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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2006
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Proposal for a

COUNCIL REGULATION

**on the conclusion of the Agreement between the European Community and the
Government of the Russian Federation on co-operation in fisheries and the conservation
of the living marine resources in the Baltic Sea**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

The European Community and the Russian Federation have negotiated and concluded on 10 - 12 July 2006 an Agreement on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea, which was initialled on 28 July 2006 by the Community and on 7 August 2006 by the Russian Federation. This Agreement shall remain in force for an initial period of six years after the date of its entry into force. It is in the interest of the Community to approve that Agreement.

The Commission proposes that the Council adopt by Regulation this new Agreement between the European Community and the Government of the Russian Federation on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea.

General context

Negotiations on a bilateral fisheries agreement between the Russian Federation and the Community date back to the time of the then Soviet Union in 1977 shortly after the extension of fisheries jurisdictions to 200NM. However, although negotiations were seriously entered into in 1988, no agreement could be reached. In 1997, the Russian Federation expressed its intention to extend the agreement to cover all its fisheries interest and was no longer interested to limit its scope to the Baltic Sea. Council agreed with this and adopted an extended mandate in March 2001.

However, in March 2004 negotiations had to be interrupted as it appeared that the Russian Federation was no longer interested in concluding an all-embracing fisheries agreement.

Following the enlargement of the European Union in May 2004, in accordance with Article 6 (12) of the 2003 Act of Accession, Estonia, Latvia, Lithuania and Poland took the necessary steps to withdraw from the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts (Gdansk Convention) either at the date of their accession or at the earliest possible date thereafter.

With the Russian Federation being responsible for only about 5% of the fishery resources of the Baltic Sea in very limited areas around Kaliningrad and St Petersburg, and with all waters in the Baltic Sea now under national jurisdiction, the Community's view was that an international Convention between two Parties was an inappropriate and disproportionate mechanism for discharging the Parties' obligations to co-operate on fisheries management. The Community therefore decided to withdraw from the Gdansk Convention and completed the relevant procedures by transmission of a Note Verbale from the Council to the Republic of Poland dated 20 December 2004. At present only Poland, which submitted its notification of withdrawal at a later moment, and the Russian Federation remain members of the International Baltic Sea Fisheries Commission (IBSFC) established by the Gdansk Convention, and Poland's membership will terminate by the end of 2006.

Instead it was considered that the fishery resources in the Baltic Sea should better be managed within the framework of a bilateral fisheries agreement between the European Community and the Russian Federation, which for the time-being should be limited to the Baltic Sea. In accordance with the Treaties of Accession, such an agreement should also integrate the existing bilateral Agreements between the Russian Federation and Estonia, Finland, Latvia, Lithuania, Poland and Sweden respectively within a single bilateral agreement.

By the end of 2004 the Russian Federation agreed to resume negotiations.

The new framework Agreement is confined to the Baltic Sea. The Russian Federation at this stage has preferred not to extend the geographical scope of the Agreement beyond the Baltic. There are nevertheless provisions in the Agreement that would allow for a possible extension in the future if this is felt to be desirable by both Parties. It would, however, require a new or amended mandate to start negotiations which could entail fishing rights for Russian vessels in Community waters outside the Baltic Sea.

The objective of the new Agreement is to ensure close co-operation between the Parties on the basis of the principle of equitable and mutual benefit for the purpose of conservation, sustainable exploitation and management of all straddling, associated and dependent stocks in the Baltic Sea. The Agreement sets out provisions on joint management measures, licensing, compliance with conservation and management measures and other fisheries regulations, control and enforcement co-operation, inspections, arrest and detention of vessels, scientific co-operation and anadromous and catadromous species. At the date of entry into force of the Agreement, it will supersede the existing bilateral fisheries Agreements between Member States and the Russian Federation.

To achieve the objectives of the Agreement, the Parties shall establish a Joint Baltic Sea Fisheries Committee, which shall meet at least once a year.

Existing provisions in the area of the proposal

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Gdansk Convention will cease to be applied on 1 January 2007. The new Agreement will replace the Gdansk Convention and will also supersede the existing bilateral fisheries Agreements between Member States and the Russian Federation.

According to Article 1 of the Gdansk Convention, the Parties should cooperate closely with a view to preserving and increasing the living resources of the Baltic Sea and the Belts and obtaining the optimum yield, and, in particular to expanding and coordinating studies towards these ends.

Furthermore, according to Article 9 of the Gdansk Convention, the duty of the IBSFC was to coordinate the management of the living resources in the Convention area by collecting, aggregating, analysing and disseminating statistical data, for example concerning catch, fishing effort, and other information.

The impact of the new Agreement will be to maintain this close co-operation between the Community and the Russian Federation, on the basis of the principle of equitable and mutual benefit for the purpose of conservation, sustainable exploitation and management of all straddling, associated and dependent stocks in the Baltic Sea.

In this context the new Joint Baltic Sea Fisheries Committee will become an important forum as regards the annual request for scientific advice on the status of fish stocks in the Baltic Sea and advice on fisheries management from the Community and the Russian Federation to the International Council for the Exploration of the Sea (ICES). This task was previously undertaken by the IBSFC.

It is not foreseen that the Agreement will entail changes in the current structure of the Community fleet in the Baltic Sea or on the way shared stocks are managed. Changes are also not foreseen in the Community share of the contribution to be paid to ICES for the request for scientific advice, currently 90,04% of the annual amount.

3) **LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The objective of the present proposal is to provide the legal basis to allow for the conclusion of the Agreement between the European Community and the Government of the Russian Federation on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea.

- **Legal basis**

Article 37 of the EC Treaty in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The proposal concerns the conclusion of an international agreement.

Not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The proposal concerns the conclusion of an international agreement.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

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on the conclusion of the Agreement between the European Community and the Government of the Russian Federation on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

Whereas:

- (1) The Community and the Government of the Russian Federation have negotiated and initialled an Agreement on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea.
- (2) The Agreement provides for a close co-operation between the Parties on the basis of the principle of equitable and mutual benefit for the purpose of conservation, sustainable exploitation and management of any straddling, associated and dependent stocks in the Baltic Sea.
- (3) It is in the interest of the Community to approve that Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Agreement between the European Community and the Government of the Russian Federation on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

¹ Opinion delivered on [date] (not yet published in the Official Journal)

Article 2

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in order to bind the Community.

Article 3

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

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

Done at Brussels,

*For the Council
The President*

ANNEX

Agreement between the European Community and the Government of the Russian Federation on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea

THE EUROPEAN COMMUNITY and THE GOVERNMENT OF THE RUSSIAN FEDERATION, hereinafter referred to as the “Parties”

NOTING that the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts (Gdansk Convention) of 1973 will cease to be applied on 1 January 2007;

RECOGNIZING that following the accession of Sweden and Finland to the Community on 1 January 1995 and Estonia, Latvia, Lithuania and Poland on 1 May 2004, elements of the fisheries agreements pertaining to maritime fisheries in the Baltic Sea concluded respectively by the Governments of the Republic of Latvia, the Kingdom of Sweden, the Republic of Finland, the Republic of Estonia, the Republic of Poland and the Republic of Lithuania with the Government of the Russian Federation are now managed by the Community;

RECOGNIZING the necessity to replace these fisheries agreements, insofar as they concern the maritime fisheries in the Baltic Sea, and the Gdansk Convention of 1973, with a new agreement between the European Community and the Government of the Russian Federation;

AFFIRMING their common desire to ensure the conservation and long-term sustainable management and exploitation of the fish stocks in the Baltic Sea;

GUIDED by the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 December 1995;

GUIDED by the Agreement on partnership and co-operation establishing a partnership between the European Community and its Member States, of the one part, and the Russian Federation, of the other part of 24 June 1994, hereinafter referred to as the “PCA”, and with a common desire to intensifying these relations;

TAKING INTO ACCOUNT the Code of Conduct for Responsible Fisheries adopted by the Council of the Food and Agriculture Organisation of the United Nations at the FAO Conference in 1995;

TAKING INTO ACCOUNT the Johannesburg Declaration on Sustainable Development adopted by the World Summit on Sustainable Development in September 2002;

CONSIDERING that some of the living marine resources of the Baltic Sea consists of straddling stocks migrating between the Exclusive Economic Zones of the two Parties and

associated and dependent stocks, and that an effective conservation and sustainable exploitation of these stocks can therefore only be achieved through co-operation between the Parties in fisheries management as well as through control and enforcement;

RECOGNISING that the Parties are committed to developing an ecosystem based approach to fisheries management based on the best available scientific advice and based on respecting the duties of the coastal State to ensure proper conservation and management measures for the maintenance of the living resources in the Exclusive Economic Zone in accordance with the United Nations Convention of the Law of the Sea of 10 December 1982;

DESIROUS to continue their co-operation in the framework of the appropriate international fisheries organisations for the purpose of the joint conservation, sustainable exploitation and management of all relevant fishery resources and confirming the intention of the Parties to continue to develop the principles enshrined in the Gdansk Convention;

RECOGNISING the importance of scientific research for the conservation, sustainable exploitation and management of fishery resources, in particular within the context of the International Council for the Exploration of the Sea (ICES) and desirous to promote further co-operation in this field;

HAVE AGREED AS FOLLOWS:

Article 1

Use of terms

For the purpose of this Agreement:

- (a) "Exclusive Economic Zone of the Parties" means Exclusive Economic Zone of the Russian Federation and the Exclusive Economic Zones of the Member States of the European Community, respectively;
- (b) "territorial sea of the Parties" means the territorial sea of the Russian Federation and the territorial sea of the Member States of the European Community, respectively;
- (c) "living marine resources" means available living marine species, including anadromous and catadromous species;
- (d) "fishing vessels of the Parties" means fishing vessels flying the flag of the Russian Federation and fishing vessels flying the flag of Member States of the European Community, respectively, equipped for the commercial fisheries exploitation of living marine resources;
- (e) "sustainable exploitation" means the exploitation of a stock in such a way that the future exploitation of the stock will not be prejudiced and that it does not have a negative impact on the marine eco-systems;
- (f) "straddling stocks" means any stock of fish that migrates regularly across the delimitations of Exclusive Economic Zones of the Parties in the Baltic Sea;

(g) "fishing effort" means the product of the capacity and the activity of a fishing vessel; for a group of vessels it is the sum of the fishing effort of all vessels in the group;

(h) "precautionary approach to fisheries management" means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment.

Article 2

Geographical area to which the Agreement applies

The geographical area to which this Agreement applies, hereinafter referred to as "the Baltic Sea", means all waters of the Baltic Sea and the Belts, excluding internal waters, bounded in the west by a line as from Hasenore Head to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to the Kullen.

Article 3

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the Russian Federation.

Article 4

Objectives

1. The objective of this Agreement is to ensure a close co-operation between the Parties on the basis of the principle of equitable and mutual benefit for the purpose of conservation, sustainable exploitation and management of any straddling, associated and dependent stocks in the Baltic Sea.
2. The Agreement lays down the principles and procedures relating to the close co-operation between the Parties with the purpose of ensuring that the exploitation of the straddling, associated and dependent stocks in the Baltic Sea provides sustainable economic, environmental and social conditions.
3. The Parties shall base their co-operation on the best scientific advice available and on any other relevant data, shall apply the precautionary approach and shall agree to develop an eco-system based approach to fisheries management.

Article 5

Joint management measures

1. Each Party may, on the basis of the principle of mutual benefit and in compliance with its own legislation, allow fishing vessels of the other Party to fish within the Exclusive Economic Zone of this Party in the Baltic Sea.
2. The Parties may exchange quotas in the Baltic Sea on a reciprocal basis.
3. To achieve the objectives of this Agreement the Parties shall establish measures governing the exploitation of the straddling stocks in the Baltic Sea, while taking into account associated and dependent species. The measures may include, *inter alia*:
 - a) Total allowable catches (TACs) for the straddling stocks and groups of straddling stocks as well as allocations between the Parties. The allocations shall be based on the historical distribution of fishing possibilities taking into account the need to have a more stock specific management as advised by ICES;
 - b) Long-term management plans for the fisheries on straddling stocks;
 - c) Limitation of fishing effort; and
 - d) Technical measures.
4. The implementation of the provisions of paragraphs 1, 2 and 3 of this Article shall be dealt with in a Joint Baltic Sea Fisheries Committee referred to in Article 14 of this Agreement.

Article 6

Autonomous management measures by the Parties

1. Each Party shall establish total allowable catches and long-term management plans for non-straddling stocks in the Baltic Sea, while taking into account associated and dependent species.
2. If, in the framework of the Joint Baltic Sea Fisheries Committee referred to in Article 14 of this Agreement, it has not been possible to agree on appropriate management measures to be recommended to their respective authorities, the Parties shall establish autonomous measures in order to ensure that the objectives as set out in Article 4 of this Agreement are achieved on the management of the exploitation and conservation of living marine resources of the Baltic Sea, while taking into account associated and dependent species.
3. Measures taken pursuant to paragraph 2 of this Article shall be based on objective scientific criteria and shall not discriminate in fact or in law against the other Party.

4. In addition to recommendations on measures adopted by the Joint Baltic Sea Fisheries Committee each Party may establish such conservation and management measures as it deems necessary to achieve the objectives as set out in Article 4 of this Agreement.

5. The measures to regulate fisheries taken by each Party within its Exclusive Economic Zone and its territorial sea for the purpose of conservation shall be based on objective and scientific criteria, while taking into account associated and dependent species, and shall not discriminate in fact or in law against the other Party.

Article 7

Licensing

1. Each Party shall require that fishing in specified areas of its Exclusive Economic Zone in the Baltic Sea by fishing vessels of the other Party shall be subject to licence (permit).

2. The competent authority of each Party shall communicate in due time to the other Party the name, registration number, and other relevant particulars of the fishing vessels which shall be eligible to fish within the specified areas of the Exclusive Economic Zone of the other Party in the Baltic Sea.

3. The implementation of the conditions for the licensing shall be in accordance with recommendations adopted by the Joint Baltic Sea Fisheries Committee as referred to in Article 14 of this Agreement.

4. Upon receiving the licence (permit) application, each Party shall, in compliance with its applicable legislation, issue the license (permit) required for fishing within specified areas of its Exclusive Economic Zone in the Baltic Sea.

Article 8

Compliance with conservation and management measures as well as other fisheries regulations

1. Each Party shall, in accordance with its own laws, regulations and administrative rules, take the necessary steps to ensure the observance by their fishing vessels of rules and regulations established in law by the other Party for the exploitation of fishery resources in the Exclusive Economic Zone of that other Party in the Baltic Sea.

2. Each Party may, in respect of its Exclusive Economic Zone in the Baltic Sea and in accordance with applicable legislation and international law, take such measures as may be necessary to ensure compliance with the provisions of this Agreement by the fishing vessels of the other Party.

3. Each Party shall notify the other Party, in advance and in the appropriate manner, of regulations and measures for regulating fishing as well as of any amendments to those regulations and measures.

4. Each Party shall take such measures as may be necessary to ensure compliance with the provisions of this Agreement within its Exclusive Economic Zone and within its territorial sea.

Article 9

Control and enforcement co-operation

The Parties shall co-operate on control and enforcement in the Baltic Sea. To this end, the Parties agree to establish a plan for the exchange of control and enforcement strategies.

Article 10

Inspections

Each Party shall agree to inspections on its fishing vessels carried out by the competent bodies of the other Party responsible for fishing operations in its Exclusive Economic Zone in the Baltic Sea. Each Party shall facilitate such inspections for the purpose of monitoring the observance of the regulatory measures and regulations referred to in Article 8 of this Agreement.

Article 11

Arrest and detention of vessels

1. The competent bodies of each Party shall, in case of arrest or detention of fishing vessels of the other Party, promptly notify the competent bodies of that Party through diplomatic channels or other official channels of the action taken and any penalties subsequently imposed.

2. The competent bodies of each Party shall promptly release fishing vessels and crews which are arrested upon the posting of reasonable amount of bail or other security by the ship owner or his representative, determined in accordance with applicable legislation of the Russian Federation and the Member States of the European Community.

Article 12

Scientific co-operation

1. The Parties shall request ICES to provide scientific advice for straddling, associated and dependent stocks in the Baltic Sea in order to provide the basis for the adoption of joint management measures for these stocks.

2. The Parties undertake within the framework of ICES to co-operate in the conduct of the scientific research of relevance to this Agreement.

3. The Parties shall encourage co-operation amongst scientists and experts concerning fisheries issues of reciprocal interest including in the fields of aquaculture.

Article 13

Anadromous and catadromous species

1. The Parties shall co-operate for the purpose of the conservation of anadromous and catadromous species in accordance with the United Nations Convention on the Law of the Sea, in the framework of this Agreement and relevant international arrangements, in order to promote the conservation, restoration, enhancement and rational management of these stocks in the Baltic Sea.
2. Notwithstanding the geographical area of application of the Agreement defined in Article 2 of this Agreement, the Parties may agree to extend cooperation on the management of anadromous and catadromous species, but excluding such species which live their entire life cycle in internal waters.

Article 14

Joint Baltic Sea Fisheries Committee

1. To achieve the objectives of this Agreement, the Parties shall establish a Joint Baltic Sea Fisheries Committee (hereafter referred to as the Committee).
2. Each Party shall appoint its representative and assistant representative to the Committee and inform the other Party through official channels thereof.
3. The Committee shall consider all issues pertaining to the scope and application of this Agreement and provide recommendations to the Parties.
4. The Committee shall, in particular:
 - a) Examine the development and dynamics of the straddling, associated and dependent stocks in the Baltic Sea and the fisheries exploiting them;
 - b) Supervise the implementation, interpretation and smooth operation of the Agreement, in particular on the provisions on control, enforcement and inspection;
 - c) Ensure the necessary liaison concerning matters of common interest relating to fisheries;
 - d) Serve as a forum for the amicable resolution of disputes which might arise regarding the interpretation or application of this Agreement.
5. The Committee shall meet, as agreed by the Parties, at least once a year, alternately in the territory of each Party with a view to recommending to the respective authorities for the relevant fisheries and stocks in the Baltic Sea measures as laid down in Article 5 of this Agreement. The Committee shall meet in extraordinary session at the request of either of the Parties.

6. The Committee shall, where appropriate, establish additional bodies to fulfil its functions.
7. The Committee shall adopt its own rules of procedure at the first meeting.

Article 15

Consultations between the Parties

The Parties shall consult on questions relating to the implementation and proper functioning of this Agreement, or in the event of a dispute concerning the interpretation or application thereof.

Article 16

International co-operation

The Parties shall co-operate within the framework of relevant international organisations on management and conservation matters of mutual interest, which may be considered by such international organisations.

Article 17

Saving clause

1. Nothing contained in this Agreement shall affect or prejudice in any manner the positions or the views of either Party with respect to their rights or obligations under international fisheries agreements and the positions or the views with respect to any question relating to the Law of the Sea.
2. This Agreement is without prejudice to the delimitation of the Exclusive Economic Zones of the Parties.

Article 18

Entry into force

1. This Agreement shall be applied provisionally from the date of signature and shall enter into force from the date of receiving the last written notification that all internal procedures required for its coming into force, have been fulfilled by the Parties.
2. At the date of entry into force of the Agreement, insofar as the following agreements concern maritime fisheries in the Baltic Sea, the Agreement shall supersede the fisheries agreements concluded between the Government of the Republic of Latvia and the Government of the Russian Federation signed on 21 July 1992, between the Government of the Kingdom of Sweden and the Government of the Russian Federation signed on 11 December 1992, between the Government of the Republic of Finland and the Government of the Russian Federation signed on 11 March 1994, between the Government of the Republic of

Estonia and the Government of the Russian Federation signed on 4 May 1994, between the Government of the Republic of Poland and the Government of the Russian Federation signed on 5 July 1995, and between the Government of the Republic of Lithuania and the Government of the Russian Federation signed on 29 June 1999.

Article 19

Duration of the Agreement

This Agreement shall remain in force for an initial period of six years after the date of its entry into force. In the event of the Agreement not being terminated by either Party through notice of termination given at least nine months before the expiry of that period, it shall remain in force for additional periods of three years duration thereafter, provided that notice of termination has not been given at least nine months before the expiry of any such period.

Article 20

Languages

Done at Brussels / Moscow on 2006 in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Russian, Slovakian, Slovenian, Spanish and Swedish languages, all texts being equally authentic. In case of dispute the English and Russian texts of this Agreement shall be determinative.