

Invasive Alien Species Briefing Note – Derogations

EU fight against invasive alien species is at risk: Derogations would significantly undermine a protective system against invasive species

Invasive Alien Species (IAS) cause significant damage to biodiversity, ecosystem services, human health and the economy. In the EU alone, the costs are estimated to be at least €12 billion annually. Such species are by nature a global problem that no single country can solve on its own; increased cooperation and effective measures adopted by all affected countries are needed. The proposed IAS Regulation therefore represents a vital step in addressing this problem in the EU, which is expected to be further exacerbated by climate change, habitat destruction and increased global trade and travel.

A responsive and robust system to tackle the impacts of IAS necessitates the introduction and enforcement of bans on the deliberate release or introduction of IAS into the environment. The IAS Regulation should not be watered down by introducing amendments, which would allow Member States or commercial activities to apply for derogations from bans, or any other obligations of the Regulation, for species recognised as being of EU concern. This could undermine the entire purpose of the Regulation.

There seems to be a general agreement among Member States that there is a need for an efficient system at EU level to combat IAS¹. **However, some proposals** in the Council Working Party on the Environment (WPE) and in the Parliament **have taken a decidedly unambitious approach** to this problem; an approach that promotes the use of derogations rather than ensuring an efficient fight against invasive species, and which will undermine the effectiveness of the system. **Any attempts to make this legislation ineffective through the introduction of derogations should therefore be strongly resisted.**

Proposals for derogations include:

- **National derogations** for invasive alien species of Union concern on the basis of non-invasiveness of a species in parts of EU territory, and excessive costs and disproportionality;
- Derogations from general bans, **authorising certain commercial activities** involving invasive alien species of Union concern (e.g. animal farming and fur production) (extension of Article 8);
- **Derogation** from the **obligation to remove newly established populations at the earliest stage of invasion** (as proposed by the Commission in Article 16)

National derogations for invasive alien species of Union concern

The IAS Regulation proposal does not sufficiently recognise the problem of **species that are native to one part of the EU**, but invasive in other parts (e.g. Zebra mussel (*Dreissena polymorpha*), Pontic rhododendron (*Rhododendron ponticum*)). In some cases this would also require a coordinated EU action due to the significance of their impacts on biodiversity, ecosystem services, human health and economy, involving both Member States where the species is native and Member States where it is alien and invasive. When such species are of Union concern they should be included in the list of species for which strict measures of the Regulation apply, including restrictions. In this case, a system allowing Member States to apply for derogations for species native in their territory would not be necessary. Instead, this could be addressed in the process of drafting the list by specifying those Member States where such species are native and where, therefore, measures such as bans, action plans, border controls and surveillance would not apply. Member States, where species of Union concern are native would nevertheless need to take precautions through cooperative action to try to prevent the spread of those species into new areas.

¹ Press release of the Environment Council meeting, 13 December 2013:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/140090.pdf

Proposals have been made enabling Member States to apply for derogations from the Regulation's obligations, where evidence indicates that an established species is: **not invasive** in their territory **or incapable of causing significant negative impacts on biodiversity, ecosystem services, human health or the economy**; or where measures taken would result in **disproportionate costs**. Examples include species that allegedly do not cause significant problems when their distribution is constrained by climate, like the Water hyacinth (*Eichhornia crassipes*), or when they occur in small numbers, like the Monk Parakeet (*Myiopsitta monachus*). Such derogations would, due to the nature of the IAS problem, lead to a system where increased efforts of some Member States – both human and financial resources – would be undermined by inaction of those Member States granted a derogation. The increased travel, trade, and tourism associated with free movement in EU internal market have facilitated intentional and unintentional movement of species beyond barriers, where they would be considered non-invasive or too expensive to tackle. As such, derogations regarding these activities could further contribute to the spread of IAS in Europe.

It should also be noted that risk assessments are unlikely to be able to predict with certainty in *all cases* whether a species is incapable of causing significant impacts on biodiversity or ecosystem services, human health or the economy, as they are based on an estimate of the likelihood of invasiveness. Such certainty would require extensive knowledge of various aspects of invasion over a long time period, including a full understanding of the species, its evolutionary tactics and of the implications of commercial activities involving the species, and sufficiently robust monitoring systems. Risk assessments also have to contend with the considerable time lag shown by many species between introduction and invasion, and the effects of climate change.

In addition, when it comes to derogations on the basis of excessive and disproportionate costs, one cannot disregard the experience of similar derogations in other fields of environmental law. The implementation of the Water Framework Directive (WFD), for example, is fundamentally undermined and its objectives threatened by the widespread use of exemptions and the ability of Member States to postpone measures on the basis of them being 'disproportionately expensive'.

Member States should **not be allowed to derogate** from action on **species that have been found** – in accordance with the procedures laid out in the IAS Regulation – **to be of Union concern**, and **require EU level action** to prevent their further introduction, establishment and spread. This would undermine a protective system designed to benefit all Member States. A system with no derogations would also ensure consistency across all Member States, which would support the single market, as well as providing legal certainty and clarity for the public and businesses.

Authorising certain commercial activities involving invasive alien species of Union concern

Similar arguments hold true for derogations from general bans that would authorise certain commercial activities involving IAS of Union concern (e.g. animal farming, fur production and horticulture). These derogations are being proposed by a few Member States to protect their industry, via extension of Article 8 of the proposed IAS Regulation (i.e. through permitting). In the past, species such as American mink (*Neovison vison*), raccoon dogs (*Nyctereutes procyonoides*) and coypu (*Myocastor coypus*), have escaped² or have been deliberately released³ from fur farms and have made their way into the environment, even reaching offshore islands, where they have caused considerable damage to protected native fauna and flora. All three of these species are listed in the 100 worst IAS on the DAISIE database. If they are listed under the EU IAS Regulation as species of Union concern, but commercial entities are allowed to continue using them, this would be a serious oversight. The restrictions contained in the Regulation should apply to *all* activities for *all* species defined as being of Union concern. The environmental and economic costs for EU as a whole caused by releases of IAS from commercial activities far outweigh the economic benefits they might generate.

² A Danish study estimated 80% of free-ranging mink captured were fur farm escapees. See Hammershøj, M. *et al.* (2005). *Journal for Nature Conservation* 13: 267-274.

³ For example, 6000 mink were released from fur farms in the Netherlands by animal rights activists in 2003. See Reynolds J.C., Short M.J. & Leigh R.J. (2004). *Biological Conservation*, 120, 533-543. It should be noted that such releases are rare and such illegal activities are deemed counterproductive and highly irresponsible by animal protection organisations, mainly due to their negative impact on biodiversity.

Derogation from the obligation to remove populations in the earliest stages of invasion (Article 16)

One of the Guiding Principles for tackling IAS under the Convention on Biological Diversity states, *where it is feasible, eradication is often the best course of action to deal with the introduction and establishment of invasive alien species. The best opportunity for eradicating invasive alien species is in the early stages of invasion, when populations are small and localised*⁴. Upon detection, **removing the populations in the early stages of invasion should be a priority**, since removal, done in a proper and humane way, benefits all Member States and is the most cost-effective approach if a species has already been introduced. In the case of animals, it also impacts on fewer individuals than longer-term controls.

However, the proposed Regulation currently introduces in the part referring to ‘early detection and eradication’ (Chapter III of the IAS Regulation) the possibility of derogation from the obligation to eradicate in these early stages of invasion when certain conditions are met (e.g. on technical or economical grounds). Several invasions in the EU have resulted from very small initial populations (e.g. Asian hornet (*Vespa velutina*)), which could have been successfully and cost-effectively addressed through early stage removal.

Member States may be concerned that they would be forced to eradicate even when it might not be feasible or viable to do so. It should be noted, however, that these would be the early stages of invasion, when eradication in principle should still be possible. The derogation from that obligation cannot be sought on theoretical grounds only, and as **removal of the population is widely known to be the most effective approach, it should at least be attempted** in the early stages of invasion. Given that Member States will be dealing with the early stages of invasion of IAS, it will in any case be very difficult to judge whether or not the invasion in question meets the conditions for a derogation from the obligation to eradicate. Furthermore, applying for derogation in the earliest stages of invasion could consume precious time and resources that should otherwise be spent in efforts to eradicate.

Technical feasibility and economical considerations (such as cost-benefit analyses) need to be taken into account when designing management measures, which can also include eradication, for widely spread or well-established species (as defined by Article 17 of the proposed IAS Regulation). Scientific advice provided in the framework of the IAS Regulation implementation would be best placed to define with precision when a population is in the early stages of invasion (and, therefore, removable) and when it is established (and therefore, not removable), but there should be no undefined space between those concepts. In the absence of evidence, any small population must be assumed to be in the early stages of invasion, and removal must be attempted.

The new proposal on IAS represents a unique opportunity to take decisive action on one of the main biodiversity conservation challenges. Member States and the Parliament should use this opportunity to steer it in the direction emphasising prevention, which is the most effective solution, both in economic and ecological terms, and an animal welfare friendly approach to controlling invasive species, with the same rules applied to *all* species considered to be of Union concern in *all* Member States.

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⁴ Convention on Biological Diversity (2002). *Guiding principles for the prevention, introduction and mitigation of impacts of alien species that threaten ecosystems, habitats or species*. UNEP/CBD/COP/6/20