation on access to EU documents must be adopted within two years following the entry into force of the Treaty of Amsterdam, i.e. by 1 May 2001. A proposal for a Regulation on Public Access to European Parliament, Council and Commission Documents was adopted in January 2000[27].

The draft regulation is addressed to the three EU institutions and will replace the Council, Commission and Parliament Decisions on public access to documents mentioned above, but only after each of the institutions adapts its own rules of procedure to giving it effect.

Scope
The draft regulation gives all EU citizens the 'right to the widest possible access to documents of the institutions'. To access EU documents, citizens will not have to state 'reasons for their interest' or prove a direct interest, as it is often the case in the legislation of Member States. The scope of the regulation covers 'all documents held by the institutions', which includes documents 'drawn up by them or received from third parties and in their possession'.

Access to documents received by EU institutions from third parties is limited to those sent after the date of application of this regulation. This provision marks an important step forward in granting a wider access to EU documents, including documents and information submitted by Member States. In the context of accessing information on fisheries subsidies, this means that the data and information sent by Member States to the Commission on their national subsidies will become accessible to EU citizens. However, the restriction of including only the documents sent to the Commission after the draft regulation enters into force is an important one, as it leaves out an important number of past and current data.

The definition of "document" excludes "texts for internal use such as discussion documents, opinions of departments, and excluding informal messages". The excluded documents would not even need to be identified or registered. The scope of this exclusion is too broad and inconsistent with the nature of EU institutions as public authorities which as a matter of principle should be subject to public accountability and scrutiny.

[26] 'Access to documents -Statistics', see the European Commission website: http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/en/index.htm#1
[27] COM(2000) 30 final, Official Journal C 177, of 27 June 2000.

The provisions on the scope of the future regulation establish that access to EU documents will be restricted to EU citizens or legal persons having a registered office in the European Union. This is an unnecessary restriction inconsistent with the principle of non-discrimination found in the EU treaties, Member States legislation and Aarhus Convention.

Exceptions

Nevertheless, the draft regulation has not been very well received by environmental NGOs, primarily because of the length and breadth of the exceptions. In this respect, the Commission proposal lags behind the legislation in many Member States and it even represents a step backwards with regard to current EU legislation. The exceptions included in the draft regulation (Article 4) are listed below:

'The institutions shall refuse access to documents where disclosure could significantly undermine the protection of:

a) the public interest and in particular:

- public security,
- defence and international relations,
- relations between and/or with the Member States or Community or non-Community institutions,
- financial or economic interests,
- monetary stability,
- the stability of the Community's legal order,
- court proceedings,
- inspections, investigations and audits,
- infringement proceedings, including the preparatory stages thereof,
- the effective functioning of the institutions;

b) privacy and the individual and in particular:

- personnel files,
- information, opinions and assessments given in confidence with a view to recruitments or appointments,
- an individual's personal details or documents containing information such as medical secrets which, if disclosed, might constitute an infringement of privacy or facilitate such an infringement;

c) commercial and industrial secrecy or the economic interests of a specific natural or legal person and in particular:

- business and commercial secrets,
- intellectual and industrial property,
- industrial, financial, banking and commercial information, including information relating to business relations or contracts,
- information on costs and tenders in connection with award procedures;

d) confidentiality as requested by the third party having supplied the document or the information, or as required by the legislation of the Member State.

The list of exceptions of this draft regulation is far longer (21) than those allowed by the Aarhus Convention (11). Although some of them as the same (e.g. 'international relations', 'intellectual

property rights'), they are also so broad that they could be easily abused unless their applicability is clearly defined (e.g. 'the stability of the Community's legal order', 'the effective functioning of the institutions'). The Commission proposes to keep the current system based on the 'harm test', which allows the EU institutions to refuse access to documents when they consider that disclosure of the information "could significantly undermine the protection" of the interests listed in Article 4 (see box above). In addition, requirements such as to interpret the exceptions in a narrow way and to take into account the public interest served by disclosure (Aarhus Convention) are not included in this legislative proposal.

Procedures

The draft regulation further includes details on the processing of applications, which must be made in writing. The deadline for giving a written and reasoned reply is one month. In exceptional cases, the one-month limit may be extended for a further month. The draft regulation establishes that failure to reply within the time-limit will be considered as a negative response. In this case the draft legislation allows the refusal of access to information without giving the reasons behind it. The applicant can then submit a 'confirmatory application' and the EU institution has another month to reply, subject to yet a further delay of a month, in exceptional cases. The draft text provides no definition of what these 'exceptional cases' might be. If access is still denied, the applicant must be informed of the grounds for refusal and also of the remedies available: court proceedings or a complaint to the Ombudsman.

Shortly after the publication of the Commission's proposal on a Regulation regarding public access to documents of the European Parliament, the Council and the Commission, the European Environmental Bureau (EEB) released a paper[28] voicing strong criticism as to both the content and form of this proposal. The EEB objects to the lack of public consultation on the proposal itself, stressing that an opportunity to gather external experience on the subject has indeed been missed.

In general, European environmental NGOs share the EEB's view that the proposed Regulation would introduce lower standards on access to information than those currently existing in many Member States and at international level, in particular with regard to the Aarhus Convention. As explained above, and among other reasons, time limits for replying to requests are excessively long and exceptional cases for delay in giving a response are allowed but not defined. If the proposed Regulation is adopted in its current form, there is a serious risk that it could undermine the more open regimes in Member States.

2.3 Experience in accessing EU documents

The access regimes of the Commission and Council have been in operation for several years. From the bi-annual reports on the implementation of the Decisions on public access to information[29] it can be concluded that there is an increasing awareness among citizens of the possibility of public access to information. The number of documents being requested has increased and more documents are publicly available, with the exceptions being used less frequently.

However, according to the European Parliament's evaluation of the Commission and Council codes, "*it has become clear that two of the exceptions in both the Commission and Council codes*

[28] *EEB Comments on the European Commission's Proposal for a Regulation regarding Public Access to Documents of the European Parliament, the Council and the Commission*, March 2000, available in: http://www.eeb.org/publication/access_to_documents_.htm

[29] Reports on the implementation of Council Decision 93/731/EC for the periods 1994-1995 and 1996-1997.

(the protection of the confidentiality of an institution's proceedings and the protection of the public interest) were couched in too general terms"[30].

There is case-law from the European Court of Justice on this subject, clarifying the ground-rules for access to information. The jurisprudence of the European Court of Justice covers the interpretation of the scope of the two most general and most widely used exceptions to access to information mentioned above. Two selected cases that provide interpretation for these two exceptions are summarised below.

The case *John Carvel and Guardian Newspapers Ltd. V Council,* summarised below, shows the importance of adequately balancing the conflicting interests when applying the exceptions to refuse access to EU documents in the interpretation provided by the EU Court of First Instance in 1995.

John Carvel and Guardian Newspapers Ltd. V Council[31]

On the scope of the exception related to the confidentiality of EU institutions' proceedings, the EU Court of First Instance annulled the Council's decisions that refused access to the preparatory report, minutes, attendance and voting records of the Justice Council on 29-30 November 1993, and the minutes of the Agriculture Council of 24-25 January 1994.

The Court based its judgement only on its consideration that the Council had not complied with its obligation under Article 4(2) to '*genuinely balance the interests of the citizen in gaining access to the documents against any interests of the Council in maintaining the confidentiality of its deliberations'*.

The balance of interests is closely linked to the degree of consideration given to requests for access to documents.

The Court of Justice has ruled that the joint Code of Conduct lays down the general principle that the public should have the greatest possible access to documents held by the Commission and the Council, and that any exception to this rule must be construed and applied narrowly, in accordance with the general principle of transparency[32]. The Court has called on the EU institutions to demonstrate that they balance the need for the two exceptions (confidentiality of institutions' proceedings and protection of public interest) against the criterion of the public's right to information, on a case-by-case basis.

Other important clarifications made by the EC Court of First Instance have been:

- The obligation to state the reasons for refusing access means that the grounds must be shown "clearly and unequivocally" 'so as to enable the persons concerned to ascertain the reasons for the decision in order to protect their rights and allow the Community courts to exercise their powers of review (Case T-124/96 *Interporc v Commission*, para.53);
- The exception based on the protection of the public interest (court proceedings) contained in the Code of Conduct cannot enable the Commission to escape from its obligation to disclose

[30] Report on 'Openness within the European Union', European Parliament, A4-0476/98.
[31] Case T-194/94, Judgement of 27 October 1995.
[32] For instance in the cases Netherlands v Commission and van der Wal (C-189/98 P, C-174/98-P), Interporc Im- und Export v Commission (T-92/98, T-124/96), WWF UK v Commission (T-105/95) or Tidningen Journalisten vs Council (T-174/95).

documents which were drawn up in connection with a purely administrative matter (Case T-92/98, *Interporc v Commission*, para.42 -judgement of 7 December 1999);

WWF-UK v Commission

The judgement of the Community Court of First Instance in the 1995 case *WWF-UK v Commission*[1] illustrates this balancing process. The Court recognised the right of EU citizens to have access to documents held by public authorities and the fact that Decision 94/90 confers legal rights on third parties. In its interpretation of the exceptions to this right of access, at the core of the Court case, it was considered that 'the grounds for refusing a request for access to Commission documents [..] should be construed in a manner which will not render it impossible to attain the objective of transparency'.

The joint Code of Conduct contains two categories of exceptions: a mandatory and a discretionary list. To refuse access to the documents requested by WWF-UK, the Commission invoked the 'protection of the public interest', included in the former category, and the 'confidentiality of infringement procedures', which belongs to the 'discretionary' list of exceptions. However, the Court established that the Commission must use a margin of discretion "by striking a genuine balance between, on the one hand, the interest of the citizen in obtaining access to those documents and, on the other, its own interest in protecting the confidentiality of its deliberations".

In its judgement of 5 March 1997, the Court drew a distinction between documents which protect the public interest and those which protect the interests of the Commission in ensuring confidentiality of it internal deliberations. The Court found that a balancing of interests must be undertaken only in relation to the latter type of document. The Court of First Instance found that this balancing of interests had not been undertaken by the Commission and ruled in favour of WWF-UK, annulling the Commission Decision which refused access to the requested documents[1]. The Court further held that the Commission had not complied with the requirement of explaining the grounds for its refusal.

The most recent ruling of the EC Court of First Instance on the matter of access to documents[33] includes the following interpretation of the Commission Decision 94/90 and its exceptions:

- The exceptions to the right of access as laid down in the joint Code of Conduct 'must be interpreted in the light of the principle of the right to information and the principle of proportionality', and therefore the Commission is required to examine whether partial access should be granted.

- In this case, the Commission denied access to documents by reference to categories of documents and not on the basis of the actual information contained in the documents in question. This implies that it had not assessed specifically whether the exception concerning the protection of the public interest genuinely applied to the whole of the information contained in those documents.

- The Court ruled that the Commission is obliged to consider in the case of each document to which access is sought, whether disclosure is likely to undermine one of the aspects of the public interest protected by the exceptions. The Court rules that the Commission must make clear in the grounds stated for its decision that it has carried out an assessment of the documents at issue in the particular case.

[33] Case T-123/99, *JT's Corporation v European Commission*, judgement of 12 October 2000.

2.4 The EU Ombudsman

The European Ombudsman[34] has received complaints from EU citizens when access to documents has been denied. The Ombudsman also acts as a mediator between European citizens and EU institutions. In relation to access to documents from EU institutions, in 1997 the Ombudsman's launched an own-initiative inquiry into public access to documents, which led to a special report[35] submitted to the European Parliament. His recommendations on the transparency and openness of EU institutions and subsidiary bodies prompted some of them to regulate this matter[36].

Reporting on the exception for access based on the confidentiality of certain documents, and based on the results of the enquiry, the European Ombudsman reported that: **"***Some of the replies referred to requirements of Community law that certain types of document should be confidential.[…]. However,* ***it did not appear that any of the institutions or bodies gave public access to all documents that were not specifically covered by legal obligations of confidentiality.***"(emphasis added)

Although none of the cases on access to documents dealt with by the ECJ concerned state aid, the European Ombudsman has intervened in this area.

Complaint 1313/98/VK

In June 1998, the European Ombudsman received a complaint[i] from a German citizen related to the Commission's failure to reply to a request for information on a particular case of State aid related to transport infrastructure. As the Commission explained that the request had not been answered due to staff changes and did not contest the validity of the request, it can be understood that it did not object to the subject of the request. This complaint will be used as a supportive argument if requests for information on fisheries subsidies at national level are refused under one of the exceptions of current or future legislation on access to EU documents.

3 European Community: Access to Environmental Information

Public access to environmental information is crucial in achieving effective public participation in decision-making. To a great extent, both the success or failure of environmental policy and legislation, and their impact on the quality of the environment, rely on them.

In 1987, the 4th EC Environmental Action Programme[37] identified the need to improve public access to information held by environmental authorities as a priority for Community action. However, the initiative had come from the European Parliament, which had asked for access to environmental information for all to be made possible by a specific Community programme[38].

[34] The European Ombudsman cannot deal with complaints concerning national, regional or local administrations of the Member States. A complaint must be made within two years from the date when the facts on which the complaint is based were known. The complainant must have already contacted the institution or body concerned, for example by a letter. The Ombudsman does not deal with matters that are before a court or have already been settled by a court.

[35] 616/PUBAC/F/IJH, of 15 December 1997. For further information, the European Ombudsman homepage is: http://www.euro-ombudsman.eu.int/home/en/default.htm

[36] On 21 March 1997, the European Environment Agency adopted a Decision on public access to its documents.

[37] Official Journal C 70, of 18 March 1987.

[38] European Parliament Resolution of 15 May 1987 , Official Journal C 156, of 15 June 1987.

In June 1990, Directive 90/313 on the freedom of access to information on the environment[39] (the Directive) was adopted. At that time, the situation in the Member States was very different: some countries had a nearly total lack of rules in this area while others had had legislation on access to information in general (not just environmental information) for some time[40].

The objective of this Directive was to ensure freedom of access to, and dissemination of, information on the environment held by public authorities. It also sets out the basic terms and conditions on which such information should be made available. The 5th Environmental Action Programme (1992-1999) reinforced the importance of public participation when it stated that the value of Directive 90/313 lies not only in making environmental information available, but also in 'demonstrating the transparency of decision-making processes'.

The Treaty of the European Union, as amended by the Amsterdam Treaty, enshrines the concept of openness. The 1997 treaty reform marked a new stage in the process of creating a closer union among the peoples of Europe where 'decisions are taken as openly as possible and as closely as possible to the citizen' (Article 1). The work of the EU institutions needs to be made more transparent to bring it closer to the citizens. This is the rationale behind the right of access to documents, according to Article 255 of the EC Treaty.

3.1 Directive 90/313 on the freedom of access to information on the environment

Introduction

The main EU legal instrument on access to environmental information is Council Directive 90/313/EEC, of 7 June 1990, on the freedom of access to information on the environment[41].

The objective of Directive 90/313 ('the Directive') is to ensure freedom of access to environmental information held by public authorities, as well as the dissemination of this information in a harmonised manner throughout the EU. It sets the basic terms and conditions on which information on the environment should be made available.

The Directive defines in its Article 2 'Information relating to the environment' in a very broad manner, as follows:

> [A]ny available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites and on activities or measures adversely affecting, or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes.

The European Court of Justice has indicated that the term 'information relating to the environment' needs to be interpreted broadly, 'embracing both information and activities relating to the state of' the aspects contained in Article 2. The Court thus interpreted 'measures' to mean every kind of administrative activity, including a statement of views given by an authority.[42]

In the same Article, the Directive defines 'public authorities' in a similarly wide manner as 'any public administration at national, regional or local level with responsibilities, and possessing information, relating to the environment'. The Directive also covers information held by 'bodies

[39] Directive 90/313, of 7 June 1990. Official Journal L 158, of 23 June 1990.
[40] Portugal, Finland, Sweden and The Netherlands.
[41] In the internet, at http://europa.eu.int/eur-lex/en/lif/dat/1990/en_390L0313.html).
[42] ECJ Judgement of 17 June 1998 (*W.Mecklenburg v Kreis Pinneberg*), paras. 19 and 20.

with public responsibilities for the environment and under the control of public authorities' (Article 6). Excluded from the scope of the Directive is information held by 'bodies acting in a judicial or legislative capacity'. The European Court of Justice[43] has interpreted this exclusion narrowly, limiting it to situations in which the relevant body is performing its judicial functions. The same narrow interpretation is likely to be applied for a legislative body.

The Directive prohibits public authorities to require proof of interest before information can be given. The information requested must be provided at the person's request without having to prove an interest (Article 3(1)).

Exceptions

Article 3(2) of the Directive lists the exceptions to the freedom of access to environmental information. Member States *can*, in their national legislation implementing the Directive, refuse access to information on the environment where this information affects:

- The confidentiality of the proceedings of public authorities, international relations and national defence;
- Public security;
- Matters which are, or have been *sub judice*, or under inquiry (including disciplinary inquiries), or which are the subject of preliminary investigation proceedings;
- Commercial and industrial confidentiality, including intellectual property;
- The confidentiality of personal data and/or files;
- Materials supplied by a third party without that party being under a legal obligation to do so;
- Material, the disclosure of which would make it more likely that environment to which such material related would be damaged.

The European Court of Justice has taken a very principled approach to these exceptions. It found that the Directive starts from the assumption that access to information should be provided as a rule, as it is the goal of the Directive. Access can only be denied as a matter of exception in specific and clearly defined cases. Each of the reasons for denying access cannot be interpreted to extend beyond what is necessary to secure the protection of the interests it is intended to uphold[44]. The Court therefore requires a balancing of interests and a narrow interpretation of the exception.

The Court has so far only addressed the scope of one of these grounds for refusal: 'matters which are, or have been, *sub judice* or under enquiry or which are the subject of preliminary investigation proceedings'. The Court held that the term 'preliminary investigation proceedings' in the Directive needs to be strictly construed and it does not include administrative procedures that are preparatory of an administrative measure. This exception is only admissible, according to the Court, if it immediately precedes a contentious or quasi-contentious procedure and is justified by the need to obtain proof or to investigate a matter prior to the opening of the actual procedure.[45]

If information cannot be provided for any of the reasons above, the Directive requires that this information shall be supplied in part where it is possible to separate out information falling under the exceptions (Article 3(2) last sentence).

[43] ECJ Judgement of 9 September 1999, Case C-217/97 (*Commission v Germany*).
[44] Judgement of 17 June 1998 (Case C-321/96, *Wilhelm Mecklenburg v Kreis Pinneberg*), paras 25 and 26.
[45] Ibid.

Article 3(3) in addition states that information can be refused if it involves the disclosure of unfinished documents, data or internal communications, as well as when it is a manifestly unreasonable request or has been formulated in 'too general a manner'.

Time-limits

Public authorities need to respond to a request for information 'as soon as possible and at the latest within two months'. In case the information is refused the reason for this refusal needs to be given (Article 3(4)).

The Directive provides for the possibility of appeal against a refusal to provide information in case the person requesting the information 'considers that his request for information has been unreasonably refused or ignored' or has been 'inadequately answered'. Judicial or administrative review of the decision is to be provided in accordance with the legal system of the Member State (Article 4).

Charges

The Directive allows Member States to charge for the information provided, but requires that such charge may not exceed a 'reasonable cost' (Article 5). Authorities may only charge for 'supplying' information and not for the administrative tasks connected with a request for information. [46] This also implies that they can only charge for the information actually provided.[47] The fact that authorities are allowed to charge for the information furthermore precludes any interpretation liable to dissuade those wishing to obtain information from making a request to that effect. [48]

Active supply of information

Member States are also under a duty to provide general information to the public on the state of the environment by means of periodic publications or descriptive reports (Article 7). This obligation is complementary to the freedom of access to information. If good and comprehensive information is frequently and reliably made available by the authorities, at their own initiative, fewer requests for information will be received.

Application of the Directive

The European Commission has published a report[49] on the experience gained in the application of Directive 90/313. This report follows the requirement of Article 8 of the Directive that the Commission should produce a report in the light of the national reports on implementation received by Member States. The Commission's experience is based on the number of complaints (156[50]) lodged in relation to the application of the Directive and the June 2000 report also takes into account information and documentation received from environmental NGOs[51].

Based on this experience in the application of the Directive, key issues which have proved an obstacle in accessing environmental information have been identified[52]. These are:

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[46] ECJ Judgement of 9 September 1999, Case C-217/97 (*Commission v Germany*), para. 57.
[47] Ibid, para. 59.
[48] Ibid, para. 58.
[49] Report from the Commission to the Council and the European Parliament on the Experience Gained in the Application of Council Directive 90/313/EEC of 7 June 1990, on Freedom of Access to Information on the Environment, COM(2000)400 final, of 29 June 2000.
[50] Ibid. (Number of complaints lodged with the Commission by individuals and organisations up to November 1999, when the report was prepared.)
[51] *Recommendations for the Review and Revision of Directive 90/313/EEC on the Freedom of Access to Information on the Environment*, Stichting Natuur en Milieu, March 1998.
[52] Sanchis-Moreno, F. *Good Practices in Access to Environmental Information*, TERRA, environmental policy centre, 1999; and June 2000 Commission Report.

- the definition of 'information relating to the environment', especially in those countries with no legislation on access to information in general;
- the definition of 'public authorities' obliged to provide the information: interpretation of public authorities and 'bodies' with environmental responsibilities;
- the time limit for providing the information ('as soon as possible and at the latest within two months') is often missed;
- the interpretation of the word 'respond': some Member States claim that this only implies an indication of whether the information would be made available without indicating when it would be supplied. This is the subject of a pending case before the Court of Justice[53];
- failure to respond to requests for information brings about the requirement to indicate the grounds for refusing access to information;
- the interpretation and application of the exceptions, which are drafted in very broad terms;
- charges for providing the information, which should not exceed a 'reasonable cost'.

Although all Member States now have national measures transposing the Directive, there are many cases where national law does not comply with the requirements of the Directive[54]. The Commission continues to receive complaints concerning the non-conformity of national laws, especially regarding refusals by national authorities to respond to requests for information; the time taken by the public authority to reply; very broad interpretations of the exceptions to the principle of disclosure; and unreasonably high fees[55].

3.2 The review of Directive 90/313: New Commission proposal

> "*The process of openness initiated by Directive 90/313 needed to be further stimulated and continued by* ***correcting the shortcomings identified in its practical application****. The new proposal is to be considered as a* ***fundamental tool given to citizens and to NGOs*** *to achieve these aims on the road to sustainable development*," Environment Commissioner Margot Wallström[56].

Introduction

The Commission proposal for a new Directive to replace Directive 90/313 ('The Proposal') was adopted on 29 June 2000[57]. The reasons behind the Commission's changes to the existing access to information regime are: (1) to correct the shortcomings identified in the application of Directive 90/313; (2) to pave the way towards ratification of the Aarhus Convention; and (3) to adapt Directive 90/313 to developments in information technologies so that the new 'second generation' Directive will reflect the changes in the way information is created, collected, stored and transmitted[58].

The development of this proposal will need to be carefully followed through this project. While the discussions on the Proposal are still in a very early stage, this section gives a brief overview its main changes.

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[53] Case C-29/00, *Commission v Germany*.

[54] There are currently three pending cases (against Spain, Belgium and Germany) before the ECJ for incorrect transposition of the Directive.

[55] 16th Annual Report on Monitoring the Application of Community Law (1998), COM(1999)301, of 18 June 1999, available in http://europa.eu.int/comm/sg/sgb/infringements/report98_en.htm

[56] European Commission, 'Results of the first year in office of Mrs Wallström', 12 September 2000. (emphasis added).

[57] COM(2000)402, on the internet at: http://europa.eu.int/comm/environment/docum/00402_en.htm).

[58] Commission Press Release IP/00/699, of 3 July 2000.

To make the new regime fully compliant with the Aarhus Convention (see section 5.3 below), the current systems of ensuring *freedom of access* to environmental information, will be strengthened as the new Commission proposal establishes *a right of access* to environmental information.

Scope

The definition of '*environmental information*' in the Commission proposal is broader and more detailed than the one provided in Directive 90/313. The new definition includes 'measures (including administrative measures) such as ***policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements referred to in (a)***[59]**'** (Article 2(1)(d)). This provision is of particular importance to access information on subsidies, as fisheries subsidies plans and financial data will be included within this broad definition of 'administrative information'.

The definition of 'public authorities' is also more specific and includes next to government or other public administration at national, regional or local level, also 'any legal or natural person having public responsibilities or functions, or providing public services, relating directly or indirectly to the environment' (Article 2(2)(b)).

In the context of this report and the request of information to fisheries departments, the draft directive includes under the definition of 'public authorities' 'any legal or natural person having public responsibilities or functions, or providing public services, *relating directly or indirectly to the environment*'. The Commission has introduced this change as it admits that narrow interpretations of the wording of Directive 90/313 have led to the exclusion of certain bodies from the scope of the current regime on the basis that they did not have responsibilities for the environment, and refers to transport and energy sectors as examples[60].

Exceptions

Under Directive 90/313 public authorities are entitled to refuse access to environmental information if disclosure simply *affects* one of the legitimate interests listed in Article 3. The new proposal only allows the information to be withheld if disclosure would *adversely affect* one of the legitimate interests for which provision is made in Article 4(2). 'In each case, the public interest served by the disclosure shall be weighed against the interest served by the refusal. Access to information will be granted if the public interest outweighs the latter interest'[61].

The list of exceptions remains mostly unchanged. In the context of accessing information on fisheries subsidies, 'the confidentiality of the proceedings of public authorities' and 'commercial or industrial information' remain in the proposed new regime. However, the latter is restricted to 'the confidentiality of commercial or industrial information *where such confidentiality is provided for by law to protect a legitimate economic interest*'. National laws will need to be checked for provisions related to the confidentiality of information related to state aid and fisheries subsidies as information on these will be excluded only when such confidentiality is specifically granted in the national laws.

[59] Article 2(1)(a): '*the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, **biological diversity and its components**, including genetically modified organisms, and the interaction among these elements*'. (emphasis added)

[60] Explanatory memorandum of the proposed directive on public access to environmental information (COM (2000)402 final, of 29 June 2000.

[61] Commission proposal, Article 4(2), last paragraph.

The Aarhus Convention specifically addresses the restrictive interpretation of the exceptions allowed by the Convention[62]. The explanatory memorandum of the Commission proposal mentions this requirement[63], but it is not reflected in the text of the proposed directive.

Procedure

Applicants not only do not need to '*prove*' an interest (Directive 90/313) but they will not need to even '*state*' an interest.

The time-limit for 'responding'[64] (Directive 90/313) to the request for information have been reduced from '*as soon as possible and, at the latest, within two months* (Directive 90/313) to '*as soon as possible and, at the latest, within one month*' (Article 3(2)(a) of proposed directive).

Directive 90/313 does not contain any provisions on the form or format in which the information requested should be made available. The current proposal lays an obligation upon public authorities to make environmental information available *in the form or format requested* by the applicant[65]. The exceptions allowed are when the information is already publicly available in another form or format, and when it is reasonable for the public authority to make it available in another form or format[66]. In addition, public authorities are requested to 'make reasonable efforts' to keep environmental information in forms or formats that are readily reproducible and accessible by computer or other electronic means.

The Commission proposal places an obligation on public authorities to publicise and make available to applicants a *schedule of charges* to be made. It further requires them to publicise and make available information on the circumstances in which a charge may be levied or waived[67].

Active supply of information

The draft directive wants to ensure that the general public is evenly informed throughout the EU. For this reason, it includes a non-exhaustive list of the environmental information that, as a minimum, Member States should actively supply and disseminate. This includes texts of international environmental treaties; Community environmental legislation; national, regional or local laws 'on the environment or relating to it'; policies, plans and programmes relating to the environment', progress reports on the implementation of the legislation and policies mentioned; reports on the state of the environment; and 'data derived from the monitoring of activities affecting or likely to affect the environment'.

Specific mention is made of having this information in forms accessible by computer or other electronic means.

Access to justice

The draft directive provides for the possibility of appeal when the applicant considers that the request 'has been ignored, wrongfully refused (whether in full or in part) inadequately answered or otherwise not dealt with according with the provisions of the directive. *Judicial and administrative review* of the decision is to be provided in accordance with the legal system of the Member State.

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[62] Aarhus Convention, Article 4(4), last paragraph.

[63] '*It goes without saying that, in accordance with a well established principle of Community law, exceptions will have to be interpreted in a restrictive way in order not to defeat the principle of the right of access to environmental information*' (Explanatory Memorandum of the proposed directive, p.13).

[64] The proposed directive replaces 'respond' with the expression 'make available environmental information' in relation to a request for information (Article 3(1)).

[65] Commission proposal, Article 3(4).

[66] Commission proposal, Article 3(4)(a) and (b).

[67] Commission proposal, Article 5.

3.3 The Aarhus Convention

The Convention was preceded by a number of international declarations on the right of access to information such as the 1972 Stockholm Declaration, Chapter 40 of Agenda 21, Principle 10 of the Rio Declaration, and the 1995 Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making[68].

The Aarhus Convention was negotiated under the auspices of the UN Economic Commission for Europe (UNECE) [69], which initiated negotiations in 1996 to turn the Sofia Guidelines[70] into a legally binding international instrument. These negotiations ended in June 1998 with the adoption of the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (the 'Aarhus Convention').

This Convention has thus a scope that goes beyond access to environmental information and further legislation on access to justice and public participation will be needed at EU and at Member State level to comply with it. The EU is currently revising a number of legislative instruments to put its legal system in line with the Convention so it can ratify it. The review of the EU system on access to environmental information outlined in the precedent sections was to a great extent motivated by the adoption of the Aarhus Convention.

Article 1 of the Aarhus Convention is significant as it is the first time that an international agreement recognises 'the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'. One of three areas this Convention covers to guarantee this right is improving public access to environmental information held by public authorities. EU institutions are also included in the Convention's definition of public authorities, as the Community signed the Aarhus Convention alongside the 15 Member States.

The Convention lays down precise rights and duties regarding access to information, including deadlines[71] for providing the information requested and the grounds on which public authorities may refuse access to information. Access may be refused in three cases:

- when the public authority does not hold the requested information;
- when the request is manifestly unreasonable or formulated in too general a manner;
- when the request concerns material in the course of completion.

Requests may also be refused if the disclosure would adversely affect any of the following:

- the confidentiality of the proceedings of public authorities;
- international relations, national defence and public security;
- the course of justice; the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- the confidentiality of commercial and industrial information;

[68] The 1995 'Environment for Europe' Ministerial Conference in Sofia adopted the Guidelines on 'access to environmental information and public participation in environmental decision-making', in line with Principle 10 of the Rio Declaration on Environment and Development.
[69] United Nations Economic Commission for Europe. UNECE has 55 member countries including US, Canada, western and eastern Europe, central Asia and the Newly Independent Countries (Republics of the former Soviet Union). For further information, http://www.unece.org
[70] The 1995 'Environment for Europe' Ministerial Conference adopted the 'Guidelines to environmental information and public participation in environmental decision-making'
[71] 'As soon as possible and at the latest within one month…unless the volume and complexity of the information justify an extension of this period up to two months after the request.' (Article 4(2)).

- intellectual property rights;
- the confidentiality of personal data;
- the interests of a third party which has supplied the information; and
- the environment to which the information relates.

All these grounds for refusal must be interpreted narrowly, taking into account the public interest served by disclosing the information and also whether the information requested relates to emissions into the environment. A refusal must state the reasons that motivated it and indicate what forms of appeal are open to the applicant.

Public authorities must keep the information they hold up to date and set up publicly appropriate and accessible lists, registers and files. Use of electronic databases containing reports on the state of the environment, legislation, national plans and policies and international conventions should be promoted.

Once it enters into force, now foreseen for 2001, the Aarhus Convention will be binding on the EU countries that ratify it and on the EU institutions, after is ratified by it. This means that it will be applicable to both regimes: access to environmental information and access to EU documents. The new Community regulation on access to EU documents, now under discussion, covers access to EU documents in all areas, including environmental, so it should be in line with the Aarhus Convention.

The 40 Signatories of the Convention held their First Meeting in Moldova on 19-21 April 1999. They discussed a work-plan that included the promotion of ratification and implementation of the Convention, pending its entry into force, and the publication of a implementation guide for the Convention. The Second Meeting of the Signatories took place in Dubrovnic (Croatia) on 3-5 July 2000, where progress was assessed. An implementation guide on the Aarhus Convention has been produced and was presented at the July 2000 meeting. '*The Aarhus Convention. An Implementation Guide*' is available at the Convention's website[72].

4 Do fisheries subsidies fall within the scope of "environmental information"?

From the analysis of international and EU legislation in the preceding section it is clear that environmental information does not only refer to the status or quality of its elements, but also to those activities that have an adverse impact on it, such as fisheries subsidies.

The regimes of access to EU documents and access to environmental information, presented above, are not mutually exclusive. However, access to information is badly affected by the number and complexity of the different systems.

For any information or documentation on EU matters, including information on fisheries subsidies, the applicable rules are the ones on access to documents from the EU institutions, analysed in section 2 above. However, to obtain documents at national level we must follow the national legislation on access to information and the laws on access to environmental information that implement the Directive 90/313. Environmental information is the only type of information where the EU has introduced harmonised legislation in the 15 Member States (Directive 90/313).

[72] http:// www.unece.org/env/pp

In the case of requests for information on fisheries subsidies, different rules must be followed depending on the source of the document (national authorities, EU institutions, etc.). The current legislative review of the access regimes to both EU documents and environmental information offers a timely opportunity to achieve coherence between the two systems.

4.1 Environmental integration

The 1997 Amsterdam Treaty placed sustainable development at the heart of the European Union (Article 2 EC Treaty). Achieving sustainability is one of the goals of the Community. Furthermore, article 6 of the EC Treaty specifies that the requirements of environmental protection have to be integrated into all Community policies and activities. This includes the role of the Common Fisheries Policy in the conservation and management of living marine resources and impact of fisheries activities on marine ecosystems.

Two processes are running in parallel to achieve this integration although with a different focus: the EC Biodiversity Strategy and the Fisheries Action Plan, and the process of integrating environmental concerns into EU sectoral policies, including fisheries (the 'Cardiff process').

The EC Biodiversity Strategy (ECBS)[73] was adopted in 1998 to take action towards the conservation and sustainable use of biodiversity in order to comply with the CBD. The strategy is developed around four major themes and eight policy areas. It envisages the adoption of action plans of a sectoral and cross-sectoral nature in six policy areas, including fisheries, by February 2000. The fisheries action plan has yet to be adopted.

The Strategy highlights the importance of integrating biodiversity concerns into marine resource policies, including fisheries, and into agreements on the protection of coastal and marine environment and fisheries. The European Commission recognises in this strategy that

> 'while fisheries policies have a major impact on the conservation of biodiversity and sustainable use of biological resources, the Common Fisheries Policy has not yet fully achieved the objective of sustainable fishing.'

Key objectives of the strategy for the fisheries sector include:

- to promote the conservation and sustainable use of fish stocks and feeding grounds
- to reduce the impact of fishing activities and other human activities on non-target species and marine and coastal ecosystems to achieve sustainable exploitation of marine and coastal biodiversity

In June 1999, the European Commission published a progress report on the implementation of the EC Biodiversity Strategy. As regards fisheries, the application of the precautionary approach was identified as an important element in reviewing EU fisheries management tools. The progress report included a timetable fixing the deadline for the adoption of the action plans in February 2000.

In the absence of an action plan on fisheries and biodiversity[74], currently the main EC policy framework to deliver sustainable use of fisheries and biodiversity is the 1999 Communication

[73] Commission Communication on a European Community Biodiversity Strategy, COM(1998)42 final, of 4 February 1998.
[74] Coffey C, Paying for the Fisheries Sector: The Role of Financial Incentives', background paper for WWF-UK workshop, London, 4-5 May 2000.

'Fisheries Management and Nature Conservation in the Marine Environment'[75]. The Communication is part of a Community strategy to improve the integration of the environment into the CFP. It highlights the close connection between fisheries activities and marine ecosystems and the need to reduce pressure from fisheries to conserve marine biodiversity by taking into account the impacts of fisheries activities on the marine species and habitats.

The EU Fisheries Council reported to the Feira European Council (19-20 June 2000) on integrating environmental issues and sustainable development into the Common Fisheries Policy[76]. The report concludes that endeavours to integrate environmental requirements into fisheries policy must be continued and stepped up through increased co-ordination of fisheries and environmental policies. The Fisheries Council stresses the importance of the fisheries sector, at both national and Community level, in playing an active role in this integrated approach. An EU strategy on environmental integration is due in Göteburg (Sweden) in June 2001.

4.2 The Convention on Biological Diversity

The 1992 UN Convention on Biological Diversity (CBD) has been signed and ratified by all Member States and the EC and is in force since the end of 1993. The CBD defines 'biological diversity' as: 'the variability among living organisms from all sources including, *inter alia*, terrestrial, ***marine and other aquatic ecosystems*** and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems' (emphasis added).

Article 2 also defines 'biological resources' to include 'genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity'.

The work programme on marine and coastal biological diversity under the CBD[77] includes the following objectives:

- promotion of ecosystem approaches to the sustainable use of marine and coastal living resources
- make available to parties (of the Convention) information on marine and coastal genetic resources

4.3 The Aarhus Convention

The definition of environmental information of the Aarhus Convention is very important, as this will probably be included in the new Directive on access to environmental information. Article 1(3) of the Convention gives a detailed definition of 'environmental information'. For the purposes of this report, the most important sections of the definition are:

> (a) "information on the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, ***biological diversity and its components***, including genetically modified organisms, and the ***interaction among these elements***"(emphasis added).
>
> (b) "factors […] and ***activities or measures***, ***including administrative measures***, environmental agreements, ***policies, legislation, plans and programmes***, ***affecting or likely to affect the elements of environment within the scope of subparagraph (a) above***,

[75] COM(1999)363 final, of 14 July 1999.
[76] EU Council Report 9386/00, of 16 June 2000.
[77] Decision IV/5 adopted at the 4th Conference of the Parties to the CBD, Bratislava (Slovakia), May 1998.

and cost-benefit and other economic analysis and assumptions used in environmental decision-making". (emphasis added)

It is clear from the Community policy initiatives outlined above that the Common Fisheries Policy, which includes fisheries subsidies, has an impact on the elements of environment listed in the Convention, namely on biological diversity and its components.

4.4 Interpretation

We need to look at the scope of 'information on the environment' in the existing Directive 90/313 and its interpretation. From now on, the new draft directive on access to environmental information, which introduces the definition of the Aarhus Convention, should be use to broaden the application of Directive 90/313. The Directive in force defines 'information relating to the environment' as information "on the state of water, air, soil, fauna, flora, land and natural sites" and "on activities or measures adversely affecting, or likely to affect these including administrative measures".

In relation to accessing information on fisheries subsidies, two arguments support the interpretation of 'environmental information' to include information on fisheries subsidies:

1. fish stocks are a biological resource and, as marine biodiversity, they are included in the definition of 'environment'

2. fisheries subsidies are 'measures adversely affecting or likely to affect' the environment, as administrative measures with an impact on the marine environment.

The interpretation of the scope of this concept by the European Court is illustrated below.

Mecklenburg v Kreig Pinnerberg

The concept of 'information relating to the environment' is intentionally broad, as ruled by the European Court of Justice (ECJ) in June 1998[1] (*Mecklenburg v Kreig Pinnerberg*). In this particular case, the ECJ held that the wording of Article 2(a) of Directive 90/313 makes clear that the definition of environmental information is intended to be a broad one, 'embracing both information and activities relating to the state of [various] aspects of the environment'[1]. The Court further ruled that this phrase included any 'act capable of adversely affecting or protecting the state of one of the sectors of the environment covered by the directive'. Thus, the purpose was to avoid a definition of environmental information 'which could lead to the exclusion of any of the activities engaged in by the public authorities'[1]. The ECJ's view is that the use of the term 'measures' merely serves to make it clear that the scope of the directive includes 'all forms of administrative activity'.

1999 Judgement of the German Federal Administrative Court

At national level, the German Federal Administrative Court followed the ECJ *Mecklenburg* case and made an extensive interpretation of the definition of environmental information of the German Act on Access to Environmental Information[1]. The Court held[1] that 'activities and measures' refer to all activities of an authority aimed at protecting the environment. The Court found irrelevant whether environmental protection is or not the primary objective of the measure and thus ruled that environmental State aid falls under the scope of environmental information

Interpretation of the exceptions allowed in the 1990 Directive need to be tested. Even if the new proposed directive is adopted without delays and implemented in the Member States within the transposition deadlines, it could be over two years before improved legislation on access to environmental information is passed at national level. In the meantime, and at least until the entry into force of the new directive, Member State legislation implementing Directive 90/313 will continue to be applicable.

The application of the existing rules on access to environmental information should be made taking into account the new legislative framework, as it will be binding in the EC and 15 Member States as soon as the Aarhus Convention and the new directive enter into force.

5 European Community: Information on Fisheries Subsidies

In addition to the laws and processes discussed above for giving citizens access to information about EU fishing subsidies, there are provisions within certain subsidy programmes themselves that have a bearing on their transparency. While these provisions do not in themselves create rights or legal mechanisms for accessing information, they are relevant to how governments collect and disseminate information. They are also of some interest for what they teach about current approaches to transparency in these programmes.

5.1 The EU Financial Instrument for Fisheries Guidance (FIFG)

The European fisheries sector is one of the most heavily subsidised in the world. The bulk of these subsidies is provided through the Financial Instrument for Fisheries Guidance (FIFG). The FIFG is one of the four EU Structural Funds[78], and its funding is directed to structural measures in the catching, marketing, processing and aquaculture sectors and the development of port facilities. It is particularly directed at providing financial support to economically depressed areas within the EU dependent on fisheries. (For a brief overview of the goals and scope of the FIFG, *see* Appendix V.)

The Structural Funds, including the FIFG, were reviewed in 1999 as part of the *Agenda 2000* reform of the EU finances, and new regulations were adopted for the period 2000-2006. The reform has brought a gradual shift towards an emphasis on sustainability, but more radical measures are urgently needed to tackle the over exploitation of fish stocks. In this respect, the preamble of the new regulation states that 'it is as important to provide for appropriate measures to preserve the trophic chain as it is to provide for aquaculture and the fish processing industry'[79].

With regard to its administration, FIFG is subject to the general rules applying to all Structural Funds plans and programmes. As of late October 2000, regional development plans for 2000-2006 are going through the last stages in their adoption.[80] In the poorest regions of the EU, [81] these plans must include information on the types of measures that will be co-financed by the FIFG in the region, together with a financial table. These plans also include the objectives and

[78] There are four Structural Funds: (1) the European Regional Development Fund (ERDF), (2) the European Social Fund (ESF), (3) the European Agriculture Guidance and Guarantee Fund (EAGGF), and (4) the Financial Instrument for Fisheries Guidance (FIFG).
[79] Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, Official Journal L 337, of 30 December 1997. (Preamble, paragraph 13).
[80] Information on the Structural Funds plans for 2000-2006 can be found in http://www.inforegio.cec.eu.int/dg16_en.htm
[81] Or 'Objective 1 regions'. These regions have a GDP of less than 75% of EU's average GDP and are established by the European Commission.

priorities for fisheries expenditure in the region for the next seven years.[82] Outside the neediest regions, the FIFG operates through fisheries development plans, which have the same structure and content as those described above. Structural Funds plans are public documents agreed between the Commission and each Member State and must be publicly available.[83]

The new EU Regulation on information and publicity measures to be carried out by the Member States concerning assistance from the Structural Funds[84]

A step towards increased transparency is the recent EU Regulation on information and publicity measures to be carried out by the Member States concerning assistance from the Structural Funds[85]. This regulation contains detailed implementing rules to fulfil the information requirement of Article 53(2) of the general regulation on the Structural Funds[86]. The regulation is applicable to information and publicity on the financial assistance provided by the four structural funds, and so it includes FIFG expenditure.

The principle behind this regulation is 'to increase public awareness and transparency regarding the activities of the European Union and create a coherent picture of the assistance concerned across all Member States'. The aims of these information and publicity measures, which must be presented in the form of a communications action plan, are twofold:

- inform about the opportunities offered by joint financial assistance from the EU and Member States in order to ensure the transparency of such assistance. The target groups are potential and final beneficiaries, as well as:

    - regional and local authorities and other competent public authorities
    - trade organisations and business circles
    - the economic and social partners
    - non-governmental organisations, especially bodies to promote equality between men and women and those working to protect and improve the environment
    - project operators and promoters

- inform the general public about the role played by the EU in co-operation with the Member States in the assistance concerned and its results.

There is no provision in this regulation on commercial confidentiality or any other restriction on the obligation to inform on the use of the Structural Funds. The choice of specific information and publicity measures and its presentation in the form of a communications action plan are left to the discretion of the authorities managing the funds.

This new regulation focuses more on actively informing the public[87] of the role of the EU in assisting certain economic sectors rather than on providing relevant information upon request. There is a contrast between EU requirements to actively inform and publicise information on specific areas, such as this, and the obligation to respond to specific requests for information. The

[82] For a discussion of access to these documents, and of structures for participating in the formulation and implementation of national programmes under the FIFG, *see* symposium paper *Reforming European Union Fisheries Subsidies*.
[83] Regulation 1260/1999, of 21 June 1999, laying down general provisions on the Structural Funds, Official Journal L-161 of 26 June 1999.
[84] Regulation 1159/2000, of 30 May 2000, Official Journal L-130, of 31 May 2000.
[85] This Regulation is binding in its entirety and directly applicable in all Member States from 3 June 2000.
[86] Regulation 1260/1999, of 21 June 1999, laying down general provisions on the Structural Funds, Official Journal L-161, of 26 June 1999.
[87] Through billboards, plaques, posters, publications and events.

EU laws under review analysed in sections 2.2 and 3.2 above indicate a move towards increasing the positive obligation for Member States and EU institutions to make information publicly available as a general rule of good practice.

5.2 State aid

Article 87(1) of the EC Treaty provides that state aid is, in principle, incompatible with the common market. Article 87(2) lists those areas where state aid 'may be considered to be compatible with the common market'. This includes 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

The European Commission has adopted industry-specific or sectoral rules defining its approach to State aid in particular industries. One of these categories is that of 'sensitive sectors', which includes shipbuilding. The general state aid rules apply only to a limited extent in the sectors involved in the production and marketing of fisheries products. State aid in the areas of fisheries and agriculture is subject to competition rules, but only to the extent determined by the EU Council[88].

Following the reform of the Structural Funds in 1999, the Commission is reviewing the State aid rules currently applying in the area of fisheries. DG Fisheries will propose new Commission guidelines for the examination and evaluation of state aids in fisheries and aquaculture this year. These guidelines 'will consider the specific circumstances of the sector including compatibility of the aids with the management or achievement of the various objectives of the CFP'[89].

The European Commission has published information on state aid in the 'Eighth Survey on State aid in the European Union'[90]. This information is based on submission of national reports, and therefore relies on the Member States. However, national reports are not published themselves and are also likely to be incomplete.

Information contained in EU documents will be subject to the rules of the new EU regulation, once it is adopted, whereas information about national subsidies will need to follow each country's internal laws on access to information.

5.3 The Common Fisheries Policy

The Common Fisheries Policy (CFP) is the European Union's instrument for the management of all fisheries within Community waters. It was created to manage this common resource, and to meet the obligation set out in the original EC Treaty to have a common fisheries policy based on common rules adopted at the Community level and implemented in all Member States.

In June of this year, the EU Council of Ministers adopted a new regulation establishing a Community-wide framework for the collection and management of fisheries data needed to conduct the CFP. **[91]** The objective of this Regulation is to establish a Community framework for the collection and management of the data needed to evaluate the situation as regards fishery resources and the fishing industry, where Member States will be responsible for collecting the data. The Community needs complete and reliable data on the biology of the fish stocks, on the

[88] *Vademecum on Community rules on State aid*, European Commission, June 1999.
[89] Directorate-General for Fisheries, Work Programme 2000.
[90] COM(2000)205 final, of 11 April 2000. Available in http://europa.eu.int/comm/dg04/state_aid/survey/8_en.pdf.
[91] Regulation 1543/2000, of 29 June 2000 (Official Journal L176, of 15 July 2000).

fleets and their activities, and on economic and social issues in order to conduct the scientific evaluations needed for the common fisheries policy.

Article 4 of the Regulation details what data are to be collected[92], including those needed to evaluate the economic state of the industry. In particular, Article 4(4) makes a specific reference to information on the subsidies received:

As regards the fishing fleets:

- the income from sales and other revenue (for example ***subsidies***, interest received) (emphasis added)
- the production costs
- data enabling the jobs at sea to be counted and classified

and, as regards the fish processing industry:

- production expressed in volume and value terms for product categories to be determined
- number of enterprises, and number of jobs
- changes in production costs, and their composition.

Article 7(4) of the proposed regulation intends to keep this information out of public access. "***Data transmitted or collected in whatever form under this Regulation shall be covered by professional secrecy*** and shall qualify for the same protection as that granted to similar data by the national legislation of the Member States who receive them, and by the corresponding provisions applying to the Community institutions." (emphasis added)

The only reference to environmental issues in this Regulation is in Article 10(3) where it is established that Regulation 1543/2000 will be reviewed by 31 December 2003. The Commission will assess whether it is appropriate to extend the range of data collected 'in areas significant to the CFP not yet covered by this Regulation' such as '*aquaculture, **the relationship of fisheries and aquaculture with the environment**, and the capacity of fisheries and aquaculture to create jobs'*[93].

In March 2000 the European Parliament adopted its report on this Regulation where it had asked for the introduction of a new paragraph in Article 4 to include the data required to monitor changes in aquatic ecosystems[94]. However, the proposed regulation was discussed at the EU Fisheries Council on 16 June 2000 and it was decided that it would be adopted without further debate.

6 Conclusions

The access to information regimes studied in this report have a number of basic characteristics in common. Each starts with the presumption that members of the public have a general right to find out what public authorities are deciding, and the information on which these decisions are based. Each regime then proceeds to narrow this fundamental right by the use of:

[92] 'Data to be collected by Member States: that needed to evaluate the activities of the fishing fleets and changes in fishing power; data which makes it possible to estimate the total volume of catches per stock, including discards where appropriate; data to allow the monitoring of prices associated to the various landings; and data needed to evaluate the economic state of the industry' (Article 4).
[93] Article 10(3) of Regulation 1543/2000.
[94] Report A5-0038/2000.

- restrictive definitions of what is meant by "information,"

- broad exceptions that allow the withholding of certain categories of information,

- procedural techniques aimed at ensuring that public authorities are not overwhelmed by the volume and costs of responding to information requests.

Gaining access to information within the European Union is made particularly challenging by the number, size and complexity of the government institutions that may hold the information. At the moment, the institutions established by the Community do not a have a common or consistent access policy. Access rules agreed at the Community level that are applicable to the government institutions of the Member States, allow wide discretion for inconsistent application by each government. To the extent that common standards are required of each Member State, there has been uneven implementation, and little enforcement by the Commission, mostly prompted by the complaints received from citizens and environmental groups. This leaves European civil society at a unique disadvantage when seeking to access information from those governments that have not made a strong political commitment to disclose data to the public.

Growing public concern about the impact of government policies on the environment and sustainable development has led to a number of regional and international initiatives that seek to prioritise the right to access "environmental information". While these developments are welcomed, and may bring particular benefits to environmental campaigners, they create an additional set of rules and, potentially, an additional definitional hurdle for citizens to clear. For example, to take advantage of this new set of rules convincing arguments may need to be made that European fishing subsidies fall within the definition of "environmental information."

Perhaps the greatest limitation on the effectiveness of the access to information rules studied in this report is the essentially passive nature of the obligations they place on governmental institutions, which the new legislative proposal intends to address. Under all of these rules, civil servants are required to pass information to the public only when specifically requested to do so. This places the burden on civil society not only to be aware generally of the prior existence of such information and the institution or agency that holds it, but also to understand the relevance of the information to their particular interests and concerns.

Experience from other jurisdictions suggest that these types of rules only operate effectively within societies where there is a commitment by governments to act proactively in disclosing information, and a tradition within civil society to demand answers from their governments. The relatively scarce amount of practice in interpreting and applying access to information rules within the EU and its Member States suggests that these two essential elements may as yet be absent from the European dynamic. Efforts like the WWF Fisheries Subsidies Initiative are therefore essential, both to test the limits of existing rules, and also to help stimulate the cultural changes necessary to develop more participatory partnerships between civil society and governments.

This Report does reveal that the EU and its Member States are increasing their legislative and policy efforts to improve transparency in decision-making and promote access by the citizens to the institutions that so directly affect them, both in Brussels and at national level. Whether as a result of recent political and administrative crisis, growing public disaffection with European institutions, or the development and experience gained in applying the current regime, the existing EU rules are now under review.

In sum, the mechanisms available to give the public access to information about fishing subsidies in the European Union are potentially strong, but are currently characterised by a combination of complexity, ambiguity, and underuse. Solid grounds exist to believe that the current regime could produce significantly more transparency for fishing subsidies in the EU than exists in practice today. Moreover, the trends in the law are mainly in a positive direction. Nevertheless, real transparency will require governments to show significantly greater will to open the books on fishing subsidies. As popular understanding of the consequences of EU fisheries policies grows, and as citizens of the EU increasingly demand stronger accountability from their governments, the regime for guaranteeing public access to information about fishing subsidies will likely undergo new tests. An improved flow of information from the government to the public will only help in achieving more rational and effective fisheries policies.

Appendix I: 'Directives,' 'Regulations,' and Other Instruments Of EU Rulemaking

For those unfamiliar with the legal lexicon of the European Union, the variety of institutions, instruments, and procedures involved in establishing policies and rules can be confusing.

The **principal governing institutions** of the EU are:

> ***The Council of Ministers*** — This is the highest governing body of the EU, made up of national ministers from the Member State governments, acting on behalf of their governments. At a given meeting, the Council will be convened by ministers charged with portfolios relevant to the question at hand (*e.g.*, the ministers of fisheries meet in the EU Fisheries Council to discuss matters related to the Common Fisheries Policy, the environment ministers meet in the EU Environment Council, etc.). The Council, together with the European Parliament, has the power to pass EU legislation according to the different procedures explained below.
>
> ***The European Commission*** — The Commission is made up of 20 representatives named by the Member States, acting (in principle) independent of the national governments which named them. The Commission initiates legislative proposals. The Commission "adopts" draft directives or regulations that are then discussed and passed by the Council (and the Parliament, according to the procedure) before they have legal force. Other powers of the Commission include executive powers in administering the EU Structural Funds, and its role as 'guardian' of Community law, with the power to initiate infringement proceedings against Member States for failure to fulfil their obligations under EU law.
>
> ***The European Parliament*** — The European Parliament is chosen by direct popular vote across the EU. It does not have the power to initiate EU legislation, but does have the ability to modify, veto and adopt EU legislation under some circumstances (see procedures below).

Legislative instruments applied by the EU include:

> ***Directives*** — These are legislative acts that establish mandatory EU policy, but are not legally effective in a given Member State until implemented ("transposed") into law by the Member State. Directives are binding in the sense that they mandate the end to be achieved, but they leave some choice to the Member States regarding the form and method for achieving them, according to their own legal systems. Transposition by Member States is mandatory within a time period set out in each directive.
>
> ***Regulations*** — These are also EU legislative acts. As distinct from Directives, EU Regulations are "directly applicable in all Member States"—that is, they have the immediate force of domestic law, once they enter into force after publication in the Official Journal of the EC.
>
> ***Decisions*** — These are acts of the Commission or the Council that, in general, are binding only on the Member/s State/s, citizen/s or company/ies they are addressed to, from the moment they are notified to them.

Procedures used to pass EU legislation are complex, and principally vary in role played by (and the degree of power given to) the European Parliament:

> ***Consultative role —*** Allows adoption of legislation by the Council after merely consulting the Parliament. This is the procedure to regulate 'State aids' under Article 89 of the EC Treaty. The Common Fisheries Policy also follows this procedure: "*The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make regulations, issue directives, or take decisions, without prejudice to any recommendations*" (Article 37 EC Treaty).
>
> ***Co-operation procedure —*** Gives the European Parliament two readings of the proposed measure. It gives the European Parliament a greater role in the legislative process although it cannot block the adoption of legislative instruments. Its application has radically decreased after the changes introduced by the Treaty of Amsterdam[95] and now only a few issues within economic and monetary policy follow this procedure.
>
> Co-decision procedure— This procedure is designed to prevent the adoption of a measure without the approval of both the Council and the European Parliament and it focuses on both institutions reaching a jointly approved text. The European Parliament has also two readings of the proposed measure but it differs from the co-operation procedure as the Parliament can actually veto legislation if it disapproves it, but cannot force the Council to accept its amendments. This procedure now applies to a wide range of EC legislation, including environmental legislation and the internal market.

[95] The Treaty of Amsterdam upgraded all the legal basis that used to rely on the co-operation procedure, to the co-decision procedure.

Appendix II: Chart Summarising Existing Legislation

LEGISLATION	STATUS	INSTITUTION/S COVERED	INFORMATION COVERED	*EXCEPTIONS*
Commission Decision 94/90, of 8 February 1994, on public access to Commission documents	In force (It will be replaced by new Regulation on public access to EU documents)	European Commission	'Any written text, whatever its medium, which contains existing data and is held by the Commission'. It excludes documents written by a person, body or institution outside the Commission.	The protection of: - The public interest; - the individual and privacy; - commercial and industrial secrecy, - the Community's financial interests; - confidentiality as requested by supplier of information contained in the document; - the Commission's interest in the confidentiality of its proceedings.
Council Decision 93/731, of 20 December 1993, on public access to Council documents	In force (It will be replaced by new Regulation on public access to EU documents)	EU Council	Council documents: 'any written text, whatever its medium, containing existing data and held by the Council'. It excludes documents written by a person, body or institution outside the Council.	Same as above.

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LEGISLATION	STATUS	INSTITUTION/S COVERED	INFORMATION COVERED	*EXCEPTIONS*
European Parliament Decision 97/632, of 10 July 1997, on public access to European Parliament documents	In force (It will be replaced by new regulation on public access to EU documents)	European Parliament	European Parliament documents: 'any written text, whatever its medium, containing existing data and drawn up by the institution'. It excludes documents written 'by a natural or legal person, a Member State, another Community institution or body, or any other national or international body'.	The protection of: - the public interest and, in particular public security, the financial interests of the European Community, court proceedings or the Institution's enquiry activities - commercial and industrial secrecy - the individual and of privacy - confidentiality as requested by the supplier of information contained in a document - the confidentiality of deliberations of the political groups, of the parliamentary bodies where they meet in camera, or of the relevant services of its Secretariat.
Proposed Regulation regarding public access to European Parliament, Council and Commission documents (COM (2000)30, of 26 January 2000)	First reading (co-decision) [Awaiting opinion from European Parliament]	European Parliament, Commission and Council	All documents held by these institutions. This includes documents drawn up by them or received from third parties and in their possession. Access to documents from third parties will be limited to those sent to the institutions after the date when this regulation becomes applicable.	The protection of: - the public interest (public security, defence and international relations, financial or economic interests, inspections, investigations and audits, etc. - privacy and the individual (personnel files, etc.) - commercial and industrial secrecy or the economic interests of a specific natural or legal person (business and commercial secrets, industrial, financial, banking information, etc.) - Confidentiality as requested by the

				third party having supplied the document or the information.
Directive 90/313, of 7 June 1990, on the freedom of access to information on the environment	In force (It will be replaced by the new Directive on public access to environmental information)	Addressed to EU Member States (not EU institutions). They defined the practical arrangements to make environmental information available by public authorities.	Information on the environment held by public authorities: 'any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities or measures adversely affecting, or likely so to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes'.	- The confidentiality of the proceedings of public authorities, international relations and national defence - Public security - Matters which are or have been sub judice or under enquiry, or which are the subject of preliminary investigation proceedings - commercial and industrial confidentiality, including intellectual property - the confidentiality of personal data and/or files - material supplied by a third party without that party being under a legal obligation to do so - material the disclosure of which would make it more likely that the environment to which it relates would be damaged.

Continued on next page

LEGISLATION	STATUS	INSTITUTION/S COVERED	INFORMATION COVERED	*EXCEPTIONS*
Proposed Directive on public access to environmental information ***COM(2000)402, of 29June 2000***	First reading (co-decision) [Awaiting opinion from the European Parliament]	Addressed to EU Member States (not EU institutions). They must ensure that public authorities make available environmental information held by or for them.	Environmental information: any information in written, visual, aural, electronic or any other accessible form on: (a) the state of the elements of the environment (air, water, biological diversity and its components, including GMOs, and the interaction among these elements, etc.) (b) factors such as substances, energy, etc. affecting or likely to affect the elements of the environment listed in (a) (c) emissions, discharges and other releases into the environment (d) measures such as policies, legislation, plans, programmes, etc. and activities affecting or likely to affect the elements referred to in a) (e) cost-benefit and other economic analyses and assumptions used within the framework of measures and activities	- Information not held by or for the public authority to which the request is addressed - request is manifestly unreasonable or formulated in too general a manner - the request concerns material in the course of completion or internal communications If the disclosure would adversely affect: - confidentiality of the proceedings of public authorities - international relations, public security and national defence - the course of justice - confidentiality of commercial or industrial information - intellectual property rights - the protection of individuals (processing of personal data) - the interests of any person who supplied information on a voluntary basis - the environment to which such information relates.

			referred to in (d) (f) the state of human health and safety, conditions of human life, cultural sites and built structures.	
UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('Aarhus Convention')	Signed in June 1998 (not yet in force)	Parties to the Convention must guarantee the right of access to information in environmental matters. Each party must 'ensure that officials and authorities assist and provide guidance to the public in seeking access to information. The EC and EU-15 signed the Convention in June 1998 but none has yet ratified it.	Environmental information: 'any information in written, visual, aural, electronic or any other material form on: (a) the state of elements of the environment (air, water, landscape and natural sites, biological diversity and its components, including GMOs …) (b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes affecting or likely to affect the elements of the environment within the scope of (a) […] (c) the state of human health and safety, conditions of human life, cultural sites […]	- the public authority does not hold the information requested - the request is manifestly unreasonable or formulated in a too general manner - the request concerns material in the course of completion or concerns internal communications of public authorities where this is provided for in national law If the disclosure would adversely affect: - the confidentiality of proceedings of public authorities - international relations, national defence or public security - the course of justice - commercial and industrial confidentiality - the environment to which it relates, - […].

Appendix III: Comparison of Proposed Regulation on Access to EU Documents with Proposed Directive on Access to Environmental Information

	Proposed Regulation on Access to documents held by EU institutions (COM(2000) 30 final)	**Proposed Directive on Public access to environmental information (COM(2000) 402 final)**
Aim:	Public access to documents of the institutions by citizens, natural or legal persons or residents in the EU. (Article 1)	Public access of everybody to environmental information held by public authorities and dissemination of environmental information. (Article 1)
Scope:	Documents held by the institutions, drawn up by them or received form third parties. (Article 2)	Environmental information, which is held by a legal or natural person on behalf of a public authority under arrangements made between that authority and that person. (Article 2.3)
Definition of "documents" and "environmental information":	"Document" shall mean any content whatever its medium concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility. (Article 3a)	"Environmental information" shall mean any information in any accessible form on: the state of the elements of the environment, factors likely to affect the environment, releases to the environment, measures and activities affecting or protecting the state of the environment, economic analyses and assumptions used within the framework of measures and activities, the state of human H&S, conditions of human life, cultural sites and built structures in as much as they may affect the above mentioned (Article 2.1)

Continued on the next page

	Proposed Regulation on Access to documents held by EU institutions (COM(2000) 30 final)	**Proposed Directive on Public access to environmental information (COM(2000) 402 final)**
Exceptions:	Non-administrative documents. Texts for internal use. Public interest. Privacy and the individual. Commercial and industrial secrecy or the economic interests of a specific natural or legal person. Confidentiality as requested by the third party having supplied the documents or as required in MS legislation (Articles 3 and 4).	The authority addressed does not hold the requested information. The request is unreasonable or formulated in a too general manner. The material is in the course of completion or internal communications. Confidentiality of the proceedings of public authorities. International relations, public security and national defence. Adverse effects on the course of justice or enquiries or the possibility of receiving a fair trial. Confidentiality of commercial or industrial information, foreseen in legislation to protect economic interests. Intellectual property rights. Protection of individuals with regard to the processing of personal data. Adverse effects on the interests of any person who supplied the information voluntarily. Adverse impacts on the environment. (article 4)
Time-limit for response:	Within one month of registration of the application or, in exceptional cases and prior notification to the applicant, two months. Confirmatory applications must be answered within one month (Articles 5 and 6).	Within one month after the receipt of the request or, prior notification to the applicant, in case of voluminous or complex information, within two months. (Article 3)

Legal remedies:	In case of a negative reply, the applicant can, within one month, make a confirmatory application to the same institution. After this, or in case of incomplete or ignored requests, a revision can be obtained via court proceedings or a complaint to the Ombudsman. (Articles 5 and 6)	Member states must ensure that applicants have access, first to an administrative or inexpensive procedure and, secondly to a review by a court or another body established by law. (Article 6)
Charges:	The cost of a request for access may be charged to the applicant. (Article 8)	Charges for the supply of information may not exceed a reasonable amount and must be publicised. Examination *in situ* shall be free of charge. (Article 5)

Appendix IV: Comparison of Current Legislation with Proposed Legislation - A technical summary (as of 30 October 2000)

1. Accessing Information from the European Council and Commission: Current Regime (Decisions and Joint Code of Conduct) and Proposed European Regulation

Definition and Scope of Information

- Current regime: The current definition of '***document***' is very wide and includes published and unpublished material, including preparatory documents and other explanatory papers.

¬ Draft Regulation: The proposed definition has a narrower scope than the current regime and it excludes texts for internal use such as discussion documents and opinions. The scope of he exclusion is too broad and inconsistent with the approach of increasing public access and transparency.

- Current regime: Documents written by Member States, institutions, organisations, natural or legal persons outside the EU institutions are excluded from the scope of the current system, ie. they cannot be accessed through the Commission or EU Council until and unless they are part of an EU document. This exception could cover information and data submitted by the Member States to the Commission on fisheries subsidies such as state aid.

¬ Draft Regulation: The proposed scope allows access to documents sent by the Member States to the Commission and Council, but only to those sent after the entry into force of the new regulation.

- Current regime: In 1999 the EU Council set up a public register of Council documents. From July 2000, the register indicates which documents have already been released to the public via the internet.

¬ Draft Regulation: The proposed regulation requires the three EU institutions to provide access to a register of documents.

Exceptions

- Current regime: The exceptions most used by the Commission and Council to refuse access to EU documents have been the 'protection of confidentiality of an institution's proceedings' and the 'protection of the public interest'. The European Court of Justice has ruled that the public should have the greatest possible access to EU documents and any exception to this rule must be construed and applied narrowly.

¬ Draft Regulation: The proposed regulation actually includes a far longer list of exceptions than are currently allowed. The inclusion of new grounds for refusing access related to the protection of 'business and commercial interests' and 'financial or commercial interests' could undermine future access to information on fisheries subsidies.

Procedural Guarantees and Limitations

- Current regime: A positive aspect of the current regime, which will most probably remain after the review, is that citizens will not have to state the ***reasons*** behind the request for access to EU documents, nor prove their ***direct interest*** in the matter, as it if often the case in the legislation of Member States.

¬ Draft Regulation: No changes are anticipated to this aspect of the regime.

- Current regime: The current system requires ***refusals to access requests*** to be justified in writing by the relevant official. The ***time-limit*** for replying to the applicant on whether the request has

been approved or rejected is one month. There is no reference as to when the document is made available for access after the request has been approved.

¬ Draft Regulation: The draft allows the extension of the one-month deadline to respond to requests for a further month in 'exceptional cases', which are not defined. A lack of response from the institution is considered an unjustified refusal of access.

2. Accessing Environmental Information from the Governments of European Member States: Current and Proposed European Directives

Objectives and Rights

- Current Directive: The ***objective*** of the current system was to ensure freedom of access to, and dissemination of, information on the environment held by public authorities

¬ Draft Directive: The new proposal would establish a citizen's *right of access* to environmental information, in line with the Aarhus Convention.

Scope and Definitions

- Current Directive: The definition of '***environmental information'*** in the current regime includes information related to activities and measures adversely affecting the environment, or likely to affect it.

¬ Draft Directive: The new definition of environmental information includes information related to 'measures' such as *policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect* the environment. This is important when requesting access to information on fisheries subsidies, as they are likely to fall within this broad definition of 'measures'. However, the argument that fisheries lie within the Directive's definition of 'elements of the environment' will still need to be made.

- Current Directive: The definition of '***public authorities'*** responsible for providing information covers any public administration 'with responsibilities, and possessing information, relating to the environment'.

¬ Draft Directive: The new definition of public authorities includes 'any legal or natural person having public responsibilities or functions, or providing public services, *relating directly or indirectly to the environment*'. The change aims at including in the scope of the new Directive those public authorities currently left out as the information they hold is not considered to be *directly related* to the environment.

- Current Directive: Member States are under a duty to provide general information to the public on the state of the environment by means of periodic publications or descriptive reports, but the application of this requirement has been unsatisfactory and the current system has mostly focused on the passive supply of information upon request.

¬ Draft Directive: It includes the same requirement of actively supply information, but it goes further by including a non-exhaustive list of the environmental information that, as a minimum, Member States should actively supply and disseminate, preferably through electronic technology.

Exceptions

- Current Directive: On the ***exceptions*** allowed by the directive in force, they apply when the information requested *affects* certain interests. The most relevant ones for fisheries subsidies are 'the confidentiality of the proceedings of public authorities' and 'commercial and industrial confidentiality', although there is no judicial interpretation of them by the European Court.

¬ Draft Directive: Access will be refused when disclosure would *adversely affect* similar interests to the ones protected by the current regime. However, the confidentiality of commercial and

industrial information will be protected only when '*such confidentiality is provided for by law to protect a legitimate economic interest*'.

- Current Directive: The European Court of Justice has ruled that the exceptions allowed in the Directive must be interpreted in a narrow way.
- ¬ Draft Directive: It does not include this requirement, which is specifically mentioned in the Aarhus Convention, as it establishes that the grounds for refusing access '*must be interpreted in a restrictive way*'.

Procedural Guarantees and Limitations

- Current Directive: According to the current system, the environmental information must be provided at the person's request without having to ***prove an individual interest***.
- ¬ Draft Directive: the new regime goes one step further as applicants will not need to even '*state*' an interest in their requests for access to information.

- ¬ Draft Directive: A positive change of the proposed new regime is that it establishes that, in each case, the ***public interest*** served by the disclosure must be weighed against the interest served by the refusal. Access to information will be granted if the public interest outweighs the latter interest.

- Current Directive: The current directive allows Member States to refuse disclosure of ***unfinished documents, data or internal communications***, as well as when the request is 'manifestly unreasonable' or has been formulated in 'too general a manner'.
- ¬ Draft Directive: these grounds for refusing access remain in the new draft directive with the only proviso that '*the public interest served by the disclosure'* must be taken into account.

- Current Directive: The ***time-limit*** set for 'responding' to information requests is *two months*. In case the information is refused, the reason must be explicitly given.
- ¬ Draft Directive: the time-limit has been reduced to *one month* from the receipt of the request (two months for requests of special volume and complexity). The deadline is not for responding but for 'making available' the information requested. Refusals must be notified in writing and state the reasons behind it, an include information on the review procedure.

- Current Directive: The existing system allows Member States to ***charge*** for the information provided, but requires that such charge may not exceed a 'reasonable cost'.
- ¬ Draft Directive: it places an obligation on public authorities to publicise and make available to applicants a *schedule of charges* to be made. It also requires them to publicise and make available information on the circumstances in which a charge may be levied or waived.

- Current Directive: Directive 90/313 does not contain any provisions on the ***form or format*** in which the information requested should be made available
- ¬ Draft Directive: The current proposal lays an obligation upon public authorities to make environmental information available *in the form or format requested* by the applicant. The exceptions allowed are when the information is already publicly available in another form or format, and when it is reasonable for the public authority to make it available in another way.

Appendix V: Overview of the Financial Instrument for Fisheries Guidance (FIFG)

Under the recent reform of the FIFG adopted for the period 2000-06,[96] the objectives of the FIFG are:

- to contribute to achieving a sustainable balance between fishery resources and their exploitation
- to strengthen the competitiveness of structures and the development of economically viable enterprises in the sector
- to improve market supply and the value added to fishery and aquaculture products
- to contribute to revitalising areas dependent on fisheries and aquaculture

The FIFG will provide financial support in the following areas:

- fleet renewal and modernisation of fishing vessels
- adjustment of fishing effort
- joint enterprises
- small-scale coastal fishing
- socio-economic measures
- protection of marine resources in coastal waters
- aquaculture
- fishing port facilities
- processing and marketing of fishery and aquaculture products
- measures to find and promote new market outlets
- operations by members of the trade
- temporary cessation of activities and other financial compensation
- innovative actions and technical assistance

FIFG expenditure[97] is managed through multi-annual programming plans proposed by the Member States, negotiated with the European Commission and agreed between the Commission and each Member State. FIFG plans are co-financed by the Member States and private funds, and the EU rate of assistance depends on the region and on where the funds go to, ie. whether or not they fund a revenue-generating investment (infrastructure, firms, SMEs). Rates of EU contribution range, according to these factors, between 15% and 85% of the total cost.

The new Regulation specifies the conditions governing aid to the fleet. The general principle is that public funding should not contribute to increasing fishing capacity.

For the 2000-2001 period, the framework for the management of the Community fleet will be the fourth Multi-annual Guidance Programme (MAGP IV) which has been in place since 1997 'with a view to achieving a balance on a sustainable basis between resources and their exploitation'. To be allowed to allocate public support, Member States will have to establish mechanisms for monitoring fleet renewal and modernisation. They will also be required to show that the development of their fleet does not exceed the annual objectives fixed in the MAGP. No public aid for fleet modernisation and renewal may be granted unless the overall annual MAGP have been respected.

The European Commission has recognised that a balance between fleet capacity and the availability of resources is essential for the long-term viability of the fishing industry. It further admits that 'the exploitation of the fish stock in Community waters is very high and has led to the decline of many

[96] Regulation 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, Official Journal L 337, of 30 December 1997. (Preamble, paragraph 13).
[97] The FIFG budget for 2000-2006 is EUR 1106 million.

stocks of the highly valued species'[98]. In this way, MAGPs have not achieved their objective and the Commission itself recognises that 'the current MAGP target of a three per cent reduction in fleet size, to be achieved by December 2001, is probably ten times low'[99].

[98] Report from the Commission to the Council 'Preparation for a mid-term review of the Multi-annual Guidance Programmes (MAGP), COM(2000)272 final, of 10 May 2000.
[99] Commission press release of 22/9/00.

Appendix VI: Access to information in five Member States

Directive 90/313 aims at ensuring a minimum level of access to environmental information in all EU countries, but they are free to provide measures that go beyond the text of the Directive. Similarly, the list of exceptions to the freedom of access included in the Directive is not mandatory: Member States were able to choose which of those exceptions to use in their internal legislation. The design of practical arrangements for making the information available was also left to the national authorities.

An overview of the national legislation on access to information for each of the selected Member States follows below. The selection of the five countries has been based on different factors so as to include the perspective of a variety of legal systems, and also to present a geographical balance. The political and economic importance of these countries, and the size of their fisheries sector have been factors that have played an important role in the country selection. The five countries are: France, Spain, Italy, The Netherlands and the United Kingdom.

A list of references of the relevant legislation on access to information in these five countries is annexed to this report.

1. France

1.1 Legislation on access to information

Since the end of the 1970s, France has experienced a constant move from a secretive policy on access to information to real obligations on civil servants with regard to transparency and communication. A series of laws has materialised this desire of improving transparency. In particular, Law 78-17, of 6 January 1978, on information technology, databases and freedom[100] recognises the right of access of every person to data related to them. In addition, Law 78-753, of 17 July 1978[101], established the principle of free access to administrative data and created the Commission of Access to Administrative Documents (*Commission d'acces aux documents administratifs-CADA*).

With regard to procedural aspects, Decree 88-465, of 28 April 1988, set up the procedure to access administrative documents[102]. Law 79-18, of 3 January 1979, on archives[103] defines the types of access to archived materials.

The legal texts that implement Directive 90/313 on access to environmental information in France are the above-mentioned Law 78-753 and Decree 88-465. Thus, the main characteristic of the French transposition is that the texts are previous to the Directive and broader in their scope of application. An Administrative Circulaire of 10 June 1982 established the right to obtain information on pollution but it has been more recently when Law 95-101, of 2 February, granted access to environmental information for all citizens.

In addition to this, there are other legal texts, which refer to information in a specific sector, such as the Law on chemical products[104] or the Administrative Order of 10 June 1982 establishing the right to /-access information on pollution[105]. Law 95-101 on the strengthening of environmental protection

[100] *Loi no. 78-17 du janvier 1978 relative a l'informatique, aux fichiers et aux libertes, dite loi "Informatique et libertes"*.
[101] *Loi no. 78-753 du 17 juillet 1978 portant diverses mesures d'amelioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal.*
[102] Decret no. 88-465 du 28 avril 1988 relatif a la procedure d'acces aux documents administratifs.
[103] *Loi no. 79-18 du 3 janvier 1979 sur les archives.*
[104] *Loi du 17 Juilliet 1977 modifiee par la loi du 21 octobre 1982, portant sur le controle des produits chimiques.*
[105] *Circulaire du 10 juin 1982 relative au droit a l'information en matiere de pollution.*

(*Loi Barnier*)[106] included provisions to the effect of granting a general right of access to environmental information.

Since the mid 1990s, France has been involved in a number of reforms to modernise its public structures with a view to making the administration more efficient and bringing it closer to the citizens. Regarding the latter objective, on 12 April 2000, the Act on the rights of citizens in their relation with the Administration[107] was adopted. The new Act aims, *inter alia*, at improving transparency and citizens' access to public documents. Its first title "Provisions on access to legal rules and transparency" establishes every citizen's right to have access to all legislative documents adopted by public authorities. It also amended several provisions of the legal framework of access to information in France in order to broaden its scope and clarify ambiguous terms. Thus, for instance, access to documents is no longer restricted to their "nominative" content, and the definition of the exceptions to the right of information has been redrafted and consolidated in a single article.

With regard to access to environmental information, the French Minister of Environment, Ms Dominique Voynet, recently announced France's ratification of the Aarhus Convention through a draft law which will be submitted to Parliament before the end of the year 2000[108]. The draft law will be the first step in the Ministry's strategy to increase participation in public inquiries related to infrastructure developments and is to be followed by a second law reforming the rules for public inquiries early next year. The aims of the reform are also to increase transparency and to adapt the current public participation procedure to the great public demand it has triggered. It is planned that the draft law will implement the principles of consultation and participation and will make compulsory that authorities outline and announce the purpose of proposed infrastructure projects or environmental policies. Public authorities will also be required to publish the comments received from the public. Furthermore, the draft law will aim at extending the powers and increasing the budget of the existing Commission on Access to Administrative Documents.

1.2 Interpretation and application of French legislation on access to environmental information

- the scope of "environmental information"

With respect to documents, the scope of "information relating to the environment" seems to be more restrictive in French legislation than in the Directive[109]. While French Law 78-753 sets a list of documents, the Directive simply refers to "any available information". The Commission on Access to Administrative Documents determined that the list is not exhaustive, but French judges have been restrictive in their interpretation. However, in its Guide on Principles on the diffusion of environmental information[110] addressed at public authorities, the French Ministry of Environment uses the definition of the Directive to describe the scope of environmental information.

- the scope of relevant "exceptions"

Exceptions to the right of access to information are provided for in article 6 of Law 78-753. The list has been re-written pursuant to Law 200-321, but not many changes have been introduced. The list of exceptions to the right of access follows the ones in the Directive. The main difference is the

[106] *Loi no. 95-101 du 2 fevrier 1995 relative au renforcement de la protection de l'environnement, dite "loi Barnier".*
[107] *Loi no. 2000-321 du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations.*
[108] ENDS Daily of 28 September 2000.
[109] This paragraph is based on the article on access to environmental information in France by Pellisand F.and Prieur M. published in Ralph Hallo (editor) *Access to environmental information in Europe. The implementation and implications of Directive 90/313/EEC*. Kluwer Law International. The Hague, 1996.
[110] *Principes de diffusion des données relatives a l'environnement (version 1 du 2 novembre 1998).*

inclusion of grounds for refusing access based on "secrets protected by law". The Guide of the Ministry of Environment states that the refusal of information should be the exception.

1.3 Fisheries subsidies in France

The Fisheries Orientation Act (Loi d'Orientation Peche, 5 November 1997) aims at creating an adequate framework for the fisheries industry. It was adopted at a moment of crisis in the fisheries sector that highlighted the frailty of the resource and the need to improve both the industry and its social implications. The Act includes a number of measures aimed at the establishment of fisheries companies and the modernisation of fleets. They include tax incentives to support traditional fisheries, new fisheries companies and shipbuilding in France's overseas territories.

In the period 1994-1999, the European Union made ECU 260 million available to French authorities and businesses for the development and restructuring of its fishing industry, mainly through the Financial Instrument for Fisheries Guidance (FIFG). This represents approximately 9% of the total budget allocated to the FIFG over the 1994-99 period in the EU, i.e. ECU 2,700 million.

For the period 2000-06 the FIFG budget outside Objective 1 regions for France is of EUR 225 million, the total EU FIFG budget being EUR 1.1 billion. In Objective 1 areas, FIFG funding is bundled with the other Structural Funds to finance regional development programmes. In France, the only Objective 1 regions are its overseas territories so the EUR 225 million FIFG budget for 2000-06 will be spent in mainland France.

The French fishing industry is at present undergoing radical restructuring as a response to the crisis caused by the increasing reduction of fish stocks and the intense competition within Europe and globally. The Fisheries Orientation Act[111] sets out the legal framework to tackle this crisis. Its main objectives are the protection of fish stocks and the modernisation of fishing companies and work relations within the sector. Furthermore, the Fisheries Orientations Act contains a number of financial provisions that should stimulate the establishment of fishery companies as well as fleet modernisation. These include tax incentives for the establishment of traditional fisheries companies or for the construction of ships in the overseas territories, as well as incentives for young fishermen.

With an output of 600,000 tonnes of fish in 1997, France was the country with the fourth highest number of catches in the EU, after Denmark, Spain and the UK. In addition, France has the largest aquaculture sector in the EU (Eurostat).

French authorities most likely to hold relevant information on fisheries subsidies:

Ministere de l'Agriculture et de la Peche
Direction des Peches maritimes et des cultures marines
3, place Fontenoy
F-75700 Paris
Tel: +33 1 44 49 80 00
Fax: +33 1 44 49 84 00

1.4 General conclusions on the level and effectiveness of the implementation of these laws

Due to the early adoption of legislation on access to information, France has a vast experience and jurisprudence concerning this subject. This is also applicable to the area of access to environmental information where the Commission on Access to Administrative Documents has been active and issued numerous opinions. However, there are also critical voices. For instance, in June 1996 the

[111] *Loi d'Orientation Peche, 5.11.97.*

French branch of Friends of the Earth issued a report[112] on environmental problems in France, in which it denounces the lack of information on the state of the environment and lack of transparency with regard to certain information or installations.

2. United Kingdom

2.1 Legislation on access to information

Council Directive 90/313 is implemented in Great Britain through the Environmental Information Regulations (EIR) 1992 (Statutory Instruments 1992 No. 3240)[113].

More generally, there is a Code of Practice on Access to Government Information. This is a non-statutory scheme which requires government departments and other public authorities to make certain information available to the public and to release information in response to specific requests [114].

The current Freedom of Information (FOI) Bill is expected to supersede the Code of Practice, while amending the Data Protection Act 1998 and the Public Records Act 1958.[115] The House of Commons passed the FOI Bill and it was introduced into the House of Lords in April 2000. Some proposed advantages over the Code are:

- a statutory basis (versus the current non-statutory Code of Practice);
- nearly all public authorities are covered;
- the harm test is based on probability (versus possibility under the Code of Practice);
- discretionary disclosure is allowed even if the information is exempt; and
- the creation of an Information Commissioner and an Information Tribunal that will enforce the rights created and promote good practice. (The public will have direct access to the Commissioner, rather than the Code's requirement of an intervention of a Member of Parliament.)

It is planned that the Freedom of Information Bill will expand the rights of those seeking access to information. It also empowers the Secretary of State to adopt appropriate measures to implement the Aarhus Convention.[116]

2.2 Interpretation and application of UK legislation on access to environmental information

- the scope of "environmental information"

There is some dispute as to what is covered under the term "environmental information." In a memorandum to the House of Lords Select Committee on the European Communities, the United Kingdom Environmental Law Association (UKELA) found the EIR definition of "environmental information" essentially the same as the Directive, but interpretation of that definition by public authorities was sometimes unduly narrow. They dispute restricted access to information relating to planning applications involving an environmental impact assessment, where a planning enquiry is

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[112] *Une breve synthese des problemes environnementaux francais*. Friends of the Earth's contribution to OCDE's evaluation mission on France's environmental performance, June 1996.
[113] Hallo, R. and Roderick, P., *Freedom of Access to Information in the United Kingdom: A User's Guide to the Environmental Information Regulations and EU Directive 90/313*, Stichting Natuur en Milieu and FIELD, December 1994.
[114] House of Lords Website, Freedom of Information Bill, Explanatory Notes, http://www.publications.parliament.uk/pa/ld199900/ldbills/055/en/00055x--.htm (16/06/2000).
[115] The statutory rights created and regulatory powers of the newly created commissioner will extend to information kept under the Keeper of the Public Record Office established under the 1958 Act.
[116] House of Lords Website, Freedom of Information Bill, Arrangement of Clauses, Clause 73, http://www.publications.parliament.uk/pa/ld199900/ldbills/055/00055--o.htm#73 (16/06/2000).

scheduled. Such a request was refused on the basis of the "legal or other proceedings" exception of Reg. 4(2)(b).[117]

Friends of the Earth (FOE), in their memorandum, argued that inaccessibility of files for whatever reason is not grounds for exclusion under the Directive. FOE cited the National Rivers Authority interpretation of the EIR in its own information policy as excluding information that is held in other than accessible form because it places an "undue burden" on the information holder. FOE argued that public bodies should sort and collate the information with public access already in mind, and that the words "by a relevant person in an accessible form" be deleted from Regulation 2(1)(b).[118] UKELA agreed with this position, stating that their members experience showed that public officials see Reg. 2(1)(b) as a limitation if information is too difficult to provide and presumably not "accessible."[119] The FOI Bill may solve this problem in that it "requires public authorities to adopt and maintain a publication scheme and to publish information in accordance with it."[120]

FOE also had information requests turned down under the information provision because they involved financial information. For example, a 1994 FOE request from the Water Services Association (WSA) on industry estimates for the cost of environmental programmes was refused. WSA responded that "estimates of the costs of environmental programmes fall outside the meaning of environmental information." FOE argued that the Directive does not exclude financial information and moreover, the cost-benefit analysis required of the Environmental Agency suggests the importance of including financial information in the overall definition of "environmental information"[121]. The UK Department of the Environment seemed to confirm that the EIR is simply the Directive transposed with regard to "environmental information."

- the scope of relevant "exceptions"

Under the same Select Committee memorandum mentioned above, UKELA argued that the EIR improperly expands the exceptions allowed under the Directive. Article 3(2) allows refusal "where it affects" a variety of matters, whereas the EIR expands the exclusion to information "relating to" those matters. This expansion runs counter to the general EU legislation rule of interpretation that derogations be narrowly construed.

UKELA also argued that the EIR expanded the Directive's "sub judice" exception to include "any legal or other proceedings (whether actual or prospective)" under 4(2)(b). However, there is no basis in the Directive for including such a "prospective" exception. This view was supported in *R v. British Coal Corporation*, where Harrison J ruled that "prospective" legal proceedings did not include a planning application that may or may not go to appeal.[122]

Another controversial point is the "internal communications" exception, which UKELA regards as ambiguous. They note that some quangos refused to supply information regarding their views on licence applications on the basis that these constitute "internal advice" and therefore fall under the exception.

The Campaign for Freedom of Information (CFI), in their memorandum to the Select Committee, argued that the EIR contained two major defects. The first is the lack of a "harm" test that is found in other nations' FOI Acts. Thus, information may be exempt if it merely "relates to" national interests

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[117] House of Lords, Select Committee on the European Communities, 1st Report, Session 1996-97, *Freedom of Access to Information on the Environment*, p. 2, HMSO 1996.
[118] *Ibid.*, 76.
[119] *Ibid.*, 2.
[120] House of Lords Website, Freedom of Information Bill, Explanatory Notes, http://www.publications.parliament.uk/pa/ld199900/ldbills/055/en/00055x--.htm (16/06/2000).
[121] *Ibid.*, 76.
[122] *R v. British Coal Corporation, ex parte Ibstock Building Products Limited*, [1995] Env. LR 277.

without any assessment of whether release of that information would cause actual harm. However, the proposed FOI Bill includes a harm test based on probability. The other major defect was the lack of a public interest override to an exception. As CFI pointed out, both the Environmental Protection Act and the Code of Practice contain a public interest override, where exempt information may be disclosed when outweighed by the public interest. [123] But once again, the proposed FOI Bill contains a provision for this defect by allowing "discretionary disclosure in the public interest even when the information is exempt."[124]

It should be noted here that requests for information from a public agency might incur prohibitively high charges under the Tradeable Information Initiative (TII). For example, a FOE request for digital map data from Ordnance Survey resulted in a charge of over £350,000. The justification was that as an Executive Agency, Ordnance Survey had to charge at these levels to achieve its cost recovery target. FOE argued this violated the Article 5 "reasonable cost" rule of the Directive. The Secretary of State for the Environment, in a response to FOE, said that nothing in the EIR precluded full cost recovery, and noted this was in accordance with government policy.[125]

The TII is based on the premise that government can exploit information as a tradeable commodity. This falls in line with the government's Next Steps policy, where newly created Executive Agencies compete for business where possible and charge for services to recover cost targets set by HM Treasury. The result is that charges for information may no longer be limited to merely covering administrative costs of supply.

However, one public agency, the Countryside Council for Wales, took the position that the TII contradicts the EIR with regard to charges for information. Its legal council decided that the EIR takes precedence over the TII. Moreover, the Department of Trade and Industry noted that the TII guidelines state that the initiative is concerned with private sector profitable uses of government-supplied information. This would seem to exempt NGOs such as FOE from the grasp of TII. Moreover, the draft FOI Bill would limit charges for unpublished information to 10% of the marginal cost of locating it.[126]

Finally, some state bodies that were privatised, such as public utilities, claim not to be covered by the EIR. The Water Service Company (WSC) argued it is not a "relevant person" under EIR 2(3). But this seems to run counter to a High Court ruling that South West Water Limited is a "state authority" for purposes of European employment law.[127] Privatised power companies took the same position as WSC, while Railtrack made a different justification, claiming it was not carrying out a function of "public administration" within Regulation 2(3)(a).

The Department of Environment compiled a list of refusals to supply requested information under the EIR from February 1993 to March of 1996. The following table shows the results:

EIR Grounds for Refusal	***No. of Refusals***
- Over Two Month Limit, R5(b)	10
- Commercial Confidentiality, R4(3)(a), R4(2)(e)	7
- Legal or Other Proceedings, R4(2)(b)	7
- Internal Communications and Confidential Deliberations	6
- Incomplete Documents, R4(2)(d)	3
- International Relations, R4(2)(a)	3

[123] House of Lords, Select Committee on the European Communities, 1st Report, Session 1996-97, *Freedom of Access to Information on the Environment*, p. 16, HMSO 1996.
[124] UK Home Office Website, *The Draft Freedom of Information Bill Summary*, http://www.homeoffice.gov.uk/foi/dfoisumm.htm (19/06/2000).
[125] Ibid., 83.
[126] Ibid.
[127] *Griffin and Ors v. South West Water Services Limited* [1995] IRLR 15.

- National Security, R4(2)(a)	3
- Unreasonable/Too General, R3(3)	3
- Information not Relating to the Environment	2
- Information not Held	1

2.3 Fisheries subsidies in the UK

In the funding period 1994-1999, the EU made available EUR 160 million to the UK fishing industry, organisations and public authorities under the Financial Instrument for Fisheries Guidance (FIFG)[128]. This represents approximately 6% of the entire FIFG budget for the same period.[129] The UK programme is divided into three geographic regions - Highlands and Islands, Northern Ireland and the rest of the country (England, Wales, Scotland except Highlands and Islands).

"Within the European Union's Common Fisheries Policy, MAFF acts to encourage the sustainability of fishing. The actions taken to this end include restrictions on the amount of fishing, through quotas; rules on the mesh size of nets, to allow smaller fish to escape; rules on fish landing sizes; the operation of a restrictive licensing policy; and a reduction in fishing activity through decommissioning fishing vessels."[130]

Under the EU's Multiannual Guidance Programme, UK fishing capacity had a targeted reduction of 17.5% from 1992 to 1996. Through EU funds targeted for decommissioning efforts, the UK fishing fleet was reduced in size from 11,189 vessels in 1990 to just under 10,000 vessels in 1997.[131] Further reductions led to the current fleet of 8,271 vessels, and the EU is calling for accelerated cuts of 10%, translating to 800 fewer. The British government is determined to fight the proposed cuts, as it is considered that the real problem is enforcement of current law, with juvenile fish not being allowed to reach maturity.

UK authorities most likely to hold information on fisheries subsidies:

"The UK Fisheries Departments comprise the Ministry of Agriculture, Fisheries and Food (MAFF), the Scottish Office Agriculture, Environment and Fisheries Department (SOAEFD), the Welsh Office Agriculture Department (WOAD), and the Department of Agriculture for Northern Ireland (DANI). Departments in the Isle of Man, Jersey and Guernsey are responsible for administering fishing activity in their respective areas."[132]

MAFF
Fisheries Division I
(Structures and Marketing)
Nobel House
17 Smith Square
London SW1P 3JR

MAFF Fisheries Division IB (FIFG and State aid)
Telephone 0207 238 5710.

[128] European Union website, http://europa.eu.int/comm/dg14/ifop/uken.htm (16/06/2000).
[129] European Union website, *The Financial Instrument for Fisheries Guidance and the PESCA Initiative*, http://europa.eu.int/comm/dg14/pcp/en/pcp5_2.htm (19/06/2000).
[130] UK Ministry of Agriculture, Fisheries and Food (MAFF) website, http://www.maff.gov.uk/environ/marenv.htm (16/06/2000).
[131] European Union website, *http://europa.eu.int/comm/dg14/ifop/uken.htm#THE COMMUNITY INITIATIVE PESCA* (16/06/2000).
[132] UK Ministry of Agriculture, Fisheries and Food website, http://www.maff.gov.uk/fish/industry.htm (16/06/2000).

2.4 General conclusions on the level and effectiveness of the implementation of these laws

It appears that the EIR has many shortcomings, perhaps the greatest being that it focuses only on environmental information. It is not surprising that government agencies not accustomed to providing information are reluctant to do so. The FOI Bill should provide much needed assistance to those seeking information from the government on any topic. But for those who are concerned with the environment, an FOI Act is important in that it changes the way government is expected to interact with its constituents, regardless of what kind of information they are seeking.

3. Italy

3.1 Legislation on access to information[133]

Law 142/90, of 8 June 1990, establishing a local authorities system, granted citizens the right to have access to all administrative documents held by these local authorities. The exception to this right are those public documents considered confidential for express indication of the law or resulting from a temporary and motivated decision of the mayor or president of the province.

On August 1990, Law 241/90 was passed, introducing new 'provisions regulating administrative proceedings and the right of access to administrative documents'. Although adopted two months after the Directive on access to environmental information, and generally considered to implement it, Law 241/90 does not expressly establish a "right to know" in the environmental field. Instead, it provides for a right of access to documents but only with regard to specific and clearly defined situations, in fact it is more of an exception to the 'general rule of secrecy' of information held by public authorities than a comprehensive right.

Law 241/90 requested further legislative development. This led to the adoption of Presidential Decree 352/92, of 27 June 1992, establishing the modalities for the exercise of the right of access to administrative documents and grounds its refusal.

The first provision concerning access to environmental information was included in Law 349/86, of 8 July 1986, setting up the Ministry of the Environment. It grants every citizen the right to access information on the state of the environment held by public authorities. The law did not provide for any restrictions to this right. However, in case of refusal by the authorities, Law 349/86 did not provide for access to justice, thus compromising *de facto* the exercise of this right.

Specific transposition of the Directive on access to environmental information in Italy was achieved seven years after the Directive had been passed. Legislative Decree 39/97, of 24 February 1997[134] specifically refers to environmental information, being a literal translation of the original text of the Directive into Italian law. The objective of the Decree is to ensure freedom of access to, and dissemination of, information[135] on the state of the environment held by public authorities[136]. This

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[133] See MELONCELLI, A., *L'informazione amministrativa*, Rimini 1983, and TASSONE, S., *Il diritto di accesso agli atti amministrativi ed I limiti alla sua operativita' nell'attuale panorama legislativo e giurisprudenziale*, in *Giur. It.*, 1993, III, p. 265 ff. On the specific issue of access to environmental information in Italian law, see DE CESARIS, *Informazione ambientale e accesso ai documenti amministrativi*, in *Riv. Trim. Dir. Pubbl.*, 1991, p. 851 ff., and MORANDI, G., *Informazione ambientale e accesso ai documenti amministrativi* in *Riv. Giur. Amb.*, 1992, p. 805 ff.

[134] On the Legislative Decree (*Decreto Legislativo*) 39/97, see WWF, *Access to Environmental Information in Italy*, Paper produced with the support of the Italian Ministry of Environment, Rome 1999.

[135] For a non-exhaustive list of information that may be asked under Decree 39/97, see WWF, *op. cit.*, page 16.

[136] According to Article 2 (b) of Decree 39/97, the expression 'public authorities' shall mean "any public administration at national, regional or local level – that is, Regions, Provinces, Municipality, Mountain Communities – and any other body having public responsibilities or functions functions, or providing public

right is granted to all[137]. Legislative Decree 39/97 has therefore eliminated the need for the person requiring information to prove a direct and concrete interest on the matter. The list of grounds for refusal mirrors the exceptions listed in the Directive[138].

3.2 Interpretation and application of legislation on access to information

The modalities of exercise of the 'right of access' are determined by Presidential Decree 352/92, which distinguishes between an "informal" and a "formal" access procedure[139]. Both procedures require the applicant to provide evidence of his/her identity, representative powers, and the legal relevance of the interest on the basis of which the right of access to administrative documents is exercised[140]. If access is refused, the grounds for refusal must be given[141]. If the public authority that received the request does not respond within thirty days from the date of the request, it is deemed to have been refused[142].

On access to environmental information, the only difference between the Italian law and the Directive is the deadline for public authorities to respond to requests for information: thirty days[143]. Lack of reply within this period of time is deemed to constitute a refusal to providing the information requested. The right of access can be exercised by asking for a copy[144] or examining the documents or acts required. Consultations must be free of charge, whereas copies or duplications of the material are subject to reproduction costs. The modalities and form for accessing information are detailed in Articles 2 to 6 of Presidential Decree 352/92, of 27 June 1992.

- scope of exception to access:

Unlike Directive 90/313, and previous provisions that recognised a right of access to information, the right of access to administrative documents provided for in Law 241/90 is subject to an important restriction. This right is conferred only on those who can prove a ***private and specific interest*** in the matter, with the objective of protecting a specific legal situation. Public authorities have therefore wide powers of discretion to refuse the information requested. This has been explained as a way of avoiding an excessive number of requests for information[145]. It seems possible to interpret this provision as simply requiring an interest that *deserves* to be protected by the judicial authorities.

The right of access is subject to further limitations, which broadly coincide with the exceptions of Article 3(2) of the Directive on access to environmental information. In this respect, Law 241/90 cannot be considered a correct implementation of the Directive, as the Italian instrument contains grounds for refusal that are not mentioned in the exhaustive list of the Directive, thus unlawfully restricting the right conferred to individuals by EC law: For instance, documents that are legally classified as secret; those cases where secrecy or confidentiality is imposed by law; monetary policy;

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services, in relation to the environment" (e.g. Agencies providing services on waste management). The definition, instead, does not include bodies exercising judicial or legislative functions, such as Parliament, Tribunals – including Administrative Tribunals (*T.A.R.*, *Consiglio di Stato*), Regional or Provincial Councils.

[137] Article 3, Legislative Decree 39/97.

[138] For an extensive analysis of these exceptions, see WWF, *op. cit.*, p. 22 ff.

[139] Articles 3 and 4 of Presidential Decree 352/92.

[140] On the need for the claimant to show the concrete interest on the basis of which he acts before the administrative authority and the interpretation given by the administrative justice to this requirement, see *supra*, note 11.

[141] Article 25(3), Law 241/90.

[142] The so-called *silenzio-dissenso* (administrative negative silence). Article 25(4), Law 241/90.

[143] Article 4(6), Decree Legislative 39/97. On this issue, Directive 90/313/EC states that "A public authority shall respond to a person requesting information as soon as possible and at the latest *within two months*" (Article 3(4); emphasis added).

[144] Including a floppy disk or email message.

[145] ARENA, G., *op. cit.*, p. 32 ff. This position seems now to be shared by the recent jurisprudence on Article 22.

and the prevention and repression of crime are included in the list of grounds for refusing access (Article 24).

In case of explicit refusal or failure to respond within thirty days, the applicant has a further thirty days to seek judicial review through recourse to the *T.A.R.* (Regional Administrative Tribunal)[146]. The *T.A.R.* must decide within thirty days from the deadline to apply for judicial review, and its decision can be appealed, within thirty days from its notification, to the Council of State. If the administrative court rules in favour of the applicant, it can order that information requested by the applicant be made available to him/her[147]. In addition to the judicial control exercised by the administrative court, further protection of the right of access to administrative documents is provided by the Commission on Access to Administrative Documents. The Commission oversees the application of the 'right to know' and publishes an annual report on the transparency of the activities of public authorities, recommending changes to legislative and regulatory provisions to enhance access to information held by public authorities[148].

Public authorities were called, within 60 days from the entry into force of the Decree, to establish a specific department to respond to requests for environmental information. In case of access being denied a review of the decision of the public authorities may be sought through access to the administrative court (*T.A.R.*)[149]. The supply of general information to the public on the state of the environment is also covered, as reports on the state of the environment must be published by the Ministry of Environment and sent to the Parliament every two years. The Council of Ministers must also determine suitable ways for the diffusion of information through the mass media. The Minister of the Environment is also required to present annual reports to the Parliament on the measures adopted for implementing the Decree.

Case law

The jurisprudence has interpreted the provision of proving a '*private and specific interest'* in the information requested as requiring proof of a specific and substantial interest in need of protection. Access was granted only when the existence of a substantial right (*diritto soggettivo*) or a legitimate interest (*interesse legittimo)*[150] could be proved.

However, recent pronouncements by administrative courts have favoured a broader interpretation of this provision, aimed at differentiating the "right to know" from the right to appear before the administrative court[151]. Recent judgements have recognised a right of access to administrative documents to those acting on behalf of associations for the protection of collective interests (*interessi diffusi*). Among these, it is worth referring to *Cons. Stato, Sez. VI*, 9 September 1992, no. 630, in *Foro Amm.*, 1992, p. 1993, and in particular to *TAR Sicilia, Sez. Catania*, 9 April 1991, no. 118, in *Foro It.*, 1991, III, p. 322. In the latter judgement, the regional administrative court applied Article 14 of Law 349/86 which recognises the right of "every citizen" to access information relating to the state of the

[146] Article 25(5).
[147] Article 25(6).
[148] The Commission, set up by a Decree of the President of the Republic upon recommendation of the President of Council of Ministries, is made up of 16 members, elected for a three-year term.
[149] As we have seen, Article 25 provides for a mechanism consisting in an appeal before the *TAR* (Regional Administrative Tribunal), to be proposed within thirty days from the refusal. The Tribunal, in case it admits the request, may order the authority to show the documents requested. The decision of the Tribunal can be further appealed by either party within thirty days from its notification; the judicial authority competent to hear the case is the *Consiglio di Stato* (Council of State).
[150] See, *inter alia*, *Cons. Stato, Sez. VI*, 27 March 1992, no. 193, in *Giur. It.*, 1993, III, p. 265, and *Cons. Stato, Sez. VI*, 30 October 1993, no. 783, in *Foro Amm.*, 1993, p. 2129.
[151] In this sense, see *Cons. Stato, Sez. IV*, 26 November 1993, no. 1036, in *Giur. It.*, 1994, III, p. 322, *Cons. Stato, Sez. VI*, 7 December 1993, no. 966, in *Giur. It.*, 1994, III, p. 299, *Cons. Stato, Sez. IV*, 11 January 1994, no. 21, in *Giur. It.*, 1994, III, p. 396, and *Cons. Stato, Sez. VI*, 19 July 1994, no. 1243, in *Giur. It.*, 1995, III, p. 27.

environment. The Court held that recourse to administrative justice (Article 25 of Law 241/90) had to be guaranteed to those organisations whose interest is the protection of the environment[152].

3.3 EU Fisheries subsidies in Italy

The Financial Instrument for Fisheries Guidance (FIFG) allocated 400 million ECUs to Italy in the period 1994-99 out of a total budget of 2,700 million ECUs for the EU-15. This financial aid went to fisheries businesses and public authorities in Italy as part of the EU regional policy supported by the structural funds.

Italian authorities most likely to hold information on fisheries subsidies

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Fax: (39-6) 59 08 41 76

3.4 General conclusions

So far, there is no jurisprudence on the application of Legislative Decree 39/97. This is not surprisingly, given the notorious length of judicial proceedings in Italy and the "recent" character of the implementation measure of the EC Directive. It is nevertheless likely that this Decree will constitute the object of several proceedings, in particular in combination with to the provisions of Law 241/90, as the latter can be invoked by public authorities to justify a refusal of access to information.

4. Spain

4.1 Legislation on access to information

The general basis for access to information can be found in article 105(b) of the 1978 Spanish Constitution. This article grants every citizen the right to access files and administrative registers, except where such access could affect national security and defence, criminal investigations or personal privacy. That article has been developed by Articles 35 to 37 of Law 30/1992 on General Administrative Procedures[153]. Article 35 of the 1992 Law establishes that every citizen has the right to access documents in the course of the administrative proceedings he or she is involved in. Furthermore, Article 37 gives citizens a right to access registers and documents, as well as any other supportive material, which are part of a file (*expediente*), irrespective of the form in which they are kept, and provided that they belong to proceedings which have been completed by the request's date. Law 30/1992 also gives citizens the right of access to registers and files held by public authorities in accordance with the Constitution and any specific legislation.

The right of access to information is subject to a number of limitations and exceptions, which include, *inter alia*, the following:

[152] Contra, see Cons. Stato, Sez. IV, 27 March 1992, no. 193, in Giur. It., 1993, III, p. 878, which excluded this recourse arguing that Article 25 was not intended to create a new hypothesis of *actio popularis*, and Cons. Stato, Sez. VI, 3 February 1994, no. 85, in Giur. It., 1994, III, p. 662, where this right was rejected on the basis of the special character of the recourse ex Article 25.
[153] *Ley 30/1992, de 26 de noviembre, de Regimen Juridico de las Administraciones Publicas y del Procedimiento Administrativo Comun*.

- Confidential documents can only be accessed by those directly concerned.
- Nominative documents can only be accessed by the holder of the information and by third parties who can prove a direct and legitimate interest.
- The authorities may deny access to documents when there are prevalent public or private interests or where there is a law which allows refusal.

Moreover, the right established by Law 38/1992 is only recognised for Spanish nationals. With regard to procedural arrangements, Article 37 requires an application for access to specific documents. This is an obstacle for access in cases where it is not exactly known which documents or registers are the most relevant for the information sought.

The time limit to respond to a request for information is of three months, although through the amendment introduced by Law 4/1999[154], public authorities are obliged to inform applicants of the following, within ten days of receiving the request:

- The date when the request was received.
- The maximum delay allowed for answering the request;
- The effect of the administrative silence (or failure to respond to the request);

Other legislation concerning the right for access to information includes Law 9/1963 on Official Secrets[155], Law 5/1992 on the Regulation of Computerised Handling of Personal Data[156] and Law 11/1986 on Patents[157].

Directive 90/313/EC has been transposed in Spain through Law 38/1995 on the right of access to information relating to the environment[158]. For matters not covered by this Law, Law 30/1992 on General Administrative Procedures acts as supplementary legislation. The Spanish Ministry of Environment has set up a specific web address on access to environmental information: http://www.mma.es/areainfor.htm

4.2 Interpretation and application of legislation on access to environmental information

According to article 1 of Law 38/1995, the right of access to environmental information is given to:

- All natural and legal persons, who are nationals of, or have their domicile in, one of the European Economic Area States.

-All nationals of a State that gives Spanish citizens the right of access to environmental information.

The fact that the right of access is limited to EEA citizens means that its scope is more restrictive than that of the Directive. In addition, there is a conflict with the provisions of the Aarhus Convention. The Directive, as well as the Convention, grants the right of access to any citizen or resident.

Article 1 of Law 38/1995 provides that the information must be supplied by the following public authorities:

- The Central State;

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[154] Law 4/1999, of 13 January 1999, amending Law 30/1992, of 26 November 1992. Spanish Official Bulletin no.12, of 14 January 1999.
[155] *Ley 9/1963, de 5 de abril, sobre Secretos Oficiales, modificada por la Ley 48/1978, de 7 de octubre, y Ley 9/1986, de Abril.*
[156] *Ley Organica 5/1992, de 29 de octubre, de Regulacion del Tratamiento Automatizado de los Datos de Caracter Personal.*
[157] *Ley 11/1986, de 20 de marzo, de Patentes.*
[158] *Ley 38/1995, de 12 de diciembre, sobre el derecho de acceso a la informacion en materia de medio ambiente.*

- The Autonomous Communities;
- Municipalities and provinces;
- "Public law bodies" which have been vested with legal personality, whether linked to or dependent on the authorities described above.

The description of "public authorities" in Spain is not an easy one, as there are several layers of administration at central, regional and local level. Complexities arising from the country's political and administrative structure are discussed below. In addition to this, concerning "public law bodies", their description in Spanish law is very ambiguous and could impair the efficient access to information.

The scope of environmental information in the 1995 Spanish Law has been set in Article 2(1), which is almost a literal translation of Article 2 of Directive 90/313/EC. The exceptions are defined in Article 3 and include substantive and formal grounds. Access to information can be denied where disclosure would affect international relations, public security and national defence, the confidentiality of personal data and/or files, and commercial and industrial confidentiality, including intellectual property. Article 3 further includes any material supplied to the authority by a third party where that party has no legal obligation to do so, or where the information relates to material whose disclosure could have a negative impact on the environment. Matters related to proceedings for the investigation of criminal offences or matters which are, or have been, the subject of legal or administrative sanctioning proceedings, including preliminary or inquest proceedings, are excluded form the obligation to grant access.

Finally, article 3 establishes that information concerning actions of the Central Government, the Autonomous Communities, the municipalities or provinces, which have been undertaken within their competencies and which are not subject to administrative law are also excluded from the right of information. This exception refers to the so-called "political acts" ('*actos político'*) and its inclusion in Law 38/1995 has been very criticised and even considered contrary to Directive 90/313/EC[159].

Concerning the formal grounds for exception, these comprise the supply of unfinished documents or data, internal communications, unreasonable requests and, finally, requests formulated in a too general manner.

Procedural aspects are described in Articles 4 and 5 of Law 38/1995. Pursuant to Article 4, a request must be resolved within two months from the date it entered the register of the competent public authority. If the competent authority does not respond within this period of time, the request shall be deemed to have been refused. Article 4 also sets that the decision of a public authority exhausts the administrative remedies and thus, a requester will only have resort to judicial review, with the increased costs and deadlines time that this entails. Article 5 establishes that requesters have the choice of media in which they prefer to receive the information, if available.

Legislation in the 'Autonomous Communities'

As mentioned above, there are three levels of competencies in Spain: the Central State, the Autonomous Communities and the local level (municipalities and provinces). According to the Spanish Constitution, the Central State is responsible for the adoption of basic or framework legislation on the environment, while the Autonomous Communities may elaborate on that basic state legislation or impose additional standards of environmental protection, if a particular piece of legislation allows them that power. Law 38/1995 declares that only its Articles 1 (active and passive subjects) and 2 (scope of application) have the character of basic legislation.

[159] See *Access to Information on the Environment in Spain* by Maria de la Torre and Cliona Kimber in EELR, February 1997, p. 53.

The Autonomous Communities have the power to enact their own legislation on access to environmental information (although this must be in accordance with Directive 90/313/EC). So far, two Autonomous Communities have adopted their own legislation: the Region of Murcia[160] and the Basque Country[161]. This means that there is already a small disparity of regimes of access to information in Spain. The provisions on environmental information in Murcia, for instance, are slightly more favourable to the requester of information. In particular, in Murcia, the decision of a public authority does not exhaust the administrative remedies (thus leaving the possibility of an administrative appeal) and failure to respond is not deemed to constitute a refusal, but consent to access.

4.3 Fisheries subsidies in Spain

During the period 1994-1999, the European Union made ECU 1,200 million available for Spanish authorities and businesses for the development and restructuring of its fishing industry, mainly through the Financial Instrument for Fisheries Guidance (FIFG). This represents approximately 45% of the total budget allocated to the FIFG over the 1994 to 1999 period in the EU, i.e. ECU 2,700 million.

The funds made available for fisheries are administered through a special Fisheries Fund (FROM)[162], dependent of the Ministry of Agriculture, Fisheries and Food. Among other tasks, the Fund is in charge of managing the procedure for granting national and Community subsidies for fisheries and to pay the aid made available through the ERDF.

As it is the case in most European Union countries, Spain's fishing industry is undergoing radical restructuring in response to the increasing scarcity of this natural resource and to the intense competition in the sector. Fishing is an exceptionally important economic and social sector for Spain as a source of income and jobs[163]. Many regions are heavily dependent on fisheries, such as Galicia (47% of the Spanish fleet in terms of power) or Andalucia (20% of power). The Spanish fishing fleet is one of the most varied in the world, and is very active in international waters and the waters of non-Community countries. The Spanish fishing fleet obtains over half of its catch in the waters of non-member countries.

With an output of 1,110,000 tonnes of fish in 1997, Spain was the country with the second highest number of catches in the EU, after Denmark (1,827,000 million tonnes) and before the UK (896,000 million tonnes). Spain also has the second largest aquaculture sector in the EU (Eurostat).

4.4 General conclusions

It is true that many positive developments in accessing to environmental information are linked to it, but the implementation and application was/is far from being adequate. Even the Commission agreed with this and had opened two infringement procedures against Spain, and brought a case before the European Court of Justice.

The main general problem is the lack of adoption of "practical arrangements" at the different administrative levels responsible for providing the access. In addition, the administrative silence, the wider interpretation of the exceptions and the cost have been the main problems.

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[160] *Ley 1/1995, de 8 de marzo, sobre Proteccion del Medio Ambiente en la Region de Murcia. B.O.E. num. 78, de 3 de abril de 1995*.

[161] *Ley 3/1998, de 27 de febrero, General de Proteccion del Medio Ambiente del Pais Vasco. B.O.P.V. de 27 de marzo de 1998*.

[162] *Fondo de Regulacion y Organizacion del Mercado Pesquero de los Production de la Pesca y cultivos Marinos, creado por Ley 33/1980, de 21 de junio.*

[163] In terms of its specific contribution to the economy it is less important, representing only 1.2% of the GDP

Public aid is authorised and granted through the Special Fisheries Fund (FORM), which belongs to the Directorate General of Fisheries Structures and Markets of the Ministry of Agriculture, Fisheries and Food.

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5. The Netherlands

5.1 Legislation on access to information

The need for the government to set rules on transparency on the way it fulfills its task is laid down in Article 110 of the Dutch Constitution. Although the Constitution does not contain a right to information, it does require the government to adopt further legislation.

Access to information in The Netherlands is regulated in two types of legislation. First, and most important, there is the *Web openbaarheid van bestuur*[164] (law on the freedom of access to government information – WOB), which was adopted in 1991. Second, there are a number of specific provisions on access to government information in sectoral legislation. In the field of the environment the most important are the *Wet milieubeheer*[165] (Environmental management act – WM) and the *Wet milieugevaarlijke stoffen*[166] (Dangerous substances act – WMS). The access to information provisions laid down in Chapter 19 of the WM mainly apply to information held by the government in the process of permitting, whereas the provisions in the WMS apply mainly in the context of dangerous substances.

The Dutch government notified the Commission in August 1992, stating that it was of the opinion that existing legislation fully implemented Directive 90/313/EEC and that therefore no further legislation was required. The Commission's reaction to the Dutch notification, in October 1992, was that it found that the exemptions contained in Article 10(2)(b) and (g) WOB (see below) were too wide and therefore not in conformity with Article 3 of the Directive. In reaction to the Commission's concerns, the WOB was amended on 12 March 1998 to fully implement Directive 90/313/EEC. [167] The WOB now states that, in case access to environmental information is asked for, Article 10(2)(b) is only applicable in case of actions with a confidential character and Article 10(2)(g) is not applicable.

The table below gives an overview of the implementation of Directive 90/313/EEC in the Netherlands.

Table: Implementation of Directive 90/313/EEC in the Netherlands

Directive 90/313/EEC	Dutch legislation
Article 1	No implementation necessary

[164] Wet van 31 oktober 1991, Stb. 703, houdende regelen betreffende de openbaarheid van bestuur (Wet openbaarheid bestuur), as amended.
[165] Wet van 13 juni 1979, Wet milieubeheer, as amended
[166] Wet van 5 december 1985, houdende regelen ter bescherming van mens en milieu tegen ter gevaarlijke stoffen en preparaten (Wet milieugevaarlijke stoffen), Stb. 639, as amended.
[167] Wet van 12 maart 1998 tot wijziging van de Wet openbaarheid van bestuur in verband met de implementatie van de richtlijn nr. 90/313/EEG van de Raad van de Europese Gemeenschappen van 7 juni 1990 inzake de vrije toegang tot milieuinformatie, Stb. 180.

Article 2	Article 1 WOB Article 19.1 and 19.2 WM Article 1,4 and 18 WMS
Article 3(1)	Article 3 WOB Chapter 13 WM Article 19.1 and 19.2 WM Article 9-12, 14, 15, 18 WMS
Article 3(2)	Article 10 WOB Article 19.3 WM Article 56 WMS
Article 3(3)	Article 11 WOB
Article 3(4)	Article 5(2) and 6 WOB
Article 4	Article 15 WOB Article 20.1 WM
Article 5	Article 12 and 14 WOB Article 19.1 WM Article 12 and 18(4) WMS
Article 6	Article 3(1) WOB
Article 7	Article 4.2, 21.1 and 21.2 WM
Article 8	No implementation necessary
Article 9	No implementation necessary

Source: TK 1995-1996, 24 613, nr. 3

5.2 Application and interpretation of the legislation on access

The WOB is the main instrument to be used to obtain information about the size of fisheries subsidies given by the Dutch government. The WOB applies to all 'documents' held by 'government authorities'. Documents include 'written pieces or other materials that contain information' (Article 1(a) WOB), and 'government authorities' include, *inter alia*, ministries, provinces, municipalities, water boards as well as other government authorities working under their authority (Article 1(a) WOB).

Everyone, without stating an interest, can submit a request for information to a government authority, indicating the information they wish to receive or the specific document. Such a request will, in principle, be granted, unless a list of exemptions applies (Article 3 WOB). If the request for information is filed with the wrong authority, this authority will refer the applicant to the right authority or, in case of a written request, automatically forward the request, while notifying the applicant. (Article 4 WOB).

The government authority has to decide as soon as possible, at least within two weeks, on the request for information. A further two weeks is allowed if the authority notifies the applicants of the reasons for the extension before the end of the first two weeks (Article 6 WOB). The information from the relevant documents is provided through:

giving a copy or giving the literal contents in any other form, or
allowing the applicant to take note of the contents, or
providing an extract or summary, or
providing information from these documents.

Whichever form is chosen depends on the preference of the applicant and the expediency of procedure.

If the application for access to the information is rejected, the applicant can raise an objection and lodge an appeal under the General Administrative Law Act (*Algemene Wet Bestuursrecht* – AWB)[168]. The objection procedure includes a review of the original decision by the government authority concerned within six weeks. The applicant is then allowed to appeal to this decision with an administrative decision, including the possibility to ask for an interim injunction or interim relief.

The amount of charges to be incurred for the information is laid down in a separate administrative order[169]. Local and decentralised authorities can determine their own charges. In practice often no charge is made for providing the information.

The core of the WOB is its exceptions. These exceptions are laid down in Articles 10 and 11. Article 11 contains exemptions in relation to personal opinions included in documents, which is not relevant here. The exemptions in Article 10 are listed in box 1.

Box 1: Exceptions to the free access to information on the basis of the WOB

N.B.: The following is an unofficial translation.

Article 10:
1) Information on the basis of this Act is not provided if this:
could jeopardize the unity of the Crown;
could damage the security of the State;
concerns commercial and industrial information that has been provided to the government authority in confidence by legal persons.
2) The provision of information on the basis of this Act is not to be effected if the importance of doing so does not balance the following interests:
the relations of the Netherlands with other states and international organizations;
the economic or financial interests of the State, other public bodies or government authorities;
the investigation and prosecution of criminal acts;
inspection, controls and supervision by or under the supervision of government authorities;
the respect for private life;
the interest that the applicant has in being the first to take note of the information;
the prevention of the disproportionate advantaging or disadvantaging of the persons involved.
3) Paragraph 2(b) only applies to the provision of environmental information if it concerns actions with a confidential nature.
4) Paragraph 2(g) does not apply to the provision of environmental information. Provision of this information can be refused if its publication would lead to a probable deterioration of the environment

More specific access to information rules have been elaborated for each specific ministry

The Dutch government is of the opinion that the Directive is fully implemented. There are currently no plans to change the access to information laws either generally or in relation to environmental information.

Case law

Dutch Courts have shown a very favourable approach to allowing individuals access to information. Most court decisions confirm that access to information is the norm, and that this access can only denied in most exceptional circumstances. This is particularly so in relation to the commercial and industrial secrecy exemption, which is most commonly invoked by government authorities to deny access.

[168] Wet van 4 juni 1992, Stb. 315, houdende algemene regels van bestuursrecht (Algemene wet bestuursrecht), as amended.
[169] Reference to be included in final report.

In 1996, the Administrative Division of the Council of State (*Afdeling bestuursrechtspraak Raad van State*) was asked to rule on the refusal of access to information on the number of animals held at a breeding facility for test animals, as this was included in the facility's permit application. The municipality denied access as this information on the grounds that it was essential for the security of the facility. The Administrative Division, ruling on what later became Article 19(3)(1) of the WM, held that denial of access to information is only acceptable if there are important interests ('*zwaarwegende belangen'*) claimed by the person requesting secrecy, and which may only relate to commercial secrecy or information security. The Administrative Division further stressed the exceptional character of such secrecy and the need to interpret these rules restrictively.[170]

More recent case law confirms this approach. On 12 March 1999, the District Court in Leeuwarden (*Arrondissementsrechtbank te Leeuwarden*) decided on an interim injunction allowing a number of environmental groups access information on the movement of Cockle Dredgers in the Waddensea. This information was compiled by the Ministry of Agriculture, Nature Conservation and Fisheries (*Ministerie van Landbouw, Natuurbeheer en Visserij* - LNV) on the basis of information collected by so-called 'black-boxes' installed in these ships. The result of this compilation was a map showing where cockle fishers were fishing and what the intensity of their operations was. Access to this information was denied by LNV on the basis of Article 10 WOB as the information was of a confidential and commercial nature, which was provided in confidence to the government. In addition, LNV argued that provision of this information would undermine future co-operation of the cockle fishers with the control on their fishing activities. Applicants urgently needed the information to prepare their submissions to an upcoming discussion in Parliament on the admissibility of cockle fishing in the Waddensea. Although the president of the District Court mentioned that Article 10(2)(d) might be in violation of Directive 90/313/EEC, he did not explicitly test its compatibility. Instead he foind the defendant's claims unsubstantiated.[171]

In a judgement of 15 July 1999, the Administrative Division of the Council of State again confirmed the necessity to interpret the commercial and industrial secrecy exception restrictively, repeating that the starting point of the WOB is accessibility of information. It held that commercial and industrial secrecy is 'in as far as from that information can be read or deduced knowledge concerning the technical management or production process or the market or circle of clients and suppliers'. The information requested concerned financial and technical feasibility studies for the exploitation of a sand and gravel pit. In this case, however, the Administrative Division denied access to information because of the confidential and sensitive character of the commercial and industrial information contained in those documents. It is interesting to note that the applicant invoked the direct effect of Directive 90/313/EEC, stating that the WOB had incorrectly implemented the Directive as Article 10(1)(c) is compulsory and does not prescribe a weighing of interests as it is the case in Article 10(2) WOB and as prescribed by Article 3(2) of the Directive. The Administrative Division held that the result of this approach would have been the same and thus refused to explicitly test the compatibility of the WOB with Directive 90/313.[172]

EU Fisheries subsidies to The Netherlands

The EU allocated 67 million ECUS[173] to The Netherlands primarily through the FIFG (Financial Instrument for Fisheries Guidance) in the period 1994-1999. They covered the entire fisheries sector

[170] Afdeling bestuursrechtspraak Raad van State, 13 maart 1996, Harlan CPB and Windemuller v. Burgemeester en Wethouders van Zeist

[171] Arrondissementsrechtbank te Leeuwarden, 12 maart 1999, de Waddenvereniging en de Nederlandse Vereniging tot Bescherming van Vogels v. LNV

[172] Afdeling bestuursrechtspraak Raad van State, 15 juli 1999, De Kring v. Burgemeester en Wethouders van Weert.

[173] European Commission, DG Fisheries, see http://europa.eu.int/comm/fisheries/doc_et_publ/liste_publi/ifop/nlen.htm

in the Netherlands: from fleet modernization to fishing port equipment, from aquaculture to the processing and marketing industries.

Authorities holding information on fisheries subsidies

Ministerie van Landbouw, Natuurbeheer en Visserij
Directie Visserij
Hoofdafdeling Zeevisserij
Head: drs. G.J. van Balsfoort

Visiting address:
Bezuidenhoutseweg 73
2594 AC Den Haag
Mail address:
Postbus 20401
2500 EK Den Haag
Tel: (070) 378 48 45
Fax: (070) 378 61 53

List of Implementing Legislation in France, Italy, Spain, the UK and The Netherlands

Member State	Implementing Legislation for 90/313
France	- 01. Loi Numéro 78-753 du 17/07/1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal, Journal Officiel du 18/07/1978 Page 2851 - 02. Décret Numéro 88-465 du 28/04/1988 relatif à la procédure d'accès 390L0313
Italy	- 01. Legge del 07/08/1990 n. 241, Decreto del Presidente della Repubblica del 18/08/1990 n. 192 - 02. Decreto del Presidente della Repubblica del 27/06/1992, regolamento per la disciplina delle modalità di esercizio e dei casi di esclusione del diritto di accesso ai documenti amministrativi, in attuazione dell'art. 24, comma 2, della legge 7 agosto 1990, n. 241, recante nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi, Gazzetta Ufficiale - Serie generale – del 29/07/1992 n. 177 pag. 3 - 03. Decreto legislativo del 24/02/1997 n. 39, attuazione della direttiva 90/313/CEE, concernente la libertà di accesso alle informazioni in materia di ambiente, Supplemento ordinario n.48/L alla Gazzetta Ufficiale - Serie generale - del 06/03/1997 n. 54
Nederlands	- 01. Wet van 31/10/1991, houdende regelen betreffende de openbaarheid van bestuur (Wet openbaarheid van bestuur), Staatsblad 1991, nr. 703 - 02. Beschikking van de Minister van Justitie van 07/04/1988, houdende plaatsing in het Staatblad van de tekst van de Wet algemene bepalingen milieuhygiene (Stb. 1986, 318), zoals deze laatstelijk is gewijzigd bij de wet van 30/03/1988, Staatsblad 1988, nr. 133 - 03. Wet van 01/051975, houdende regels betreffende beroep op de Raad 390L0313 van State tegen overheidsbeschikkingen (Wet administratieve rechtspraak overheidsbeschikkingen), Staatsblad 1975, nr.284 - 04. Wet van 05/12/1985, houdende regelen ter bescherming van mens en milieu tegen ter gevaarlijke stoffen en preparaten (Wet milieugevaarlijke stoffen), Staatsblad 1985, nr. 639 - 05. Koninklijuk Besluit van 20/04/1976 tot vaststelling van de datum inwerkingtreding van de wet van 01/05/1975, stb. 284, houdende regels betreffende beroep op de Raad van State tegen overheidsbeschikkingen (wet administratieve rechtspraak overheidsbeshikkingen), Staatsblad 1976, nr. 234 - 06. Koninklijk Besluit van 10/04/1992, houdende vaststelling van het tijstip van inwerkingtreding van de Wet openbaarheid van bestuur (Stb. 1991, 703), Staatsblad 1992, Nr. 185 - 07. Koninklijk Besluit van 07/08/1980, houdende vaststelling van het tijdstip

	van inwerkingtreding van de Wet algemene bepalingen milieuhygiene (Stb. 1979, 442) en van enige daarmee samenhangende regelingen, Staatsblad 1980, nr. 443 - 08. Koninklijk Besluit van 11/12/1986, houdende vaststelling van het tijdstip van gedeeltelijke inwerkingtreding van de wet milieugevaarlijke stoffen (Stb. 1985, 639), Staatsblad 1986, nr. 623 - 09. Besluit van 09/01/1986, houdende vaststelling van het tijdstip van gedeeltelijke inwerkingtreding van de Wet milieugevaarlijke Stoffen (Stb. 1985, 639), Staatsblad 1986, nr. 10 - 10. Regeling van de Kabinet van de Minister-President van 08/04/1992 (Aanwijzingen inzake openbaarheid van bestuur), Staatscourant van 01/05/1992, Nr. 84, bladzijde 13 - 11. Regeling van de Minister van Algemene Zaken van 18/06/1992 (Regeling uitvoering WOB (Wet openbaarheid van bestuur)), Staatscourant van 23/06/1992, Nr. 118, bladzijde 8 - 12. Wet van 12/03/1998 tot wijziging van de Wet openbaarheid van bestuur in verband met de implementatie van de richtlijn nr. 90/313/EEG van de Raad van de Europese Gemeenschappen van 07/06/1990 inzake de vrije toegang tot milieu-informatie, Staatsblad nummer 180
Spain	- 01. Ley 30/92 de 26/11/1992, de Régimen Jurídico de las Administraciones Publicas y del Procedimiento Administrativo Comun, Boletín Oficial del Estado num. 285 de 27/11/1992 Pagina 40300 (Marginal 26318) - 02. Ley 38/95 de 12/12/1995, sobre el derecho de acceso a la información en materia de medio ambiente, Boletín Oficial del Estado num. 297 de 13/12/1995 Pagina 35708 (Marginal 26838) -03. Ley 1/1995 (Murcia), de 8/3/1995, de protección del medio ambiente. Boletín Oficial de Murcia num.78 de 3/4/1995 - 04 Ley 3/1998 (Pais Vasco), de 27/3/1998, General de Protección del Medio Ambiente del País Vasco. Boletin Oficial del País Vasco num.59, de 27/3/1998 - 05 Ley 4/1999, de 13/1/1999, que modifica la Ley 30/1992, de 26/11/1992. Boletín Oficial del Estado num.12, de 14/1/1999.
United Kingdom	- 01. The Environmental Information Regulations 1990, Statutory Instruments number 3240 of 1990 - 02. The Environmental Information Regulations (Northern Ireland) 1993, Statutory Rules of Northern Ireland number 45 of 1993 - 03. The Public Health (Freedom of Access to Information on the Environment) Rules 1992, Legal Notice No. 143 of 1992, Gibraltar Gazette No. 2,697 of 12/11/1992 Implementing SIs The Environment Information Regulations 1992, SI 1992/3240

	The Environment Information (Northern Ireland) Regulations 1993, SI 1993/43 The Environmental Information (Amendment) Regulations 1998, SI 1998/1447 Related SIs The Plant Protection Products Regulations 1995, SI 1995/887 The Plant Protection Products (Basic Conditions) Regulations 1997, SI 1997/189

EUROPEAN PARLIAMENT

1999 *2004*

Consolidated legislative document

… December 2000 2000/0032(COD) – PE1

*****I**

POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on .. December 2000 with a view to the adoption of European Parliament and Council Regulation (EC) No …/2000 regarding public access to European Parliament, Council and Commission documents and improving transparency in their working methods (2000/0032(COD) – PE1)

PE 297.811

EN **EN**

POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on … December 2000

with a view to the adoption of European Parliament and Council Regulation (EC) No …/2000 regarding public access to European Parliament, Council and Commission documents *and improving transparency in their working methods*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission[1],

Acting in accordance with the procedure referred to in Article 251 of the Treaty[2],

Whereas:

(1) Trust and confidence in the European Union and its institutions can only be ensured if an open and democratic political debate and decision-making process take place at all levels.

(2) The second paragraph of Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, enshrines the concept of openness, stating that: "This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen".

(3) The Charter of Fundamental Rights of the European Union adopted by the European institutions on …. stresses the same concept of openness in Article 41 (right to good administration) and Article 42 (right of access to documents).

1 *OJ C 177 E, 27.6.2000, p. 70.*
2 *Position of the European Parliament of …..… December 2000.*

(4) ***Strengthening the protection of the rights and interests of nationals of the Member States of the Union is listed in Article 2 of the Treaty on European Union as an objective of the Union; Article 2 of that Treaty also stipulates that the objectives of the Union shall be achieved while respecting the subsidiarity principle.***

(5) ***In the context of the European Union, Declaration 17 annexed to the Final Act of the Maastricht Treaty recognises that "transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration". Transparency can therefore contribute to the strengthening of the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law on which the Union is founded as stated in Article 6 of the Treaty on European Union. Transparency also plays a vital part in protecting against the arbitrary use of and the abuse of power and against corruption and fraud.***

(6) ***In accordance with the democratic principle laid down in Article 6 of the Treaty on European Union, in exceptional cases where documents cannot be made public, Parliamentary scrutiny should be granted according to an interinstitutional agreement.***

(7) ***Openness and transparency are also means of overcoming any problems that may be caused by cultural and linguistic differences among the Member States.***

(8) ***This Regulation provides a new legal basis and consolidates the initiatives that the institutions have already taken with a view to improving*** the transparency of the decision-making process by targeting information and communication measures more effectively and adopting rules on public access to documents. ***On the same basis, this Regulation is the legal framework for existing and future interinstitutional agreements in relation to methods of drafting laws, content and format of the Official Journal, managing and storing documents with a view to granting access, and guidelines on the implementing rules on access to documents.***

(9) The implementing rules on public access to documents should be drafted as clearly as possible.

(10) ***In recognition of the need for further progress in the Union towards greater transparency, the Treaty of Amsterdam introduced into the Treaty Article 255 on the right of access to documents. Consistent with the principle of openness in Article 1 of the Treaty on European Union, t***he purpose of this Regulation ***which implements Article 255 of the Treaty,*** is to ***give the fullest possible effect to the right of*** access to documents ***and thereby to increase openness and transparency in the institutions***. It ***defines the scope of*** the right of access to documents and lays down the general principles and limits on such access in accordance with Article 255(2) of the Treaty.

(11) Since the question of access to documents is not covered by provisions of the ECSC and Euratom Treaties, this Regulation will apply to documents concerning the activities covered by those two Treaties. This was confirmed by Declaration No 41 attached to the Final Act of the Treaty of Amsterdam.

(12) Under Articles 28(1) and 41(1) of the Treaty on European Union, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters.

(13) Where bodies and agencies are created by the European Parliament, the Council or the Commission and they are under the responsibility of the institutions, those bodies and agencies should, as regards access to documents, apply the principles laid down in this Regulation. As a matter of good administration, the other institutions and bodies may adopt internal rules on public access to documents which take account of the principles and limits in this Regulation.

(14) In order to bring about greater openness in the work of the institutions and in line with current national legislation in most of the Member States, access to documents should be extended to include all documents held by the European Parliament, the Council and the Commission.

(15) In accordance with Article 207 of the Treaty, greater access to documents should be granted at least in those cases where the institutions can be regarded as acting in their legislative capacity. Therefore, in principle, all documents adopted in the course of a legislative procedure should be made public.

(16) The principles laid down by this Regulation are to be without prejudice to the specific rules applicable to access to documents, ***where those rules provide wider access than required by this Regulation or in certain specific areas where such rules are justified. Such rules should be listed in an Annex to this Regulation.***

(17) ***In principle, all the documents of the institutions are accessible. However, certain public and private*** interests ***may*** be protected by way of a system of exceptions. The institutions should be entitled to protect ***informal information designed to enable personal opinions to be given or ideas to be freely exchanged within the institutions. When decisions are taken on the disclosure of a document, the need to protect some of the interests envisaged by the exceptions should be weighed against the interest of promoting transparency and public discussion.***

(18) In order to ensure that the right of access is fully observed, ***a*** two-stage administrative procedure, with the possibility of court proceedings or complaints to the Ombudsman, should be ***established***; where at the confirmatory stage no response ***is given, the applicant should be entitled to institute court proceedings or to make a complaint to the Ombudsman.***

(19) Each institution may at the time a document is produced or received and should at the latest when it is listed in the register examine by reference to specific exceptions laid down in this Regulation whether access to that document may be limited.

(20) Each institution should ***be responsible for taking*** measures to inform the public about the new provisions in force. ***F***urthermore, to make it easier for citizens to exercise their rights arising from this Regulation, each institution should ***establish*** a register of documents. ***If necessary, the institutions should be provided with adequate resources to enable them to implement the Regulation properly.***

(21) Each institution should encourage and educate the staff concerned to help and assist citizens trying to exercise their rights arising from this Regulation and should establish contact points. Each institution should reorganise and simplify the internal procedures and methods for managing the work flow of documents.

(22) ***In accordance with the principle of subsidiarity in Article 5 of the Treaty*** this Regulation ***does not*** amend ***or harmonise*** existing national legislation on access to documents. ***In accordance with*** the principle of *loyal cooperation* ***laid down in Article 10 of the Treaty*** which governs relations between the Community institutions and the Member States, ***the institutions should take account of the opinion of the author before taking the final decision on the disclosure of documents. At the same time the institutions concerned should respect the right of Member States to grant access in accordance with their national legislation.***

(23) The protection which citizens of the Union enjoy pursuant to international agreements should not be limited by the Union.

(24) In accordance with Article 255(3) of the *Treaty*, each institution lays down specific provisions regarding access to its documents in its rules of procedure. ***Those provisions should supplement this Regulation and should not conflict with its content. This applies also to the conditions under which the public are to have access to Council documents, to be elaborated in the Council's Rules of Procedure pursuant to Article 207(3) of the Treaty, since Article 255(1) of the Treaty is to be seen as the general principle and overriding provision.***

(25) This Regulation and the provisions giving effect to it will replace Council Decision 93/731/EC of 20 December 1993 on public access to Council documents ***as last amended by Council Decision 2000/527/EC of 14 August 2000***[1], Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents[2] and European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents[3] ***which should therefore be repealed. The rules relating to the confidentiality of Schengen documents and to the historical archives should also be repealed.***

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1 OJ L 340, 31.12.1993, p. 43; Decision as last amended by Decision 96/705/EC, ECSC, Euratom (OJ L 325, 14.12.1996, p. 19) ***and by Decision 2000/527/EC (OJ L 212, 23.8.2000, p. 9)***.

2 OJ L 46, 18.2.1994, p. 58; Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

3 OJ L 263, 25.9.1997, p. 27.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PRINCIPLES AND SCOPE

Article 1

Purpose

1. The purpose of this Regulation, which implements Article 255 of the Treaty, is to give effect to the constitutional principle laid down in Article 1 of the Treaty on European Union according to which decisions in the Union have to be taken as openly as possible and as closely as possible to the citizen.

2. Pursuant to Article 255(2) of the Treaty, this Regulation defines the principles and conditions on which this right of access to documents can be limited on grounds of public or private interest.

3. The purpose of this Regulation is also to promote good practice on information management in the institutions covered by this Regulation and to give natural and legal persons the opportunity to monitor and influence the functioning of the institutions.

Article *2*
Beneficiaries

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, ***has*** the right ***of*** access to the documents of the institutions within the meaning of this Regulation, without having to cite reasons for their interest, subject to the ***principles and limits determined in this Regulation.***

The institutions shall ensure that the widest and easiest possible public access to documents is granted.

The institutions may under the same conditions grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

Article *3*
Scope

1. This Regulation shall apply to all documents drawn up by the ***institutions*** *or originating* from third parties and in their possession ***in all areas of activity of the Union***.

2. ***In case of conflict,*** this Regulation ***takes precedence over existing Regulations adopted on the basis of the European Union or Community Treaties allowing less favourable treatment for the citizens with regard to access and limits to access to documents.***

3. This Regulation shall not preclude the application of the specific rules in Annex I.

Article 4
General Principles

1. The right of access to documents of the institutions includes access to published documents and access to documents available on the register and documents available on written request.

2. This Regulation does not affect the right of Member States to grant access to documents in accordance with their national legislation.

3. This Regulation does not authorise the withholding of documents from the European Parliament.

4. This Regulation does not deprive citizens of the Union of rights concerning access to documents acquired under instruments of international law.

5. This Regulation is without prejudice to the rights of judicial authorities, investigative bodies and Parliaments.

Article *5*
Definitions

For the purposes of this Regulation:

(a) "document" shall mean any content ***held, received or produced by the institution*** whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***authored by an individual, department (unit, division, directorate) or institution in the implementation of its procedural rules or official duties*** concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility. ***"document" shall not mean informal information in the form of written messages designed to enable personal opinions to be given or ideas to be freely exchanged ("brain storming") within the institutions.***

(b) "institutions" shall mean the European Parliament, the Council and the Commission ***as well as***

- ***their internal and subsidiary bodies (for example European Parliament Committees, Council Committees, Council Working Groups and Commission Directorates-General);***
- ***agencies created by the institutions and accountable to the institutions, as listed in Annex II.***

(c) "***third*** party" shall mean any natural or legal person, or any entity outside the institution, including the Member States, other Community and non-Community institutions and bodies and non-member ***countries***.

Article 6

Principles of Access

1. All documents are accessible unless the limits on access set out in Article 7 apply.

2. If an institution wishes to limit access to a document it may classify the document as soon as the document is produced or received and shall classify it at the latest when it is listed in the register referred to in Article 18. A later classification may not limit access to a document save in exceptional circumstances.

Classification shall include a reference to the relevant exception in Article 7.

Where the conditions for the application of an exception exist for a certain time only, classification shall be limited in time accordingly.

3. When an application for disclosure is made, the institution shall assess whether the exception in Article 7 still applies. In any event all classifications not limited in time shall be reviewed at regular intervals.

4. After the expiry of a period of 30 years, all documents shall be accessible to the public except the following documents or parts of documents:

- ***files relating to staff of the institutions or records containing information on the private or professional life of individual persons or otherwise covered by the rules on the protection of personal data***
- ***documents which have been graded confidential or higher and which have not been declassified***
- ***contracts submitted to or concluded by the Euratom Supply Agency pursuant to Chapter VI of the Treaty establishing the European Atomic Energy Community.***

Article *7*
Exceptions

1. Public access to documents may be limited on the following grounds:

(a) ***access may be denied on grounds of public interest where disclosure could significantly undermine***
- public security,
- monetary stability,
- ***defence and military matters,***
- ***vital interests relating to the European Union's international relations.***

(b) ***access shall be denied where disclosure would be contrary to the protection, under the law, of the right to privacy of an individual;***

(c) ***access may also be denied on grounds of commercial secrecy where this outweighs the public and private interest in disclosure.***

2. When considering the public interest in the disclosure of the document, the institution shall also take account of the interest raised by a petitioner, complainant or other beneficiary having a right, interest or obligation in a matter.

3. Where the institution gives a negative reply because part of the document is covered by any of the exceptions provided for in paragraph 1, the institution shall provide an edited version of the document.

4. When access is requested to a document drawn up for the purpose of internal consultation, information therein on an official's personal opinions on policy may be disclosed in a form that cannot be traced to an individual person.

Article 8

Access to personal data

The right of access to personal data held by the institutions is regulated according to:

(a) European Parliament and Council Regulation (EC) No …/2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, when the data are treated in relation to activities totally or partially founded on the Treaty;

(b) the principles outlined in Annex III which shall be applicable in the absence of specific rules adopted on the basis of the Treaties.

Article 9

Measures to be agreed by the institutions

Within a period of one year following the entry into force of this Regulation, the institutions shall, in application of this Regulation, enter into agreements, or modify existing agreements, on the following common elements which will provide the basis for the adoption of the internal rules referred to in Article 255 of the Treaty:

(a) agreed rules for the classification of documents to which, following an assessment, the exceptions in Article 7 apply and therefore to which access may be limited, including:

- *treatment and protection of such documents, including highly confidential documents;*
- *application of security gradings (top secret, secret, confidential or restricted) indicating the level of security in cases where the exceptions in Article 7 apply and restrictions on access within an institution or between the institutions are justified;*
- *transmission of classified documents between the institutions and procedures for resolving conflicts between the institutions in cases of doubt on the confidential nature of documents, including if appropriate the establishment of a European Information Authority;*
- *procedures relating to the provision of information classified as confidential to a select committee of the European Parliament according to the sensitivity of the documents;*

(b) general measures on the production, storage and dissemination of documents (through a common interface), including measures on quality of drafting of legislation and archiving of documents[1]*.*

The agreements will be adopted by the Council acting by a simplified qualified majority in accordance with Article 205(2) of the Treaty and by the European Parliament acting by a majority of the votes cast. The agreements may be modified at the request of one of the parties.

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[1] ***As defined in Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1.)***

CHAPTER II
THIRD PARTIES AND MEMBER STATES

Article 10

Documents of Member States or third parties

1. Any Member State or third party which transmits documents to an institution shall indicate whether, and if so which, parts of the documents are not to be disclosed to the public.

2. The third party must refer to the relevant exception(s) in Article 7 and must state whether the classification is limited in time.

3. The Member State or third party may submit a "public" version which may be disclosed by the institution.

4. The institutions shall decide according to guidelines to be agreed in the framework of an interinstitutional agreement whether the document or part of document in question can be made public.

5. If the institution decides that, contrary to the opinion of the Member State or third party, the document or part thereof does not fall within the exceptions in Article 7(1) and should therefore be disclosed, the institution shall immediately inform the third party or Member State of the reasons for disclosure and the date on which the information is to be disclosed (which shall not be less than one week from the date of notification) and of its right to seek interim measures from the European Court of Justice.

Article 11

Relationship with the Member States

1. Where a Member State receives a request for documents considered classified by an institution and which according to the rules of that Member State may be disclosed, the Member State shall immediately inform the institution.

2. The Member State shall decide whether the documents or parts thereof in question can be disclosed.

3. The Member States and the institutions shall cooperate in the provision of information to the citizens.

CHAPTER III

ACCESS TO DOCUMENTS

Section 1
Right of Access

Article 12

Publication of documents in the Official Journal

In addition to the documents required to be published by Article 254 of the Treaty, the documents referred to in Annex IV shall be published in the Official Journal including, where appropriate, the date of entry into force.

Article *13*
Documents accessible on written application

1. All applications for access to a document shall be made in writing ***in one of the official languages of the institutions*** in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application ***for the purposes of identifying the documents.***

"In writing" also comprises applications in electronic form such as fax or e-mail.

2. Within ***two weeks*** of registration of the application, the institution shall inform the applicant, in a written reply, of the outcome of the application ***and, if the application is accepted, transmit the documents within the same period.***

3. Where the institution gives a negative reply to the applicant, ***the institution shall state the reasons for its refusal, the period of time during which the document cannot be disclosed and, where relevant, the source from which the applicant may obtain the document***.

4. ***The institution*** shall ***also*** inform ***the applicant*** that, within one month of receiving the reply, he is entitled to make a confirmatory application asking the institution to reconsider its position.

5. ***If the institution considers that the document may be disclosed within six months of receipt of the application, the institution shall send the document to the applicant not more than two weeks after the date on which the document can be disclosed***.

6. In exceptional cases, the ***two-week*** time-limit provided for in paragraph 2 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

7. ***The staff of the institutions shall as far as possible help and inform the citizens how and where applications for access to documents can be made.***

Article *14*
Processing of confirmatory ***applications***

1. Where the applicant submits a confirmatory application, the institution shall reply to him in writing within ***two weeks*** of registration of the application ***and, if the application is accepted, transmit the documents to him within the same period***. If the institution decides to maintain its refusal to grant access to the document requested, it shall state the grounds for its refusal and inform the applicant of the remedies open to him, namely court proceedings and a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the Treaty, respectively.

2. In exceptional cases, the time-limit provided for in paragraph 1 may be extended by one month, provided that the applicant is notified in advance and that detailed reasons are given.

Failure to reply within the prescribed time-limit shall ***entitle the applicant to seek the remedies in Article 20.***

Section 2
Exercise of the right of access

Article *15*
Exercise of the right *of* access

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy***, including an electronic copy***.

In the case of very substantial documents or a very large number of documents the cost of ***making copies*** may be charged to the applicant. ***The charge has to be limited to a reasonable sum which will not exceed the real cost of production of the copies. The cost of providing documents shall be determined annually (initially on the basis of estimates) with a view to establishing the rates which shall be made public. Consultation on the spot will be free of charge***.

2. Documents shall be supplied in ***the*** language version ***requested by the applicant, or in the language of the application, provided that that language version is available.***

Documents shall be supplied in the form requested by the applicant if they are already available in that form, e.g. electronically or in an alternative format (such as Braille, large print or tape).

3. Parliamentary scrutiny of all documents excluded from public access shall be assured by regularly informing a body of the European Parliament in accordance with the format agreed in the interinstitutional agreement adopted pursuant to Article 9.

Article *16*

Reproduction for commercial purposes or other forms of economic exploitation

1. This Regulation does not interfere with rights, existing by virtue of intellectual or industrial property, that protect information contained in documents.

2. Any third party or Member State that receives information under this Regulation is responsible for complying with the applicable Community, national or international law relating to the protection of intellectual or industrial property rights.

Article *17*

Information

Each institution shall ***be responsible for informing*** the public of the rights they enjoy as a result of this Regulation ***and for publishing in the Official Journal:***

(a) the internal rules;
(b) the structure of the institution including details of any departments, committees, and formal working groups in all areas of the Union's activities;
(c) the person to whom written applications for documents should be addressed;
(d) the means of access to the register;
(e) a code of conduct on transparency for officials.

Article 18

Registers

1. Within three months of the entry into force of this Regulation, each institution shall keep a register of all documents held, drawn up, received and sent by it. This register must be widely accessible to the public.

A document shall be introduced in the register as soon as the institution or body has taken a formal decision or has filed or sent the document to other internal bodies, institutions or third parties or when one of the following conditions is met:

(a) a decision, a contractual commitment, a memorandum and other similar documents: when they have been approved;
(b) minutes: when they have been scrutinised and approved;
(c) invitations to tender, to provide information, to comment on a proposal: when they have been approved;
(d) procurement cases: when the contract has been awarded;
(e) reports, discussion papers and similar documents: when they are in the possession of the institution or body in question.

2. The register shall contain the date when the document was produced or received, a title indicating its content and the type of classification. When a document has been released as a result of a request, this shall be notified and indicated in the Register.

Where a document or parts thereof are subject to an exception under Article 7, the register shall indicate to what extent and on which grounds access to the document is limited.

3. Documents of the institutions which shall at the very least be included in the register are listed in Annex IV and include all documents created by an institution in the course of a procedure for the adoption of legally binding measures, notably all proposals, opinions, working documents, agendas, documents for discussion at formal meetings, minutes, declarations and positions of Member States.

4. Wherever possible documents shall be made directly accessible via the Internet and other forms of computer telecommunications. The documents referred to in paragraph 3 shall be made directly available within three months of the entry into force of this Regulation.

Section 3
Information Officers

Article 19
Appointment and tasks of the Information Officer

1. Within six months of the entry into force of the Regulation, each Union institution shall appoint at least one person of appropriate rank as the Information Officer, with the task of:

(a) deciding on the response to confirmatory applications and ensuring the correct application of the exceptions in Article 7;
(b) ensuring in an independent manner the internal application of rules relating to transparency and supervising the maintenance of the register of documents for that institution;
(c) ensuring that responses to citizens respect the language rules in Article 21 of the Treaty and providing assistance to citizens seeking further information on a subject in which the institution is involved.

2. In application of this Regulation, the institutions shall take all necessary steps and measures to meet demand for disclosure of documents.

3. The Information Officer shall be provided with the staff and resources required for the performance of his or her duties.

4. Further rules concerning the Information Officer shall be laid down in the internal rules of each institution or body.

CHAPTER IV
REMEDIES AND REPORTS

Article 20

Remedies

1. An applicant who receives a negative response to a confirmatory application may, in accordance with Article 195 of the Treaty, submit a complaint to the Ombudsman with a view to examining whether a case of maladministration has occurred.

2. An applicant who receives a negative response to a confirmatory application may, in accordance with Article 230 of the Treaty, institute proceedings before the Court of Justice of the European Communities.

3. Where an institution decides to disclose a document against the wishes of a third party, it shall give the third party at least one week in which to make an application for interim measures in accordance with Article 243 of the Treaty.

4. The Council shall consider whether changes need to be made to the rules of procedure of the Court of Justice of the European Communities and the Court of First Instance in relation to access to documents, in particular in relation to confidential documents and costs in transparency cases.

Article 21

Reports

1. Within a period of three years following the entry into force of this Regulation the institutions shall produce a report setting out all the measures taken to implement this Regulation.

2. Each year, each institution shall submit to the European Parliament a report for the preceding year setting out the number of cases in which the institution refused to grant access to documents and the reasons for such refusals.

CHAPTER V

TRANSITIONAL PROVISIONS

Article *22*
Effect

Each institution shall adopt in its rules of procedure provisions ***implementing*** this Regulation. Those provisions shall take effect on ... [***at the latest one year*** after the ***entry into force*** of this Regulation].

Article 23

Europol

In its capacity as the institution responsible for Europol, the Council shall examine within a period of one year of the entry into force of this Regulation, on the basis of a proposal presented by the Commission or an initiative presented by a Member State, the necessary amendments to bring the Council Act of 3 November 1998 adopting rules on the confidentiality of Europol information[1] into line with the principles of this Regulation.

CHAPTER VI

FINAL PROVISIONS

Article 24

Repeal

From the date of the entry into force of this Regulation the following shall be repealed:

(a) Council Decision 93/731/EC of 20 December 1993 on public access to Council documents as last amended by Council Decision 2000/527/EC of 14 August 2000,

(b) Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents,

(c) European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents,

(d) Decision of the Executive Committee of 14 December 1993 concerning the confidentiality of certain documents [SCH/Com-ex(93) 22 rev][2],

(e) Decision of the Executive Committee of 23 June 1998 concerning the confidentiality of certain documents [SCH/Com-ex(98) 17][3],

(f) Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community.

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1 *OJ C 26, 30.1.1999, p. 10.*
2 *OJ L 239, 22.9.2000, p. 129.*
3 *OJ L 239, 22.9.2000, p. 137.*

Article *25*
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 ***Communities***.

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

Done at ……..,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I
SPECIFIC RULES

[This list is to be defined in agreement with the Commission and Council]

ANNEX II
AGENCIES

CEDEFOP – European Centre for the Development of Vocational Training

European Foundation for the Improvement of Living and Working Conditions

European Environment Agency

European Training Foundation

European Monitoring Centre for Drugs and Drug Addiction

European Agency for the Evaluation of Medicinal Products

Office of Harmonisation in the Internal Market (Trade Marks and Designs)

European Agency for Safety and Health at Work

Community Plant Variety Office

Translation Centre for the bodies of the Union

European Observatory for Racism and Xenophobia

ANNEX III
ACCESS TO PERSONAL DATA PROVIDED FOR IN ARTICLE 8

1. Data subjects must be informed of the collection of personal data concerning them and of any processing, unless the provision of that information is impossible or involves a disproportionate effort.

2. The information to be provided under point 1 must be that which is necessary, in view of the specific circumstances of the collection of the data, to guarantee to the data subject in question that the data are processed fairly.

3. All data subjects have the right of access to their personal data and to have communicated to them in an intelligible form, without constraints, at reasonable intervals and without excessive delay or expense, data concerning them and to obtain, as appropriate, the rectification of incomplete or inaccurate data and the erasure of data which have been processed unlawfully.

4. Access may be direct or indirect, for example via a supervisory authority, and may be subject only to restrictions linked to the object or specific nature of the instrument concerned.

5. [Other principles to be developed]

ANNEX IV

DOCUMENTS TO BE PUBLISHED IN THE OFFICIAL JOURNAL

1. The following documents shall be published in the Official Journal:

Acts

(a) regulations, directives and decisions referred to in Article 254(1) and (2) of the EC Treaty and in Article 163 of the Euratom Treaty;

(b) framework decisions, decisions and conventions referred to in Article 34(2) of the Treaty on European Union;

(c) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

(d) international agreements concluded by the Community or in accordance with Article 24 of the Treaty on European Union;

(e) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions;

Proposals

(f) proposals of the Commission as referred to in Articles 251 and 252 of the EC Treaty;

(g) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty and pursuant to Article 34(2) of the Treaty on European Union;

Common positions

(h) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty, the reasons underlying those common positions, and common positions referred to in Article 34(2) of the Treaty on European Union;

2. The following shall be published in the Official Journal, unless the Council or the Committee of Permanent Representatives decides by qualified majority voting, on a case-by-case basis, that they should not be so published:

(a) common strategies, joint actions and common positions referred to in Article 12 of the Treaty on European Union and the measures implementing joint actions;

(b) joint actions, the common positions or other decisions adopted on the basis of a common strategy, as provided for in the first indent of Article 23(2) of the Treaty on European Union;

(c) measures implementing decisions referred to in Article 34(2) of the Treaty on European Union and measures implementing conventions drawn up by the Council in accordance with Article 34(2) of the Treaty on European Union.

3. Where an agreement concluded between the Communities and one or more States or international organisations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.

ANNEX V

DOCUMENTS TO BE INCLUDED AS A MINIMUM IN THE REGISTER

(a) all documents created in the course of a procedure for the adoption of legally binding measures;

(b) all documents relating to the formulation and adoption of policy or strategy;

(c) all documents relating to the implementation of EU legal instruments;

Reforming European Union Fisheries Subsidies

A briefing paper by the Institute for European Environmental Policy (IEEP)

with a focus on Financial Instrument for Fisheries Guidance (FIFG)

This briefing paper was researched and written by Clare Coffey and David Baldock of IEEP London, with editorial input provided by Julie Cator and Karen Flanders of WWF European Policy Office and David Schorr of WWF-US. It was commissioned by WWF's European Policy Office in conjunction with the Endangered Seas Campaign and was first presented at *Fishing in the Dark*, a symposium to promote improved transparency and accountability in fishing subsidies, held 28-29 November 2000 in Brussels, Belgium. The views in this paper are those of the authors and do not necessarily reflect those of WWF.

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Reforming European Union Fisheries Subsidies

By Clare Coffey and David Baldock
Institute for European Environmental Policy (IEEP)

Table of Contents

TABLE OF FIGURES 1

1 INTRODUCTION 2

2 EU SUBSIDIES TO THE FISHERIES SECTOR 3

INTRODUCTION 3
FISHERIES SUBSIDIES AND THE ENVIRONMENT 4
SUBSIDIES TO THE EU FISHERIES SECTOR 5
Brief history of EU subsidies 5
Existing subsidies to the EU fisheries sector 6
Main sources of EU subsidies for the fisheries sector 6
Member state subsidies - state aid 8
General expenditure – research, control, inspection and surveillance 8
CONCLUSIONS 9

3 OVERVIEW OF THE FINANCIAL INSTRUMENT FOR FISHERIES GUIDANCE (2000-2006) ... 9

INTRODUCTION 9
NEW ARRANGEMENTS FOR FIFG (2000 TO 2006) 11
What are the tasks of FIFG? 13
How is FIFG administered? 13
Potential project types funded by FIFG 15
Renewal and modernisation of the fishing fleet 15
Permanent cessation of fishing vessels 17
CONCLUSIONS 21

4 PRELIMINARY ANALYSIS OF EXPERIENCE UNDER FIFG (2000-2006) 22

Drafting fisheries plans - prior environmental appraisal 22
Indicators 23
Reporting 24
Application of the partnership approach 24
CONCLUSIONS 25

REFERENCES 27

USEFUL WEB ADDRESSES FOR FURTHER READING 28

Table of Figures

FIGURE 1: SUBSIDIES TO THE EU FISHERIES SECTOR (EUR MILLION IN 1998).... 6
BOX 1: EU STRUCTURAL FUNDS (2000-2006) 10
BOX 2: EU'S NEW PRIORITY 'OBJECTIVES'.(2000-2006) 11
MAP 1: MAP OF OBJECTIVE 1 AREAS FOR 2000-2006 12
BOX 3: COMMISSION GUIDELINES FOR DRAFTING AID PLANS 14
BOX 4: MULTI-ANNUAL GUIDANCE PROGRAMMES (1997-2001) 16
FIGURE 2: FIFG - FROM REGULATION TO IMPLEMENTATION 26

1 INTRODUCTION

Despite the EU's renewed commitment to sustainable development, set out in Article 2 of the EC Treaty, the crisis in fishing continues as fish stocks in European waters and around the world are reported to be in a state of decline. Latest research on the North East Atlantic environment underlines the significance of fisheries by placing it among the two most critical factors influencing the region, alongside pollution by hazardous substances[1]. The major factor contributing to these worrying environmental trends is sustained overfishing - as much as half of the EU fishing fleet is targeting stocks that are below levels considered to be biologically acceptable.

There have been repeated attempts to rectify some of the management failures that characterise European and global fisheries by setting catch limits, introducing technical conservation measures and reducing overall levels of fishing capacity. But there has often been an apparent unwillingness to tackle the underlying pressures that drive overfishing. In particular, many fishing nations continue to subsidise their fishing industries in order to improve their economic 'efficiency' and relative competitiveness in the global market. In many cases, the nature of subsidies, such as vessel building grants or fuel tax exemptions, also tends to favour those sectors of the industry with larger vessels, or those using more intensive methods. Long distance fleets are also often active in less regulated fisheries, on the high seas or in third country waters. Subsidies can therefore be a significant contributor to overcapacity in these fleets (see Nordström *et al* 1999*)*, contrary to international fish stock management efforts.

The European Union is among a group of major fishing 'nations' which continue to subsidise their fisheries sectors. Recent OECD calculations suggest that subsidies worth $ 1.4 billion are provided to the EU fisheries sector each year, made available through a combination of EU wide programmes and national state aid schemes. The single most significant source of aid is an EU budget, the Financial Instrument for Fisheries Guidance (FIFG), with funds programmed over a seven-year period and implemented in conjunction with national and private funding. Aid is available for a range of project types, including vessel building and decommissioning projects, aquaculture installations, and marketing and processing.

In the drive for sustainable development of the fisheries sector, it will be critical that environmental considerations are fully integrated within decisions on present and future EU fisheries subsidies. The rules governing FIFG expenditure were the subject of a major reform in 1999, as part of the EU's 'Agenda 2000' process. A stronger environmental element was included in the relevant EU regulations that determine the framework for aid[2]. The result is improved opportunities to deploy funds in the interest of sustainable development. However, in practice much of the aid is still designed to increase supplies of fish, improve economic 'efficiency' and strengthen competitiveness on the global market. Stringent controls will be needed to ensure that the environment does not suffer as a consequence.

Furthermore, because of the highly devolved nature of the EU aid system, the way in which FIFG is ultimately used over the coming seven years (2000 to 2006) will be heavily determined by the content and subsequent implementation of a series of programming documents covering the EU's regions. Several of these programmes are still being negotiated between the Commission and the Member States. Once they are agreed, each Member State will be left to

[1] 2000 OSPAR Quality Status Report
[2] Framework Regulation 1260/1999 and FIFG Regulation 1263/1999

decide precisely which subsidies to make available, and on what conditions. There consequently remain a number of important opportunities for influencing the environmental impacts of expenditure under the national FIFG programmes, quite apart from potential longer term reforms to the design of the EU aid scheme itself.

The immediate ability to monitor and influence national expenditure, and ensure its compatibility with agreed EU environmental objectives, is heavily dependent on accessible information on the use of funds and the level of public participation in decision-making. This applies in equal measure to the process of developing expenditure programmes, as it does to decisions relating to individual projects, and eventual monitoring and evaluation of the impact of funding. Issues of accountability and participation are particularly critical in light of growing distrust of the use of public funds. The Agenda 2000 reforms promise to deliver some improvements in this respect, but even these may not be an adequate guarantee of transparency and participation in decision-making.

This report by the Institute for European Environmental Policy, London, has been commissioned as a joint undertaking by WWF's European Policy Office and WWF's worldwide Endangered Seas Campaign. It explains and provides a critique of current EU fisheries subsidies, with a specific focus on FIFG, including the extent of transparency and public participation in administering those subsidies. The report thus provides in Section 2 an overview of fisheries subsidies in the EU. Section 3 details the new arrangements for FIFG covering the period 2000 to 2006, including the specific types of projects that are eligible and associated administrative arrangements. It is followed in Section 4 with an early critique of FIFG programming documents resulting from negotiations between the European Commission and national governments. Section 4 concludes by suggesting ways in which EU fisheries funding could be influenced in the short and medium term to minimise the negative environmental impacts of existing aid.

2 EU SUBSIDIES TO THE FISHERIES SECTOR

Introduction

In global terms, annual subsidies to the fisheries sector are thought to lie somewhere in the region of $14 billion (Milazzo, 1998). The different types of subsidies and their associated environmental implications vary. Overall, however, subsidies are increasingly acknowledged as a major factor contributing to global over-fishing.

The EU is not outside this global debate for two key reasons: firstly, the overall level of annual fisheries subsidies in the EU is estimated to amount to more than US$ 1.4 billion (OECD 2000); and secondly, the EU is the largest importer of fish products at US$ 19.4 billion (New Zealand Government, 2000) making subsidies an important international trade issue. Attempts to discipline global fisheries subsidies consequently need to give adequate attention to developments and opportunities for reform in the EU, including policies and programmes implemented at both national and EU levels.

This section presents an overview of the subsidies issue, and the particular types of subsidies that are typically available to the fisheries sector within the EU. More detailed information on the EU's Financial Instrument for Fisheries Guidance (FIFG) is provided in Section 3.

Fisheries subsidies and the environment

Broadly speaking, subsidies are used to reduce the costs or increase the returns to particular industries or sectors. Subsidies can take a range of forms, including those which reduce costs of production, for example, capital grants, interest free loans or tax concessions. Alternatively, they can enhance revenues, for example, through direct payments to producers or by artificially inflating market prices.

The term 'environmentally perverse subsidy' is commonly used to describe subsidies that encourage more environmental damage than would occur in the absence of the subsidy. Such subsidies encourage action that contradicts stated environmental goals, even though they may support other, non-environmental goals, such as job creation. The negative environmental impact of subsidies that encourage the expansion of production can be particularly significant in primary production sectors, such as agriculture and fisheries, which rely heavily on the supply of natural resources. The presence of subsidies will tend to increase production levels, even beyond the point where it would otherwise become economically 'inefficient' to continue production. Various attempts have been made to refine the classification of subsidies, though few have sought to identify those that have a greater tendency to inflict environmental damage.

To illustrate the potential harm caused by subsidies, direct grants for investment in new technologically advanced fishing vessels can, in the absence of stringent safeguards, directly increase both fleet capacity and overall effective fishing activity or 'effort'. In fisheries that are near or above capacity, as is the case in many fisheries, the subsidy can push production beyond levels, which exceed the ecological and economic optimum. Even in fisheries that are subject to some form of management system, such as many commercial EU fisheries, there is often a lack of well-defined ownership or property rights. There is consequently a built-in incentive for operators to catch as much fish as possible in the short term, rather than considering the long-term implications of their actions, a situation commonly known as the 'tragedy of the commons'. The result, as is evident in EU fisheries and many fisheries around the world, is a tendency to increase fishing effort beyond sustainable levels, both by raising fleet capacity and by using more advanced technology to locate, catch, land and process fish. This has consequent implications for fish stocks and the wider marine environment, although actual impacts will depend on precisely where subsidies are channelled. An overall reduction of subsidies in such circumstances is therefore widely anticipated to result in some environmental benefit, although actual benefits would vary significantly, depending on the type of subsidy involved.

According to basic neo-classical economic theory, creating a free market and an open trading system, even though combined with effective catch limits, should in itself encourage more 'efficient' allocation of resources through lower incentives to over-fish. In the absence of subsidies, and other trade barriers, production would become increasingly concentrated in countries and regions, which were most competitive, usually because of lower production costs and proximity to the natural resource and labour market. Thus, according to this theory, the removal of subsidies would lead to more specialised and therefore economically 'efficient' production systems.

However, this increase in economic efficiency does not imply any increase in environmental or social efficiency. Indeed, the whole theory clearly depends on the market working perfectly, reflecting not only economic but also social and environmental factors relevant to fisheries

management. It does not take into account common and recognised failures of the market, where goods and services have characteristics, which make them under-represented in the market. This is a particular issue for commercial fisheries where the 'external' costs of more intensive fishing practices, such as impacts on the targeted fish stocks or impacts on local artisanal fishing communities, are not directly borne by the producer but by society as a whole. There may be ways of 'internalising' some of the external costs, for example, by charging particular sectors for resource use or for the use of particular fishing gear, but even then the complete removal of subsidies may not lead to the 'sustainable development' of fisheries.

In some cases, therefore, subsidies may be contributing to socially and environmentally more damaging fishing practices; in other cases, subsidies may be desirable or even necessary to support social, cultural and environmental 'externalities' associated with fishing. The objective of subsidy reform must therefore be to assess the relative importance and impacts of subsidies, with a view to ensuring that future subsidies are tailored to support social and environmental goals, rather than undermining them.

Subsidies to the EU Fisheries Sector

Brief history of EU subsidies

One of the driving objectives behind EU fisheries policy has been that of increasing supplies of fish to levels which would allow the Community to become self-sufficient. The need to increase supplies of fish was given added urgency by the extension of national fishing zones in the 1980s, effectively excluding EU fishing fleets from vast areas of productive sea. Meeting market demand was to be achieved in two ways: developing the capacity of the European fisheries sector to catch or farm more fish; and increasing imports of raw fish for processing. To a large extent, these same strategies are still pursued now.

Progress relied heavily on EU assistance for capital investment in the fisheries sector, with funding mainly drawn from the 'Structural Funds' and used to build up fishing fleets, support the development of fish farms, and modernise processing and marketing conditions across the EU. Other measures introduced incentives for the exploitation of new fishing grounds, as well as encouraging vessel owners to create joint business ventures to exploit the waters of non-member States, otherwise known as 'third countries'. Another measure provided payments for vessels that were tied up, either on a temporary or a permanent basis.

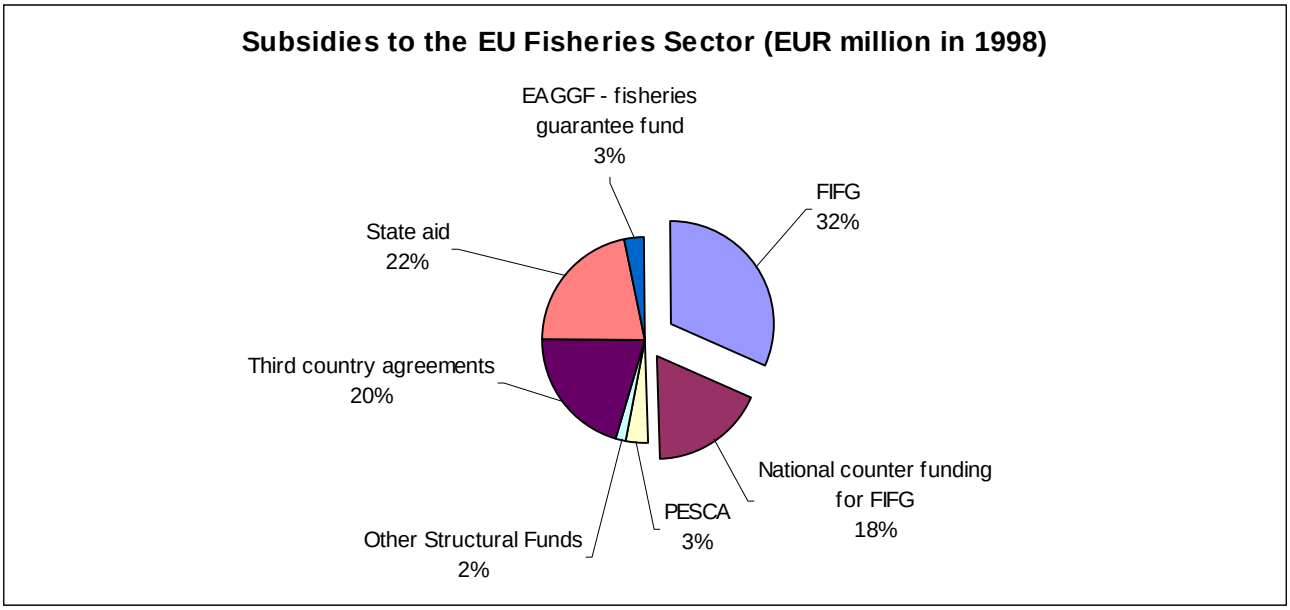
Underlying political support for investment in increased production, including fleet expansion, continued until the early 1990s when the amount of aid for construction and modernisation was significantly reduced, with corresponding increases in money available to withdraw vessels altogether, or to move them to other non-European fishing grounds. The shift was informed by a growing acceptance of the link between increased fleet capacity and declining resources. While resource management and fleet reduction policies have steadily been given a higher priority since the early 1990s, investment grants nevertheless continue: the political commitment to reducing fishing intensity being met by a desire to protect national fleets and to inject capital into the sector.

Existing subsidies to the EU fisheries sector

Subsidies to the EU fisheries sector stem from two basic sources: firstly, those originating from the EU budget, including (since 1994) the Financial Instrument for Fisheries Guidance; and secondly, a number of national sources commonly termed 'State aid'.

The pie chart below illustrates the comparative importance of the main fisheries subsidies to the EU fisheries sector, in monetary terms. An outline of the amount and nature of each source follows.

Figure 1: Subsidies to the EU Fisheries Sector (EUR million in 1998)



Sources: Third country agreements, PESCA, EAGGF and FIFG - EU Budget 2000; State aid – CEC, 2000a; national counter funding and other Structural Funds - CEC, 1997

Main sources of EU subsidies for the fisheries sector

a) Financial Instrument for Fisheries Guidance (FIFG)

The main EU level assistance programme for the fisheries sector is the FIFG. As described in more detail below, aid is released on a cyclical basis covering a seven year period. Although the fund is EU driven, wide responsibility for both drafting and implementing expenditure programmes is left to the Member States. Money is distributed through a series of regional or sectoral expenditure programmes which map out the priority areas for development. The release of FIFG is dependent upon part-funding from national public and private sources. To illustrate, a fisherman wanting to spend EUR 300,000 on modernising a boat might be eligible for EUR 100,000 under FIFG as long as a further EUR 100,000 was also secured from government finances. In practice, this means that even relatively small EU assistance budgets can lead to significant amounts of aid being mobilised under each programme. Over the last programming period 1994 to 1999, for example, FIFG was to provide ECU 2.8 billion for the fisheries sector. However, taken in conjunction with counter funding from both private and

national sources, the total financial 'envelope' was nearly double - amounting to ECU 4.5 billion.

The actual types of projects that can be funded vary considerably. In the past, Member States have tended to focus investment on three key areas: fleet building or modernisation, fleet capacity reduction measures, and investment in marketing and processing facilities. Although the actual impacts of capacity reduction subsidies is often uncertain, the fact that funds are made available for vessel building *and* capacity reduction is clearly inconsistent. Significant funding has also been injected into the aquaculture sector, particularly in southern Europe, and subsequently fuelled concerns about environmental damage.

The 'fleet renewal and modernisation' measure has been the most controversial, with funding used to build up Europe's fishing fleet dating as far back as the early 1970s. Funding continued to be targeted at shipbuilding and modernisation projects throughout the 1980s, despite growing concern over the state of fish stocks. . In the mid 1980s, for example, while ECU 32 million was targeted at the permanent withdrawal of fishing capacity, ECU 118 million was allocated to the construction and modernisation of fishing vessels (Coffey *et al* 1998). It was not until the early 1990s that there was a more widespread acceptance of the link between structural funding and the deterioration in fish stocks and a subsequent shift in the balance of expenditure in favour of vessel capacity reduction (Coffey *et al* 1998). Recent reforms of FIFG, as part of the so-called 'Agenda 2000' process, have led to further improvements. Nevertheless, FIFG continues to offer support for fleet modernisation projects, as described in more detail in Section 3 of this report.

b) Access to third country resources

The second main area of fisheries expenditure under the EU budget is tied to third country fisheries agreements. In exchange for financial compensation, the EU has since 1977 been able to secure additional fishing opportunities in third county waters. Approximately 15 such 'compensation' agreements have been signed, involving Morocco and African, Caribbean and Pacific countries. A separate 'second generation' agreement was also concluded with Argentina, providing incentives for EU vessel owners to set up joint ventures in Argentina.

The total cost to the EU of establishing third country agreements was approximately ECU 277 million in 1998, and amounted to over one billion ECU over the period 1993 to 1997. Private contributions, which are added to the incomes of the third countries, represent on average 18 per cent of the total compensation paid to secure access (IFREMER, 1999). Therefore, although the agreements do not directly inflate fishermen's incomes, they do reduce producer's costs and are therefore seen as one form of fisheries subsidy.

In 2000, the Commission released a cost benefit analysis on the agreements which suggested that they were closely linked to the construction of some fishing fleets, made possible by financial support from EU aid under FIFG, as well as other funds. The study did not come to more specific conclusions on the environmental or trade impacts of the agreements, however (see IFREMER *et al* 2000).

c) Market support

The Community's common market regime in fish and fish products includes a price support system that sets minimum prices below which certain fish products should not be sold. A set of

guide prices are agreed annually to help secure producers' income and on this basis, selling prices are calculated, as well as prices paid for fish withdrawn from the market. This system is backed up by compensatory payments and carry-over aid for freezing and storing products. In most cases, a flat level premium is available for withdrawals. Lower levels of compensation are available for products withdrawn from the market and subsequently used for purposes other than human consumption.

There is potential for market support to inflate revenues, should prices fall below the minimum set levels. In practice this has not been a significant area of subsidy to the EU fisheries sector, amounting to EUR 42.8 million in 1998, although support may be more significant in relation to certain products, for example, tuna. Overall, however, there is a general pattern of continued reduction in EU market support, particularly as regards support for the withdrawal of unsold fish, due to high prices and a continued worsening in the EU's balance of trade.

Member state subsidies - state aid

In addition to the EU led subsidies, there are a number of schemes that are initiated independently by the Member States. These are broadly defined as 'State aid' and potentially include all forms of aid made available to the sector, such as grants, interest subsidies, tax credits and other tax measures, reductions in social security contributions, etc. In addition, State aids can take the form of soft loans, advances payable in event of successful investments and deferred tax payments that are used to support production, even though net aid may not be transferred in the long term.

The average official level of aid to the fisheries sector granted by the Member States during 1996 to 1998 was EUR 296.8 million, equivalent to 4.5 per cent of value added (calculated on the basis of quantities landed and average prices). Within this figure, there are considerable variations between the Member States with Italy, Spain and the UK granting the most state aid to the fisheries sector (CEC, 2000a).

It is up to Member States to decide whether or not to institute national aid schemes. However, any schemes which are introduced are required to receive Commission approval first, to ensure their compatibility with EU State aid criteria[3]. The State aid figure given above is based on approved schemes, although in reality the figure is likely to be higher as aid schemes are not always brought to the Commission's attention.

The overall aim of EU policy in this area is to gradually reduce levels of State aid, and in the meantime, to support the creation of a 'level playing field' between the Member States by establishing common types of aid that are permissible.

General expenditure – research, control, inspection and surveillance

This category of subsidy essentially consists of 'service' expenditure to help develop, support and manage the activities of the fisheries sector, and to protect the natural resource base. A recent OECD survey (2000) estimated such expenditure to amount to approximately EUR 5 billion per annum in OECD countries, far greater than the amount transferred to support producers incomes or revenues. It essentially involves management authorities spending a

[3] Guidelines for the examination of state aid to fisheries and aquaculture, OJ L100, 27.3.97

considerable amount of funds on research, including research into new fisheries, and on administering fisheries (OECD 2000).

Although this type of expenditure can be critical for sustainable fisheries, there is ongoing debate as to whether funds are targeted properly and used most efficiently. Furthermore, there are questions as to whether the public should be paying for the significant costs associated with fisheries management, or whether the fisheries industry should be liable for all or part of these costs, in accordance with the polluter pays principle. As long as management services are provided free of charge, operating costs will be reduced, potentially with similar implications as other forms of government financial transfers. Nevertheless, for the purposes of this report, general expenditure such as this is not counted as a subsidy.

Conclusions

Recent changes to the EC Treaty have placed a renewed emphasis on the overall objective of sustainable development and, in particular, Article 6 of the Treaty now requires environmental considerations to be integrated within other EC policies, as a means of achieving sustainable development. Against this background, the continued deterioration in Europe's fish stocks and the growing international debate on the trade implications of subsidies, there are valid concerns over the level of subsidies available to the EU fisheries sector and their potential implications in the drive for sustainability.

Some progress has been made over the last few years to address these issues, including more concerted efforts to assess the scale and nature of the problem. However, research by the OECD and WTO is tending to focus on classifying subsidies according to their origins and their effects on revenues and trade. Rather less is being done to assess in detail what the actual environmental impacts of subsidies, or their removal, are. Additional work is needed to refine the relationship between fisheries subsidies and the environment, and thus ensure that the most damaging types of subsidies are removed, and the most beneficial ones retained or even possibly increased. Progress here depends on a wider engagement of environmental interests and research organisations in the fisheries subsidy debate, as well as on improvements in the level of transparency and accountability applied to public expenditure on fisheries.

In the meantime, as Section 3 of this report outlines, there remain significant opportunities to reduce the potentially most damaging elements of the EU's main fisheries aid programme - FIFG. The remainder of this report focuses on ways to improve the content and application of the EU fisheries aid over the period 2000 to 2006, not least by improving information and participation in decision-making, while also identifying one of two key opportunities to secure longer term fisheries subsidy reform.

3 OVERVIEW OF THE FINANCIAL INSTRUMENT FOR FISHERIES GUIDANCE (2000-2006)

Introduction

The formal objectives of EU fisheries aid under the Financial Instrument for Fisheries Guidance (FIFG) are to help the EU fisheries sector meet the challenges facing it, in particular to cope with worsening resource depletion, globalisation and competitiveness. Funding should

help strike a balance between fishery resources and exploitation levels, improve the competitiveness and economic viability of the fisheries sector, and improve market supplies and value added. Major reforms in the year 2000 led to the introduction of a further objective for FIFG - to contribute to the revitalisation of fisheries dependent areas.

FIFG is included in the EU's large-scale mechanism for regional/sectoral assistance, known together as the 'Structural Funds' (see box 1). The overall aim of the assistance is to reduce the social and economic disparities in Europe, with a significant proportion of funding consequently targeted at Europe's most disadvantaged ('Objective 1') areas. The way in which assistance is provided has changed considerably over the last thirty years, originally involving the European Commission directly in the process of selecting and funding individual projects. The Commission's remit has since receded, with aid now distributed to the regions and sectors on the basis of seven year rolling programmes which are drawn up and subsequently implemented by the Member States. Within the basic EU budgetary framework and rules, the Member States can decide where to direct aid and how to make it available. Member States and regional authorities consequently play a major role in determining the content and eventual impact of assistance.

Box 1 The EU Structural Funds 2000-2006

The EU's Structural Funds are the main tool for promoting social and economic development in the regions. There are four Structural Funds, whose main aims are as follows:

ERDF: *European Regional Development Fund* – to support for productive investment, basic infrastructure, and local development and employment initiatives and SMEs (Regulation 1783/1999);

ESF: *European Social Fund* – to develop the labour market and human resources (Regulation 1784/1999);

EAGGF: *European Agriculture Guidance and Guarantee Fund* (Guidance Section) – to support sustainable rural development (Regulation 1257/1999); and

FIFG: *Financial Instrument for Fisheries Guidance* – to support the for structural adjustment of the fisheries sector (Regulation 1263/1999).

FIFG and its predecessors have traditionally been deployed as a means of modernising and increasing capacity within the sector, in terms of catching, farming, marketing and processing fish and fish products. A particular emphasis has been on generating more fishing capacity and more powerful fishing technology, and providing incentives to exploit fishing grounds on the high seas and in the waters of third countries. These aids are widely considered as a major factor contributing to the high levels of overcapacity which is characteristic of Europe's fishing fleet, with fleet overcapacity in some cases considered to be around 40 per cent (see CEC 1996).

Since the 1980s, there have been gradual improvements in the approach adopted towards fisheries aid, most notably by strengthening the financial commitment to reducing fishing fleet over-capacity, with an associated reduction in the amount of funds available for boat building or modernisation projects. Between 1992 and 1999, a smaller fund – the PESCA Community Initiative – also sought to cushion the social impacts resulting from large-scale restructuring of the sector. Despite these welcome changes, however, fisheries aid continued to be available to support and encourage more intensive production, without necessarily giving adequate consideration to potential environmental impacts. A particular weakness was the failure to subject fisheries aid to the environmental and budgetary disciplines of the main Structural Funds.

The latest fisheries aid package (Regulation 1257/1999), agreed as part of the 'Agenda 2000' reforms, has made notable progress on these fronts. Expenditure on fleet modernisation and

renewal is now conditional upon Member States meeting obligatory fleet reduction targets. There have also been gradual improvements in the set of 'environmental safeguards' applied to fisheries spending. As detailed below, all aid programmes are now to include a description of the environmental situation in the region and arrangements for integrating the environmental dimension into aid to ensure EU environmental laws are fully complied with. There is also a stronger presumption in favour of environmental authorities being involved in the process of drafting and implementing fisheries aid programmes.

However, at a time when the marine environment is in a continued state of decline, there are naturally fears that aid under FIFG will continue to aggravate matters by supporting unsustainable levels of production, rather than supporting the transition to sustainable development of the fisheries sector. Funding continues to be made available for vessel build and modernisation projects, as well as supporting increased capacity in aquaculture, and processing and marketing. An immediate concern therefore is that the new environmental 'safeguards' are properly applied. But there are also longer term questions about the use of public funds to develop a sector such as this, unless funding is explicitly used to support sustainable development goals.

With these issues in mind, this section focuses on FIFG over the new programming period 2000 to 2006, outlining the basic framework for allocating funds and the specific project types that are eligible for support. Actual experiences beginning to emerge, including examples of good and bad practice, are highlighted in Section 4.

New arrangements for FIFG (2000 to 2006)

Major reforms to the EU's overall budget were agreed in 1999, paving the way for a new seven year cycle of aid to the fisheries sector, covering the period 2000 to 2006. The reforms were driven by a desire to make funding more effective, within a declining EU budgetary framework. In practice, this was achieved in a number of ways, not least by targeting aid on a smaller number of geographically defined priority areas or 'Objectives', as outlined in the following Box 2 and the map opposite.

Box 2: The EU's New Priority 'Objectives' (2000 – 2006)

As a result of the Agenda 2000 reforms, the number of priority 'Objectives' to receive EU aid has been reduced from six to just three, as follows:

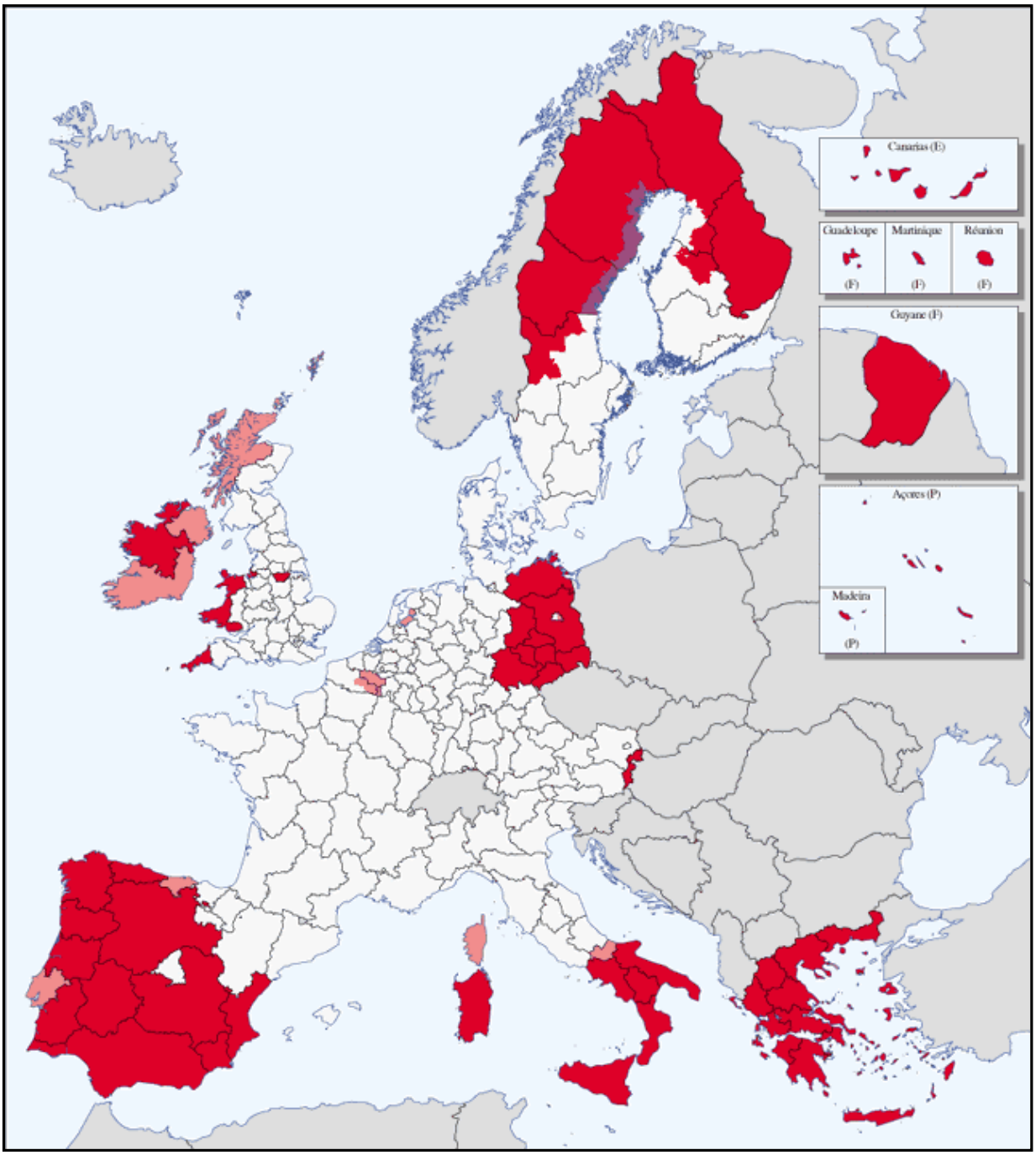
- **Objective 1** – Europe's poorest regions where development is considered to be lagging behind the rest of the Member States. As much as 75 per cent of aid is directed at these areas, including a significant percentage under FIFG.

- **Objective 2** - areas undergoing significant economic or social decline. In some cases they include fishing dependent areas where there have been substantial job losses as a result of problems in the fisheries sector.

- **Objective 3** – to support the adaptation and modernisation of education, training and employment policies and systems.

Although there is no dedicated fisheries 'Objective', special arrangements have been put in place to make FIFG available throughout the EU. This reflects the often dispersed nature of the fisheries sector and fisheries dependent communities, and the particular challenges associated with the sector.

Map 1:Objective 1 areas for 2000-2006



The largest share of fisheries aid will be targeted at the poorest (Objective 1) areas and, together with other Structural Funds, programmed within one regional programming document. Lesser amounts of fisheries aid will also be made available throughout the rest of the EU – known in EU jargon as 'non-Objective 1 areas'. This arrangement is similar to that under the previous period (1994-1999). It will also continue to be reflected in the way that aid is programmed. Most Member States will have two or more programmes relating to fisheries, covering respectively their Objective 1 and non-Objective 1 areas.

What are the tasks of FIFG?

The basic aims of FIFG are to support structural change in the fisheries sector, within the broader framework of EU social and economic development policy. Within this framework, a number of more specific tasks are identified for FIFG, as follows:

- to contribute to the achievement of a 'sustainable balance' between fishery resources and their exploitation - responding to the EU's chronic state of fishing vessel overcapacity and resource depletion;

- to strengthen the competitiveness and economic viability of fisheries enterprises – reflecting both the poor state of resources and the challenges presented by globalisation and competition in the market place;

- to improve market supply and the value added to fishery and aquaculture products – in response to the deficit in EU supplies of raw fish, while aiming to increase incomes from these limited supplies; and

- to contribute to the revitalisation of areas dependent on fishing and aquaculture – acknowledging the continued high level of dependency on the fisheries sector in many of Europe's peripheral regions.

Although these basic tasks of FIFG remain largely unaltered, compared to the previous funding round (1994-1999), the specific types of projects eligible for aid have changed somewhat, as have the arrangements for administering aid. In particular, FIFG is now subject to the basic set of environmental controls that also apply to other EU Structural Funds assistance. For example, aid programmes should now be subject to prior appraisal to ensure that their likely environmental impacts will not conflict with EU environmental objectives. These new arrangements and environmental controls are outlined below.

How is FIFG administered?

The EU Structural Funds, including FIFG, are perhaps the most devolved of all EU policies. Therefore, although FIFG is an EU fund, individual Member States determine to a large extent how aid is actually used. The main process for allocating and administering aid is set out in EU rules, however, as outlined in the attached flow chart. In summary, the process involves three key stages, as follows:

- *Stage One – Proposing Fisheries Development Plans* - Member States produce proposals (also know as development plans) for how the fisheries funds could be allocated. The plans should identify the specific economic, social and **environmental needs of the particular region or sector**. They should also set out the broad strategy and priorities for addressing these problems, including very general proposals on how aid would be allocated. Importantly, the plans should include '**integrated *ex ante* evaluations**' - prior evaluations of the likely impact, including environmental impacts, of the plans, whose results are to be incorporated within the final plan. The plans are to be drawn up taking into account a set of Commission guidelines (see Box 3). They are then submitted to the Commission and used as a basis for negotiation.

- *Stage Two – Adopting Final Programming Documents* - The plans are appraised by the Commission and are then used as the basis for negotiating with the Member State government or the relevant authority of the region covered by the plan (eg Cornwall). After a period of months, a final legal contract is agreed between the Commission and the Member State, and published as a Decision[4]. At a quite general level, this will define the **agreed measures to be pursued** and the broad level of **EU aid allocated to each type of project**. For example, EUR 1 million is to be allocated to ten vessel decommissioning projects, using a mixture of EU, national and private funds. The document should also say how the aid will be administered, including **monitoring and indicators** to be used in assessing the effectiveness of expenditure.

  The contract will consist either of a 'Community Support Framework' or a 'Single Programming Document', depending on the region and the amount of aid being allocated.[5]

- *Stage Three – Agreeing the Detail of Plans* - Once the programmes are agreed, Member States are left to decide how to allocate aid in each case. In the first instance, Member States need to draft programme 'complements' which state in more detail **what aid will be used for and how it will be administered**. These 'complements' also set out more detailed financing plans, as well as **strategies for publicising the aid**. The complements are agreed by Monitoring Committees attached to each programme, and are then submitted to the Commission. The Commission is not directly involved in developing the complements, although they do act as advisors on the Monitoring Committee.

Box 3: Commission Guidelines for Drafting Aid Plans

To help national and regional authorities to prepare their plans, the Commission adopted a set of broad guidelines in 1999. These identify a set of thematic priorities, including sustainable development, which should feature in programmes.

The guidelines highlight options for using the environmental potential of areas, including offering higher rates of aid for investments that prevent environmental damage, including in the area of natural resource use.

In relation to fisheries, the guidelines call for priority to be given to combating environmental problems, improving product quality and disposing of surplus or over-exploited species.

Monitoring and Reporting

In return for having a greater say in how funds can be used, Member States have responsibility for managing expenditure. In particular, they need to demonstrate that suitable structures are in place in each region or Member State to administer the funds, but also to monitor expenditure, and evaluate how effective and efficient programmes are. Each programme will have its own Monitoring Committee to oversee this work. The Committee is involved in approving specific project selection criteria, monitoring and evaluation procedures and project selection, although day to day work, including the initial selection of projects, is undertaken by working groups

[4] Under Article 249 of the EC Treaty, a decision is binding on the Member State to which it is addressed.

[5] Community Support Frameworks are used in the poorest 'Objective 1' regions that are to receive in excess of EUR 1 billion from the Structural Funds (including FIFG). They provide a broad framework for expenditure, and are subsequently fleshed out by a series of sectoral or thematic 'Operational Programmes', often also including a fisheries programme. Outside Objective 1 areas, FIFG is programmed under national Single Programming Documents.

and a secretariat. The membership of these important committees is varied but, as outlined below, should reflect a 'partnership' of relevant authorities.

In addition to these arrangements, Member States are to report annually on expenditure, although specific reporting guidelines are agreed separately[6]. There is also a requirement for more detailed evaluation of expenditure as part of the mid term review of the Structural Funds in the year 2003, as well as after the completion of the programming period in 2006 (Regulation 1260/1999).

The Role of Partners

A key area that has been strengthened relates to the requirement for Member States to engage 'partners' in the different stages of administering aid – from drafting programming documents, to financing, monitoring and evaluating expenditure. 'Partnership' here means the Commission, Member State, regional, local and other (eg environmental) authorities, the economic and social partners and other relevant organisations. Environmental authorities and non-governmental organisations are not explicitly mentioned in the legislation, though there is a requirement for Member States to take account of sustainable development and environmental integration when partnerships are formed[7].

The emphasis on partnerships provides a critical opportunity to influence decisions on the type and amount of aid that is made available to the fisheries sector throughout the new funding cycle. Indeed, if properly applied, it could have a major impact on the future direction of EU fisheries aid. The extent to which this and other environmental 'safeguards' have been applied to date is discussed in the final section of this report.

Potential project types funded by FIFG

In following the three main stages for implementing FIFG, Member States are left with considerable scope for determining the exact types of projects that will be supported and how much EU and national aid should be made available in each case. The range of potential projects is wider than ever, including 'traditional' capital investment projects such as boat building, and more innovative actions to support environmental management functions, such as the development of community based fisheries management plans or labelling initiatives.

The following outlines briefly the main types of projects that could be supported by FIFG. It is important to note that aid is unlikely to be made available for all of these project types or measures in each region or Member State. Rather, it will be up to the Member State or regional authority to decide on the combination of measures on offer in each case, depending on their specific needs. They will also be able to decide on the amount of funding attributed to each measure, based on local or national priorities. It is consequently possible for some measures to feature very highly in the list of priorities for one Member State and not at all in another.

Renewal and modernisation of the fishing fleet

Despite calls for renewal and modernisation grants to be eliminated as part of the Agenda 2000 reforms of FIFG, the Regulation (2792/1999) that was finally adopted continues to offer

[6] Article 21 Regulation 2792/1999
[7] Article 8 Regulation 1260/1999

funding for such projects. However important changes were secured to reduce the danger of aid contributing directly to increases in fishing capacity.

There are a number of ways in which this is done, most critically by strengthening the link between aid and compliance with the EU's fleet restructuring programmes, known as Multi-Annual Guidance Programmes (MAGP) (see inset). A number of general conditions are thus specified for EU fleet renewal and modernisation projects, whether or not EU aid is involved, as follows.

- Provision of adequate information on fleet capacity and fishing effort - Article 5 of the FIFG Regulation requires Member States to report each year on progress made with their MAGPs. States are also to furnish the Commission with information on the physical characteristics of fishing vessels and arrangements for monitoring fishing effort by fleet segment and by fishery.

- Member States are to submit 'permanent arrangements' for monitoring fleet renewal and modernisation, demonstrating that entries and exits from the fleet will be managed in such a way that fishing fleet capacity will not exceed the MAGP objectives. Capacity (apart from vessels less than 12 metres in length) withdrawn using *any* public funds cannot be replaced.

- Member States can ask for 'a clearly identified and quantified increase' in their capacity objectives if these increases are to improve safety, navigation, hygiene, product quality and working conditions, and as long as they do not result in increases in exploitation rates.

Box 4: Multi annual guidance programmes (1997-2001)

Since 1986, a series of Multi-annual Guidance Programmes, or MAGPs, have been adopted to manage the capacity of the EU fishing fleet. First at the EU and then the national level, fleet capacity and fishing effort targets are set for different segments of the fleet.

MAGP IV sets objectives for restructuring the EC fleet between 1997 and 2002 (Council Decision 97/413), with different targets specified for different segments of the fleet. For example:

⇒ fishing 'effort' of beam trawls targeting cod in the North Sea is to be reduced overall by 30 per cent;
⇒ fishing effort of vessels prosecuting stocks defined as 'overfished', such as swordfish in the Mediterranean, are to be cut by 20 per cent;
⇒ vessels below 12 m in length (with the exception of trawlers) can be excluded from these provisions, as long as the overall capacity of this segment stays within the targets set in previous programmes.

Member States are to apply these conditions whether or not FIFG is used. *Additional* conditions apply to the use of FIFG in support of fleet modernisation and renewal projects, as follows:

- where annual MAGP objectives have been achieved, any new power or tonnage that is publicly funded over the period 2000 to 2006 has to be compensated by the withdrawal of capacity (without using public aid) at least equal to that which is added; and

- until the end of 2001, where annual fleet objectives have not been met, Member States have to ensure that the entry of publicly funded capacity is compensated by the withdrawal of capacity that is at least 30 per cent greater.

Although there may be cases where investment in modern equipment is desirable, eg for safety reasons, the current arrangement still provides the potential for public aid to be used to increase fishing effort or capacity. The limited application of the 130 per cent rule in particular fails

adequately to address the issue of technical 'creep'[8]. This and other conditions also rely heavily on effective systems to monitor and report changes in fishing vessels and fishing capacity, despite inadequacies in national fishing registers and reporting systems.

Finally, the link between vessel building grants and the MAGP targets assumes that the existing targets are adequate. Yet, a recent Commission report (CEC, 2000b) states clearly that 'the global reductions in capacity and activity required by MAGP IV are inadequate'. It is likely that the Commission will in future wish to propose more stringent fleet reduction targets. New investments in fishing fleets are likely to make agreement on and implementation of future reduction targets all the more difficult.

Permanent cessation of fishing vessels

Despite the apparent conflict with the previous measure, aid is also made available to help reduce fishing fleet overcapacity in support of the EU's fleet reduction targets. To be eligible for aid, vessels have to be registered in the Community's fishing vessel register, and must be operational at the time. After the permanent withdrawal of a vessel, the corresponding fishing license has to be cancelled and the vessel permanently deleted from the Community register. Vessels have to be withdrawn in one of the following three ways:

- scrapping vessels – this is perhaps the best known means of reducing fishing fleet capacity, and potentially the most effective. However, the overall efficiency and environmental impact of previous scrapping schemes have been questioned (see Coffey *et al* 1998, Frost *et al* 1995). In particular, aid used to support scrapping may, indirectly, support renewal and modernisation in the sector. It can also have disproportionate impacts on smaller, less intensive, and often less economically 'efficient' aspects of the sector, even though these vessels may be socially and ecologically more desirable.

- permanent transfer to a third country - a second and more controversial option is to use aid to export vessels to third countries, whether or not by establishing joint enterprises in the third country. Particular conditions are now applied to such transfers, including the existence of 'guarantees that international law is not likely to be infringed'[9]. The third country to which the vessel is being transferred should not be a candidate for accession to the EU. The transfer should also result in a reduction of fishing effort on the resources previously exploited, unless the vessel has lost fishing possibilities under a fisheries agreement.

- permanently assigning the vessel to other, specified purposes – this, the third option for reducing capacity, offers aid for vessels to be assigned to activities other than fishing, for example, to support surveillance of fishing activities, to be placed in museums, or to be used for fisheries or marine environmental research or training.

Despite the potential opportunities and hazards identified, however, aid to support some form of permanent fleet capacity reduction is considered central to the transition to sustainable fisheries.

[8] 'Technical creep' is the term used to describe the problem of growing fishing mortality and environmental impacts associated with the modernisation of fishing fleets. One unit of new fishing tonnage or power is therefore likely to result in considerably greater fishing mortality that an old unit that is replaced.
[9] Article 7 Regulation 2792/1999

Joint enterprises

FIFG continues to fund the export of fleet capacity, including within the framework of EU fisheries agreements. Particular conditions apply to the establishment of joint enterprises, ie enterprises with one or more partners who are nationals of a third country in which a vessel is registered. Grants are limited to enterprises in which the Community partner owns between 25 and 75 per cent of the share capital. Ownership of the vessel must be handed over to the joint enterprise in the third country and the vessel must be used for the purposes specified for at least five years.

The measure effectively offers direct subsidies to support the export of EU fishing overcapacity, and in the absence of clear social and environmental safeguards. Furthermore, a 1998 report from the Court of Auditors (1998) states that earlier joint enterprise schemes 'had practically no effect on the overall fishing activity in Community waters.' There is a clear danger that the grants simply help establish privately owned profit-making businesses with no clear advantage in terms of EU regional development policies, and potentially in conflict with overseas development policies and local needs.

Small-scale coastal fishing

FIFG has traditionally been targeted most heavily at the larger fishing vessels and enterprises, due to the types of measures funded and the 'top-down' structures often put in place for the delivery of aid. A separate and modest budget line for support to small scale coastal fisheries was established in the 1990s on the request of the European Parliament but this was accessed by only seven Member States[10]. It also proved cumbersome to administer (see Coffey *et al* 1998).

The latest FIFG reforms have included small-scale coastal fishing fleets among the list of eligible measures. One-off grants of up to EUR 150,000 are available to support community led projects that aim to develop or modernise fishing activities. 'Small scale' is defined as vessels of an overall length less than 12 metres. Eligible projects include technological innovations, such as the introduction of more selective fishing techniques, or the organisation of production, processing and marketing, for example, to add value to local products. The measure is potentially important as a means of supporting collective projects, including projects to support improved environmental management in inshore areas.

Socio-economic measures

Measures of a socio-economic nature can provide an important means of supporting the restructuring of a sector. In the case of fisheries, funds are provided for early retirement schemes, compensatory payments where vessel decommissioning has resulted in unemployment, or payments to help fishermen leave the sector by retraining or diversifying their income base. Such payments can be particularly helpful as a means of buttressing fishing capacity withdrawal schemes, and to support the sometimes necessary closure of fisheries.

Individual premiums are also available to help younger fishermen enter the sector, by supporting them in becoming full or part owners of a fishing vessel.

[10] Greece, Spain, Finland, Ireland, Portugal, Sweden and Italy

Protection and development of aquatic resources, aquaculture, fishing port facilities, processing and marketing and inland fishing

A central element of FIFG aid is support offered to various types of capital investment projects, including investment in the protection and development of aquatic resources, port facilities, aquaculture installations, processing and marketing facilities, and inland fisheries. It is difficult to assess the potential environmental implications of this group of projects. It is nevertheless worth noting the potential for aid to be used in ways that are environmentally undesirable. It is also disappointing that there is no explicit measure for environmental projects, although projects to reduce environmental pollution are explicitly mentioned as being eligible.

Among the measures on offer are 'fixed or movable facilities aimed at the protection and development of aquatic resources, except restocking'. In effect, funding is offered for the installation of artificial reefs and/or buoys to mark out protected areas. A similar measure was included under the previous funding round, but take-up in many countries was limited. The exceptions were Italy and Spain where projects typically involved placing concrete artificial reefs on the seabed, often to protect Mediterranean Sea grass beds from trawling. There are questions about the environmental benefits of such projects and the new arrangements consequently include an explicit requirement that projects should not have a negative impact on the aquatic environment. They also need to be accompanied by a minimum five year scientific monitoring programme, including an evaluation of impacts on aquatic resources.

Another important development relates to the rates of funding for certain projects under this heading. Preferential rates are now offered for environmental improvement projects in the area of aquaculture, and processing and marketing facilities. For example, where investments in aquaculture seek substantially to reduce environmental impacts, a higher rate of public funding is now possible. This effectively strengthens the incentives in favour of the environment. Further improvements have also been made by linking aquacultural aid with implementation of the environmental impact assessment Directive (85/337). This is an important first step, placing the onus on developers to show that individual projects are compatible with other EU rules - so-called 'cross-compliance'.

Measures to find and promote new market outlets

In order to support improvements in marketing and processing, aid can be used to find and promote new market outlets for fishery and aquaculture products. Projects can include schemes to support 'product labelling'. Eco-labelling is not explicitly mentioned although such initiatives are likely, not least because priority is to be given to investments which *inter alia* promote products obtained using environmentally friendly methods. However, due to EU regulations, measures cannot refer to particular countries or geographical zones unless these have been 'recognised' under EU law[11].

Operations by Members of the Trade

In order to help rationalise and manage the market in fish, the Community has for some time encouraged the establishment of Producer Organisations by offering aid for an introductory

[11] Regulation 2081/92 on the protection of geographical indications and origins for agricultural products and foodstuffs

period. The new arrangements extend aid to existing POs, but require them to draw up and implement 'quality' plans in return.

Support is potentially also available for a series of 'short term' projects carried out in the collective interest. This is an innovative and potentially significant area for FIFG, offering a wide range of opportunities. In particular, projects can cover the following:

- management and control of conditions for access to certain fishing zones, quota management and management of fishing effort;
- promotion of more selective fishing gear or methods, and technical conservation measures;
- collective aquaculture facilities, including restructuring or improving aquaculture sites, collective treatment of effluent and the eradication of pathological risks of fish farming or parasites in catchment areas or coastal ecosystems;
- the collection of basic data and /or preparation of environmental management models for fisheries and aquaculture with a view to drawing up integrated management plans for coastal areas;
- access to training, and the organisation and transmission of know-how on board vessels and on land;
- design and application of systems to improve and control quality, traceability, health conditions, statistical instruments and environmental impacts; and
- the creation of added value in products.

In most cases, funding could be applied to support 'environmental' projects, potentially including projects involving fisheries management bodies or fishermen's organisations, as well as local stakeholder groups.

Temporary cessation of activities and other financial measures

Under a limited set of circumstances, compensation can be granted to fishermen and vessel owners who are required to stop fishing temporarily, for example, because of an emergency closure of a fishery, or in cases where a fisheries agreement between the EU and a third country has been suspended.

For the first time, compensation is also explicitly available to accompany the introduction of recovery plans for resources threatened with exhaustion. Recovery plans are currently being used by the Commission but can meet with considerable political resistance due to their short-term socio-economic impacts. The new rules allow compensation to be paid for a maximum of two years, with the possibility of an extension of a further year. The same approach can also be applied to processing companies seriously affected by the introduction of a recovery plan.

Finally, compensation can also be granted to fishermen and vessel owners where technical restrictions are introduced on the use of certain gear or fishing methods, such as the EU ban on large-scale drift netting[12].

[12] Regulation 894/97 laying down certain technical measures for the conservation of fishery resources, as amended by Regulation 1239/98

Innovative measures and technical assistance

Finally, Member States are expected to include provisions to support studies, pilot projects, demonstration projects, training measures and technical assistance. Pilot projects include experimental fishing and other projects designed to test the technical or financial viability of fisheries or fish production systems. Many of the types of activities previously eligible under the PESCA Community Initiative should, in principle, also be eligible under this heading, including the many areas listed above under 'Operations by members of the trade'.

Aid can also be used to support the exchange of expertise and publicity associated with the preparation, implementation, monitoring, evaluation or adjustment of aid programmes. It could thus make an important contribution to strengthening base line environmental data associated with fisheries aid, as well as supporting work on environmental monitoring and indicators.

Conclusions

The basic framework for EU fisheries aid covering the period 2000 to 2006 offers a range of funding opportunities for the fisheries sector, with an increased emphasis on non-capital grants and more scope for collective projects that could support local fisheries management and environmental initiatives. The emphasis on strategic environmental assessment of funding plans should also create the right conditions for shifting the balance of fisheries aid in favour of sustainable development.

The links between aid for vessel modernisation and compliance with fleet targets have also been strengthened, and a new link introduced between aquaculture aid and application of environmental legislation. In most areas, however, this link has not been made. This is a particular concern in the absence of suitable financial sanctions to penalise Member States if inappropriate projects are allowed to go ahead.

Despite these hazards, the devolved nature of funding means that there is still scope to influence where aid will be targeted and the specific groups that will benefit. This offers great potential for reducing the actual environmental implications of fisheries subsidies in the EU, particularly in those Member States where environment and sustainable development is high on the political agenda. There is also increased scope, due to the types of funding available, for investment in Community-led projects that actively support the development of local structures, potentially strengthening and rebuilding fisheries dependent communities in Europe. Environmental authorities and groups may prove instrumental in developing ideas on how to translate this into reality, drawing on experiences from other sectors, other funding instruments and other Member States.

This shift in the focus of funding should be supported by greater involvement of environmental groups and authorities in the process of drafting and implementing programmes, as part of the new emphasis on 'partnerships'. This is accompanied by stronger requirements for information and publicity measures, to raise awareness both of the opportunities and the hazards of fisheries aid, so that administrators can actively shift the balance of expenditure towards environmentally sensitive projects during the 2000 to 2006 programming period. The long term success of reforming EU fisheries subsidies will undoubtedly depend on better awareness of the environmental implications of certain types of aid, as well as greater participation of environmental interests in all stages of the funding cycle.

4 PRELIMINARY ANALYSIS OF EXPERIENCE UNDER FIFG (2000-2006)

The previous sections of this report have focused on the system of EU fisheries aid under the Financial Instrument for Fisheries Guidance (FIFG) spanning the period 2000-2006. They have outlined the main features of that aid, including the process of programming funds, and the potential areas where aid can be channelled. In so doing, the report has emphasised the very devolved nature of the Structural Funds, including FIFG. The implication is that the while a broad framework for aid has been agreed at EU level, the actual use of funds is crucially dependent upon decisions made by the Member States and regional authorities.

Only the early stages of the funding process have been completed and it is likely to be several months before the first aid applications are invited, received and assessed. However, many of the national and regional programming documents are now nearing completion. This means that while it is not possible to assess, ex post, how the funds have been used, it is becoming possible to evaluate the process by which the programming documents are being developed and negotiated. In particular, it is possible to make preliminary statements on the quality and impact of the set of environmental controls that exist, including the requirement for prior environmental appraisal of programmes, monitoring and indicators. It is also possible to review how far the new emphasis on partnership is being applied.

The following, final section of this report makes an early contribution to this evaluation, drawing attention to some of the good and bad practices that have emerged in proposing fisheries development plans (stage one) and adopting final programming documents (stage two) under the new FIFG funding round. It concludes by suggesting ways of improving the implementation of the funds in the short term, once the detail of programmes has been approved and project selection commences.

At the outset it should be noted that access to the draft programming documents has been very limited. Only in a small number of cases have national draft plans been made available. In effect, this means that only a partial assessment of progress has been possible, and this has largely been based on final documents adopted rather than work in progress.

Drafting fisheries plans - prior environmental appraisal

The Structural Fund rules require draft programmes to include an *ex ante* or prior environmental appraisal of the likely impacts of programmes. The environmental appraisal is to form part of a broader appraisal, reflecting economic and social impacts of the programme. Furthermore, the results of appraisals are to be integrated within the final draft programmes presented to the Commission. They should consequently provide an important contribution to ensuring the sustainability and effectiveness of aid. They also provide an early opportunity to canvas outside views, particularly among stakeholder groups, as to the needs and problems facing the fisheries sector or specific regions.

Despite these provisions, however, practice in this area appears, at early sight, to be disappointing. The environment features very low in a number of prior appraisals of FIFG programmes. In some cases, the environment is addressed but only to a very limited extent and often in relation to projects that are considered to be 'environmentally' desirable. None of the

documents reviewed included a systematic assessment or appraisal of the likely environmental impacts of the aid programme.

The problem is perhaps attributable to the fact that the environment is one of several areas to be covered by the appraisal, rather than being addressed in a free standing document as had previously been the case for Objective 1 areas. By introducing an environmental element into what is otherwise an economic analysis, the environment appears to have been ignored or, at best, given little attention.

State of environment report

Prior environmental appraisals are to be based on an analysis of the state of the environment before the aid programme commences. In this way, it is possible to identify current pressures or environmental opportunities that should be reflected in the type of projects to be supported or discouraged.

The fisheries capture, farming and processing sectors potentially have a major impact on the environment. In particular, many fishing activities take place in, or affect sensitive areas such as those designated under the EU's habitats and birds Directives[13]. They can also have direct and indirect impacts on water quality and implications for waste management.

Despite these issues, national FIFG programmes reviewed to date have tended not to include a detailed discussion of the state of the environment. Furthermore, while the lack of adequate state of environment reports and ex ante environmental appraisals can or could have been rectified early on in the process, the tendency has been for this not to happen. Thus, despite the EU's renewed commitment to sustainable development[14] and clear legal requirements under the Structural Funds, final FIFG programmes fail to give adequate consideration to the current and potential future environmental implications of fisheries aid.

Indicators

The programming documents are to include a set of indicators to support the monitoring and evaluation of expenditure, including the environmental impacts of expenditure.

In practice, a set of standard FIFG indicators has been circulated among the Member States for inclusion in fisheries programmes. The indicators are disappointing in that they generally do not relate to the environmental impacts of projects. The exception is for cases where the projects being funded are 'environmental', for example, projects to support the introduction of environmental technologies in aquaculture installations. In most cases, however, indicators simply relate to 'traditional' output indicators such as the number of projects funded, the additional tonnage of fish produced, etc. Even at the macro level, there appears to have been little or no attempt to introduce sustainability indicators to help monitor the implementation of the programme from an environmental perspective.

[13] Directive 92/43 on the conservation of natural habitats and of wild fauna and flora and Directive 79/409 on the conservation of wild birds

[14] As expressed in Article 2 of the EC Treaty

Reporting

There is a widespread acceptance, at least within the debate on fisheries subsidies and the environment, of the need for better information on the environmental impacts of aid. This applies at two levels, firstly requiring information on the amount of aid available, preferably categorised according to environmental impacts. Secondly, information is needed on the extent to which the aid is in fact contributing to or undermining environmental objectives.

Despite the need for better environmental information, the previous guidelines for reporting on the implementation of FIFG did not pay specific attention to this issue. It appears that future reporting requirements will similarly fail to address the environment, focusing instead on expenditure under the different measures, and using the associated output indicators. From this it is unlikely that ongoing or ex post environmental assessments of FIFG will be possible.

Application of the partnership approach

The new funding arrangements place additional emphasis on involving the range of partners in the funding process, from drafting programmes through to participating in the work of monitoring committees. Although the partnership does not explicitly require the involvement of *environmental* interests, there is a clear requirement for partnerships to reflect the particular needs of the region, bearing in mind environmental protection and sustainable development.

In practice, the level of engagement of environmental interests has been very variable. In many cases, there has been some dialogue with environmental non-governmental organisations although this has often been on an informal basis, or in response to requests from environmental groups. There has been rather limited consultation in the preparation of the ex ante evaluations, a factor which has undoubtedly contributed to their rather poor quality. There has also been little debate on issues such as indicators, monitoring and reporting in support of sustainable development.

There are at least two cases where more widespread consultations or discussions were held. In Spain, a seminar was organised on the question of fisheries and the environment and this is to be welcomed. However, it appears that key environmental NGOs were not invited to be present at the meeting. In Finland, a seminar was also held to discuss the aims of fisheries programme, with a large number of organisations invited to attend.

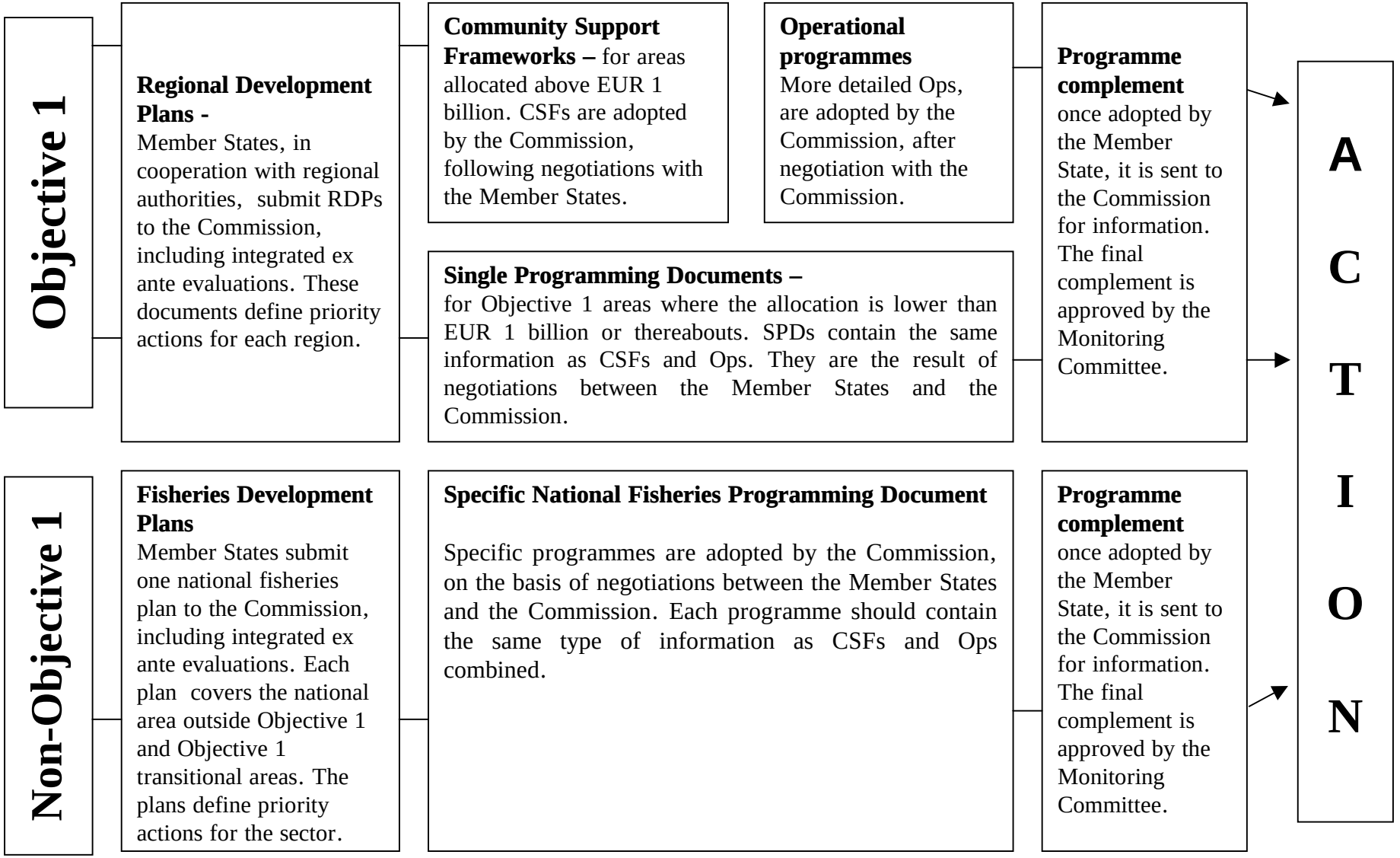
Finally, and even if it was not involved in the earlier stages of the funding process, the partnership should be fully reflected in the membership of programme monitoring committees. Again, there is some good practice emerging with environmental authorities to be included on committees in Denmark and the UK. It will be very disappointing if this pattern is not repeated in all 15 Member States and for all FIFG related programmes. In that way, it may be possible to mitigate some of the problems caused by the failure to properly undertake prior environmental appraisals of programmes. Environmental representation on these groups could also strengthen the environmental aspects of monitoring and reporting, as well as helping to raise take-up of funds for environmental projects.

Conclusions

As the final set of national FIFG funding programmes are agreed, it may be too late to correct shortcomings relating to the state of environment reports and appraisals to ensure that aid over the period 2000-2006 does not run counter to the EU's environmental objectives. But there are still important opportunities to ensure that environmental issues and opportunities are taken into account at the project level. There is also scope, in many Member States, for greater discussion with and involvement of environmental interests in deciding how FIFG is in fact spent, and at the same time maximising opportunities for funding projects to support the sector's transition to sustainable fisheries.

It will also be important that Member States are required to provide adequate information on their expenditure, so that evaluations can be undertaken *ex post* to assess environmental impacts. Where there is insufficient data to monitor and report on environmental issues, the Member States should at the very least commit themselves to future research in this area. The next opportunity for improving the application of the programme will be in 2003, as part of the mid term review of FIFG. That juncture should also be used to introduce proper environmental safeguards to FIFG, based on more rigorous environmental appraisal, monitoring, reporting and indicators.

Figure 2: FIFG - FROM REGULATION TO IMPLEMENTATION



REFERENCES

CEC (1996) Report on the Group of Independent Experts to Advise the European Commission on the fourth Generation of Multi-annual Guidance Programmes, DG Fisheries, Commission of the European Communities

CEC (1997) Summaries of Structural Interventions for Fisheries in Member States, DG Fisheries, Commission of the European Communities

CEC (1999) Ninth Annual Report on the Structural Funds, Commission of the European Communities

CEC (2000a) Eighth Survey on State Aid in the European Union, Commission of the European Communities, COM(2000)205. EurOp, Luxembourg

CEC (2000b) Preparation for a mid-term review of the Multi-annual Guidance Programmes (MAGP), Commission of the European Communities, COM(2000)272. EurOp, Luxembourg.

Coffey C & Baldock D (1998) European Funding for Fisheries Development: an environmental appraisal, IEEP/WWF. IEEP, London.

Court of Auditors (1998) Special Report No 18/98 concerning the Community measures to encourage the creation of joint enterprises in the fisheries sector accompanied by the replies of the Commission, OJ C393, 16.12.98

Frost H, Lanters R, Smit J, Sparre P (1995) An Appraisal of the Decommissioning Scheme in the Case of Denmark and the Netherlands, Danish Institute of Fisheries Economic Research, Esbjerg

IFREMER, CEMARE & CEP (2000) Evaluation of Fishing Agreements Concluded by the European Community, for Commission for the European Communities, European Contract No 97/S 240-152919

Milazzo MJ (1998) Subsidies in World Fisheries – a re-examination, World Bank Technical Paper No 406 (Fisheries Series). The World Bank, Washington DC.

New Zealand Government (2000) Subsidies in the Fisheries Sector: update on recent work conducted by New Zealand, paper to the WTO Committee on Trade and the Environment, WT/CTE/W/134. WTO web site.

Norström H & Vaughan S (1999) Trade and Environment, WTO Special Studies 4. World Trade Organisation

OECD (2000) Transition to Responsible Fisheries, Economic and Policy Implications. OECD, Paris.

Useful web addresses for further reading

European Commission, DG Fisheries	http://www.europa.eu.int/comm/dgs/fisheries
OECD, Fisheries Directorate	http://www.oecd.org/agr/fish/index.htm
FAO, Fisheries Department	http://www.fao.org/fi/default.asp
WTO, Trade and Environment	http://www.wto.org/english/tratop_e/envir_e/envir_e.htm

Openness and Transparency - the state of the debate in the European Union.

By John Palmer.

(John Palmer is Director of the European Policy Centre in Brussels. Between 1973 and 1983 and again between 1987 and 1997 he was the Brussels based European Editor of The Guardian.)

Everyone today, it seems, is a fully paid up believer in the doctrine of greater openness and transparency in decision making - at the local, regional, national and European levels. This was not always so. In the past, it was claimed that the decision making process in the European Union Council of Ministers was so closed and lacking in accountability that if the Council itself applied for EU membership, it would have to be rejected – for failing to fulfil the criteria of open governance demanded of prospective EU members.

However, what is meant by openness and transparency varies greatly between different EU member states and even between EU institutions. The battle for genuine openness and transparency in the European Union certainly has not yet been fully achieved although victory seems to be in sight.

There is no doubting the extent of change which has occurred in recent years. When, as a Brussels based journalist I first started campaigning in the 1970s for meetings of the Council of Ministers to be held in public, the official response was a mixture of bewilderment and alarm.

Two major developments lie behind moves towards greater openness since then. The first is the arrival of Sweden and Finland as EU members. The Nordic tradition of open government has had, and is still having a radical impact on the culture of governance in EU institutions.

The second development is the widespread recognition that the process of closer European integration has to be driven by a "bottom-up" rather than a "top-down" political dynamic. To quote one veteran of the long march to European unity, Jean Monnet's one time deputy, Max Kohnstamm: "The days of the benevolent conspiracy driving forward the European integration agenda are over. Further steps to closer union will have to be rooted in far greater popular understanding and support, especially from the democratic forces of European civil society."

The Amsterdam Treaty in 1997 laid down a series of general principles covering public access to meetings of the Council of Ministers and the release of documents. Unfortunately there is still an unresolved conflict between member states, between the EU institutions and between civil

society organisations and EU member states about how to interpret these openness principles. Without clear mechanisms, there is a danger that the openness process will proceed at the speed of the most reluctant member states.

In recent years the Council has allowed selected ministerial sessions to be broadcast, but the public has been bored by the ritualised delivery of speeches by ministers and the media knows that without access to the actual debate and exchanges between ministers (which are not broadcast) the public sessions are irrelevant. Meanwhile the politicians warn that further moves to greater openness will only force them to move the really important decisions "out of the conference room and into the corridors and smoked filled back rooms."

By comparison with the Council, the European Commission, and in particular the European Parliament are far more open. The Commission has laid down procedures to ensure access to all published documents or materials relating to decisions taken, although the Commission has identified a range of documents which may be withheld.

In his 1999 annual report the EU Ombudsman focuses his main criticism of the Commission on the "unnecessary and inappropriate" limitations set on inquiries into the role and performance of officials. This criticism is particularly relevant given the recent internal Commission investigations into allegations of financial impropriety and fraud.

As far as the European Parliament is concerned, MEPs, of course, have a vested interest in being seen to be on the side of the public in its battles against the "Eurocracy." The European Parliament's influence in trying to push back the frontiers of secrecy and excessive confidentiality has been strengthened by two other EU institutions - the Court of Justice and the Office of the Ombudsman.

In his report, the Ombudsman backed civil liberties organisations (including the UK-based Statewatch journal) in their demand for access to EU documents relating to internal security and policing. Meanwhile, the Court of Justice has ruled in a number of cases - including one taken by my former Guardian colleague, John Carvel - in ways that make it more difficult for the Council to blindly refuse to release background papers and other documents.

However, the Court has been faced with an interesting dilemma as a result of a test case brought by Swedish journalists who approached both the Council Secretariat and the Swedish government for an identical set of Council documents. The Council would only release a small proportion of the documents while the Swedish government was willing to hand over most of them. The issue of whose law - national or European - is superior in such a situation remains unclear.

The decision by a number of Member States to take the Council to the European Court over its decisions affecting restriction of material related to security and defence issues is a great importance. There is a real danger that, under the cover of legitimate concerns about security, that a culture of excessive secrecy will infect other parts of the EU decision making system – notably on internal security, justice and policing.

The promise by the incoming Swedish Presidency to try and establish new standards for openness and transparency is most welcome. Among the key priorities for the European Union in the years ahead is to secure the foundations of the EU more securely in democratic civil society. This will demand far greater opens and transparency than has characterised the internal institutional life of the Union to date.

John Palmer
November 20, 2000.

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FISHING IN THE DARK

A symposium sponsored by WWF and The European Policy Centre
Brussels, 28-29 November 2000

EFFECTS OF SUBSIDISED DISTANT WATER FLEETS ON THE MARINE ENVIRONMENT AND LOCAL PEOPLE IN WESTERN AFRICA

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Introduction

These last years, while adressing marine conservation problems in Western Africa, 3 major issues were generally raised by our local partners:

-Most of the distant water fleets fishing in the coastal waters of other countries do not often abide by the international standards of responsible fishing;

-The number of distant water fleets is steadily increasing in the Exclusive Economic Areas of developing countries;

-Theses fleets have tremendous ecological and economic consequences, which resulted in a crisis of fishery management.

Yet it is thanks to fishing agreements that distant water fleets have legal access to the fish resources of developing coastal countries.More important: it is thanks to subsidies that the behaviours of distant water fleets have such damaging and economic consequences.

This presentation expresses the fact that **"subsidies regimes should be reviewed and improved in order to protect marine environment and to promote the living conditions of local people".**

1) Some Views on distant water fleets and fishing agreements

During a recent survey conducted by the Cheikh Anta Diop University in Senegal (1999) on the fishing agreements between European Union and Senegal, both artisanal and industrial fishermen, fish factorymen, researchers, conservationnists, and public service technicians were asked the following question: what do you think of fishing agreements and distant water fleets ? What benefit do you derive from it?

1.1. One ***artisanal fisherman*** expressed an opinion representative of that of his peers: "*We are against fishing agreements and distant water fleets. We have few advantages but numerous disadvantages:*

i. *Foreign fleets are competing with us for the resources.*
ii. *Some foreign boats enter our fishing area by night, damaging our fishing gear and sometimes causing deadly accidents.*
iii. *Little compensation from the fishing agreements accrue to us and what is more, we can hardly get the payment provided for us in the agreements.*
iv. *Europeans are now interested in small sardines on which poor people feed in our countries; what will we feed on when they have taken everything".*

1.2. The answer of **the industrial fisherman** was:

"*Foreign fleets are competing with us for the resources and the market. Yet, they have an edge on us because of their more advanced technology and the subsidies they receive from the European union. We cannot therefore be in favour of the fishing agreements".*

1.3. The **factoryman** had an opposite view on fishing agreements. Here is his opinion:

"*The catch landing by foreign fleets keep our factory up and running. There is however a bottleneck: they usally land in our factory catches which have no outlet in the European market".*

1.4. A **conservationnist** from a local NGO said:

i. Distant water fleets destroy the fishing habitats.
ii. Some of them squander our resources by throwing back into the sea large quantities of unwanted catch.

1.5. One **researcher** asserted that:

" fishing agreements are financially beneficial. They are a source of foreign currency for most of our countries and contribute to solving their financial problems. Besides, research work into fishing is mainly supported by fishing agreements compensation fund. Putting an end to the fishing agreements or foreign fleets operations at this point and time will seriously be detrimental to fish research in our countries".

1.5. One **civil servant** expressed the most positive view on fishing agreements:
"Fishing agreements should be regarded as a management step. Part of the fishing resources which cannot be exploited by local fishermen are given to foreign fleets in exchange for financial compensation. Furthermore, the fishing agreements supply foreign currency and contribute to the training of some civil servants and researchers. They also financially support research, the operation of fishing department, investments, and provide job opportunities".

An analysis of these opinions reveals that fishing agreements are above all beneficial to governments, civil services and research institutes. These stakeholders would therefore like to have the agreements prolonged.

They are currently the only actors present at the negociations with the officials of the distant water fleets countries. Yet, we are witnessing an increasing mobilisation of civil society movements claiming better involvement in fishing agreement negociation process.

II. GOVERNANCE OF FISHERIES IN WESTERN AFRICA

2.1. Negociations of fishing agreements

Several factors place West African countries in a disadvantageous position during negociations of fishing agreements :

- These countries usually negociate on an individual basis and at different times with European Union. Each country taken alone has a negligible weight in front of the giant EU. In addition, the EU puts to good account the different negociations schedules and gains from one country what she loses to another.

- The EU has a greater command of fishing datas than the african countries.

- Since most of our countries have serious financial burdens, they take discordant steps during fishing agreements negociations. Compensation funds are even taken in consideration in the preparation of national budgets long before the signature of the agreements.

- Morever, the negociation of fishing agreement goes far beyond the fishing sector. There is a Damoclès sword hanging over the heads of developing countries negociators. There

is some disguised blackmailing: if you do not sign the agreement, your project in this or that field will not have the chance of benefiting from EU financial assistance.

One fundamental question remains: how could countries in the sub-region better manage their fish resources while deriving maximum benefit from fishing agreements. Another question relates to how to protect the interests of local fisheries especially artisanal ones.

2.2. Actions of NGOs

As underscored above, the present type of agreements are of benefit to the government, civil service and research. One key objective of WWF in general is to help develop the capacity of civil society organizations in order that they may become powerful in advocacy and lobbying capable of influencing the attitude of governments during negociations.

Some attention should also paid to fostering consultation within the Sub-Regional Fishing Commission (CSRP), between the various coastal countries and developing a common mechanism of access to fishing. We should also think of how to link up eco-labelling with fishing agreements.

Lobbying and awareness-raising activities should also be carried out so that the interests of local fisheries and especially those of artisanal ones are effectively taken into consideration in fishing agreements.

CONCLUSION

- The international fishing area should be an area where existing species are not species mainly targeted by local fishermen.

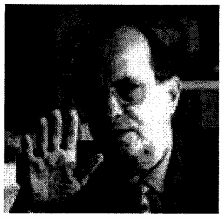
- Distant water fleets should not fish off a given coast on which artisanal fishermen depend for their subsistence.

- Special emphasis should be laid on deep-water species and other species which do not have a local market or whose exploitation requires some processing or fishing gear not locally available.

- If the quality of some species exploited by local fleets and meant for exportation negatively affect the prices, catches from this resource can therefore be shared with distant water fleets.

These 4 major recommendations cannot be implemented as long as distant water fleets are under a poor regime of subsidies.

As we share together the only earth, we want to advise strongly EU institutions “to improve fisheries subsidies regime in order to protect our marine environment and our local people depending on marine resources”.



THE EUROPEAN OMBUDSMAN

JACOB SÖDERMAN

RECOMMENDATIONS ADDRESSED TO COMMUNITY INSTITUTIONS AND BODIES BY THE EUROPEAN OMBUDSMAN

29 August 2000

From the beginning of his mandate in 1995 to 31 July 2000, the European Ombudsman has begun 920 inquiries. In 24 cases (of which 4 were own-initiative inquiries) the Ombudsman has found ongoing instances of maladministration for which no friendly solution could be reached. He therefore addressed draft recommendations to the institutions concerned. In cases in which these recommendations did not receive a satisfactorily reply the Ombudsman prepared three special reports.

CASES CLOSED FURTHER TO THE ACCEPTANCE OF THE OMBUDSMAN'S DRAFT RECOMMENDATION

46/27.7.95/FVK/B-DE

After having unsuccessfully applied for a post within the **European Environment Agency**, the complainant was not given any information regarding the reasons for her failing in the selection procedure. Given that no friendly solution could be reached, the European Ombudsman made a draft recommendation which was accepted by the European Environment Agency. It disclosed the requested information and apologised for the delay attributed to several misunderstandings.

1055/96/IJH

After conducting an inquiry into a complaint by a British journalist, the European Ombudsman made a recommendation to the **Council of the European Union**. The Council accepted the recommendation to make publicly available an up to date list of all measures it has approved in the field of Justice and Home Affairs. This list is now available on the Council's Website. The complainant welcomed the outcome and expressed his satisfaction at finally having access to information he had been requesting for seven years.

633/97/(PD)IJH

In the framework of a complaint lodged against the European Commission, the European Ombudsman addressed a draft recommendation according to which, "The Commission should keep a public register of documents it holds." The complainant considered that the failure to establish such a register would severely restrict the citizen's ability to make use of the rules on access to documents laid down in Commission Decision 94/40. The Commission accepted the Ombudsman's recommendation but put forward that for practical reasons it would need time to follow it.

489/98/OV

In the framework of a complaint against the European Commission lodged by a Commission official who was not offered a new post after a period of unpaid leave, the Ombudsman found an instance of maladministration for which no friendly solution could be found. During the reinstatement procedure, the Commission's services failed to undertake a detailed examination of the complainant's qualifications for a new post. Therefore, the Ombudsman recommended that the institution compensate the material damage suffered by the complainant. The Commission accepted the Ombudsman's recommendation and decided to award a compensation equivalent to two months salary for the damage suffered.

507/98/OV - 515/98/OV - 576/98/OV - 818/98/OV

Four candidates in a design competition organised by the European Parliament had not been notified of the results over fifteen months after the closing date. Given that the Parliament provided no explanation for this delay, the Ombudsman recommended that the institution, as a matter of good administrative behaviour, should apologise. On 16 February 2000, the Parliament followed the Ombudsman's recommendation. It acknowledged that the delay in the procedure was unacceptable and that the failure to provide the complainants with written answers to their requests made in writing amounted to unprofessional conduct on the part of the European Parliament.

398/97/(VK)GG

The Ombudsman found that the employment situation of a complainant, hired by a private company which concluded a contract with the **European Commission**, did not meet the requirements of the Commission's own Code of Conduct. The complainant alleged that he was in fact directly working for the Commission. The Ombudsman therefore recommended that the Commission should remedy the illegality of this situation and should issue the complainant with a reference for the period of time during which he worked for the Commission. On 4 April 2000 the Commission informed the

Ombudsman that a letter of reference had been issued to the complainant.

109/98/ME

The three Swedish complainants successfully participated in a competition organised by the **European Commission** to recruit temporary fishery inspectors. After their recruitment they found out that other fishery inspectors who were equally or less qualified, recruited before and after the complainants, had been placed in higher grades. Following the European Ombudsman's investigation it appeared that the complainants' posts had been advertised at lower grades by mistake. Since this is not an objective ground which could justify different treatment, there is a breach of the principle of equality of treatment and therefore an instance of maladministration. The Ombudsman recommended that the Commission remedy this situation. On 12 May 2000, the Commission accepted the Ombudsman's recommendation and declared that it would reconsider the complainants' gradings as if they had passed a competition for higher grades.

OI/1/99/IJH

In April 1999, the Ombudsman began an own-initiative inquiry into public access to documents held by four bodies which had become operational after the conclusion of his previous inquiry 616/96/(PD)IJH (see below). The European Central Bank, the Community Plant Variety Office and the European Agency for Safety and Health at Work adopted rules on public access to documents. The Ombudsman's recommendation therefore only concerned **Europol** and stipulated that rules on public access to documents, which are not already covered by existing legal provisions allowing access or requiring confidentiality, should be adopted within three months and made publicly available. Europol director, Jürgen Storbeck, informed the Ombudsman on 6 July 2000 that Europol would apply the same rules on public access to the documents it holds as the Council of Ministers.

SPECIAL REPORTS ADDRESSED TO THE EUROPEAN PARLIAMENT

616/96/(PD)IJH

An own-initiative inquiry into public access to documents held by Community institutions or bodies led the Ombudsman to send a draft recommendation to all of them. On the basis of the detailed opinions received in that inquiry, the Ombudsman decided to make a special report to the European Parliament, stressing that some institutions still had to adopt detailed rules for access to documents. He further put forward that it is one of the Parliament's tasks to control whether those rules meet the citizens' expectations of transparency. The Ombudsman stressed that it must be ensured that these rules are made public.

1004/97/(PD)GG

The Ombudsman began an own-initiative inquiry concerning the secrecy which forms part of the European Commission's recruitment procedures. He raised four major issues. Two of them were settled during the investigation - the Commission accepted to let candidates take the examination questions out of the examination room and to disclose the evaluation criteria on request. After a recommendation made by the Ombudsman, the institution also accepted to disclose the names of selection board members. Regarding the fourth issue, the candidates' access to their own marked examination scripts, the Ombudsman decided to make a special report to the European Parliament, recommending that access to their marked scripts be granted to candidates from 1 July 2000 onwards.

On 7 December 1999, the President of the European Commission, Mr Romano Prodi, welcomed the Ombudsman's recommendation and stated that the Commission would propose the necessary legal and organisational arrangements to give candidates access to their own marked examination papers, upon request, from 1 July 2000 onwards.

OI/1/98/OV

Following an own-initiative inquiry, the European Ombudsman recommended that all community institutions and bodies adopt a Code of Good Administrative Behaviour for EU officials in their relations with the public. He considers that many cases of maladministration would not have arisen if Community staff had knowledge of precise rules to be followed in their contacts with the citizens. By the beginning of April 2000, the Ombudsman had received several positive responses regarding the adoption of a Code. Seven out of ten agencies contacted have adopted the Code proposed by the Ombudsman. The European Parliament informed the Ombudsman that it had adopted a "*Guide to the obligations of officials and other servants of the European Parliament*" published on 5 April 2000, containing a section dedicated to "*Relations with the citizens*". In some other cases the elaboration of codes is in process.

On 12 April 2000, a Special Report concerning progress towards the adoption of a Code of Good Administrative Behaviour was presented by the European Ombudsman to the President of the European Parliament. The Special Report recommends that Parliament initiate the adoption of a European administrative law to ensure that officials of all the Community institutions and bodies observe the same principles of good administrative behaviour in their relations with the public.

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Fishing in the Dark

Programme

Day 1 Tuesday, 28 November

13:00 **Registration of Participants**

14:00 **Welcome and Opening Remarks**
Tony Long, Director, WWF European Policy Office
John Palmer, Director, The European Policy Centre

14:15 **Panel I - The Nature of the Problem**
Tony Long - Moderator Day 1
David Schorr, Director, WWF Endangered Seas Campaign
Fishing Subsidies: Hidden Payments, Depleted Stocks
John Farnell, Director, Directorate General Fisheries, European Commission
European Commission's Perspective of the Debate
Ronald Steenblik, Senior Policy Analyst, Organisation for Economic Co-operation and Development (OECD)
The International Information Gap

15:15 **Break**

15:30 **Panel II - Fishing in the Dark**
Tony Venables, Director, European Citizens Action Service (ECAS)
The International Transparency Debate
Carolina Lasén Diaz, Staff Lawyer, Foundation for International Environmental Law and Development (FIELD)
The Application of European 'Right to Know' Laws to Fishing Subsidies
Karen Flanders, Consultant, WWF European Policy Office
Current Efforts to Obtain Information in Europe

16:30 **General Discussion**

17:15 **Wrap-up of Day 1**

17:30 **Adjourn**

18:00 **Reception**
Featured Speaker:
Souleymane Zeba, Director, WWF West Africa Programme Office

Day 2 Wednesday, 29 November

9:00 **Towards Solutions**
David Schorr - Moderator Day 2
Recap of Day I

9:15 **Panel III - Comparing Transparency Practices**
Dag Stai, Fisheries Attaché, Norwegian Mission to the EU
Matteo Milazzo, National Marine Fisheries Service, USA
Kwame Mfodwo, Lecturer, School of Law University of Tasmania, Australia

10:30 **Break**

10:45 **Panel IV - Improving Transparency in the EU Context**
Michael Cashman, MEP, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
Proposal for a Regulation on Access to Documents
Fe Sanchis Moreno – Director, TERRA, Environmental Policy Centre
Proposal for a Directive on Access to Environmental Info/Århus Convention
Clare Coffey, Research Fellow, Institute for European Environmental Policy (IEEP)
A Call for New Structures for Participation & Monitoring in EU Structural Funds

11:45 **Going to Court** – War Stories
Dr. Georg Berrisch, LL.M. Gaedertz Law Firm
The WWF-EU case

12:15 **Explanation of Work Groups**
Participants will divide into work groups on specific topics. Rapporteurs for each group will produce a brief written report of its discussion.
Work Group 1 – Specific Information Needs Regarding Fishing Subsidies
Work Group 2 – Improving Relevant International Norms
Work Group 3 – Advancing the Issues in Other Regions
Work Group 4 – Increasing Transparency in EU Fisheries Policy

12:30 **Lunch**
Keynote Speaker:
European Ombudsman Jacob Söderman

14:00 **Working Group Sessions**

15:30 **Break**
(Rapporteurs will work over break to prepare draft reports for discussion during afternoon work group sessions)

16:00 **John Palmer,** Director, The European Policy Centre
The Unfinished Battle for Openness and Transparency

16:15 **Presentation of Working Groups Reports**
(and discussion)

17:15 **Symposium Conclusions**

17:30 **Symposium Closes**

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