

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COUNCIL REGULATION (EC) No 1224/2009

of 20 November 2009

**establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Having regard to the opinion of the European Data Protection Supervisor <sup>(4)</sup>,

Whereas:

(1) The objective of the common fisheries policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy <sup>(5)</sup>, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

<sup>(1)</sup> Opinion of 22 April 2009 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 15 May 2009 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 211, 4.9.2009, p. 73.

<sup>(4)</sup> OJ C 151, 3.7.2009, p. 11.

<sup>(5)</sup> OJ L 358, 31.12.2002, p. 59.

(2) Given that the success of the common fisheries policy involves implementing an effective system of control, the measures provided for in this Regulation seek to establish a Community system for control, inspection, and enforcement with a global and integrated approach in accordance with the principle of proportionality, so as to ensure compliance with all the rules of the common fisheries policy in order to provide for the sustainable exploitation of living aquatic resources by covering all aspects of this policy.

(3) The experience gained in the application of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy <sup>(6)</sup> has shown that the current control system no longer suffices to ensure compliance with the rules of the common fisheries policy.

(4) Currently control provisions are contained in a wide number of overlapping and complex legal texts. Some parts of the control system are poorly implemented by Member States which results in insufficient and divergent measures in response to infringements of the rules of the common fisheries policy thereby undermining the creation of a level playing field for fishermen across the Community. Accordingly the existing regime and all the obligations therein should be consolidated, rationalised and simplified, in particular through reduction of double regulation and administrative burdens.

<sup>(6)</sup> OJ L 261, 20.10.1993, p. 1.

- (5) In view of the scale of the depletion of marine aquatic resources, it is vital for the Community to adopt the necessary measures to develop a culture of compliance among all operators with the rules of the common fisheries policy, and with the objectives set out by the World Summit on Sustainable Development in 2002 as well as the European Council's Sustainable Development Strategy. To achieve this aim, the rules for control, inspection, and enforcement of conservation as well as resource management measures, structural measures and measures on the common organisation of the market should be reinforced, harmonised and strengthened.
- (6) Given that Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing <sup>(1)</sup>, obliges the Member States to take appropriate measures to ensure the effectiveness of the fight against all illegal, unreported and unregulated (IUU) fishing and associated activities and given that Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters <sup>(2)</sup> establishes provisions on authorisations for Community fishing vessels to engage in fishing activities outside Community waters and on authorisations for third country fishing vessels to engage in fishing activities in Community waters, this Regulation should be complementary to these Regulations and ensure that there is no discrimination between Member States' and third country nationals.
- (7) This Regulation should affect neither special provisions contained in international agreements or applicable in the framework of regional fisheries management organisations nor any national control provisions which fall within the scope of this Regulation but go beyond its minimum provisions, provided that such national provisions are in conformity with Community law.
- (8) Modern technologies, such as the vessel monitoring system, the vessel detection system and the automatic identification system, should be exploited since they allow effective monitoring, systematic and automated cross-checks in a rapid manner, and facilitate the administrative procedures for both the national authorities and the operators and thus allow timely risk analyses and global assessments of all relevant control information. The control system should therefore allow Member States to combine the use of the various control instruments to ensure the most efficient method of control.
- (9) A new, common approach to fisheries control should be introduced that includes comprehensive monitoring of catches, with a view to ensuring a level playing field for the fishing sector that takes into account the differences across the segments of the fleet. To this end common criteria for the implementation of fisheries control and in particular standardised and coordinated inspection procedures at sea, on land and throughout the market chain should be established. As part of the new approach the respective responsibilities of the Member States, the Commission and the Community Fisheries Control Agency should be clarified.
- (10) Management of fishery resources at Community level is based in particular on total allowable catches (TACs), quotas, effort regimes and technical measures. Appropriate steps should be taken to ensure that Member States adopt the necessary measures to implement these management measures in an effective manner.
- (11) Control activities and methods should be based on risk management using cross-checking procedures in a systematic and comprehensive way by Member States. It is also necessary for Member States to exchange relevant information.
- (12) Cooperation and coordination between Member States, the Commission and the Community Fisheries Control Agency should be intensified in order to promote compliance with the rules of the common fisheries policy.
- (13) To ensure that fishing activities are only undertaken in line with the rules of the common fisheries policy such activities should be subject to a fishing licence and, when specific conditions apply, to a fishing authorisation. Also rules on the marking and identification of fishing vessels and their gear should apply.
- (14) To ensure an effective control, Member States should operate a vessel monitoring system and fishing vessels of 12 metres' length overall or more should be equipped with a device allowing Member States to automatically locate and identify those vessels. Furthermore fishing vessels should be equipped with an automatic identification system in accordance with Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system <sup>(3)</sup>, and Member States should use the data of such a system for cross-checking purposes.

<sup>(1)</sup> OJ L 286, 29.10.2008, p. 1.

<sup>(2)</sup> OJ L 286, 29.10.2008, p. 33.

<sup>(3)</sup> OJ L 208, 5.8.2002, p. 10.

- (15) Cooperation among Community agencies and among authorities of Member States should be strengthened. For this purpose, it should be possible to transmit data from the vessel monitoring system, automatic identification system and the vessel detection system to Community agencies and competent authorities of Member States engaged in surveillance operations for the purpose of maritime safety and security, border control, protection of the marine environment and general law enforcement.
- (16) It should be for the Council to decide on the future use of electronic monitoring devices and traceability tools such as genetic analysis and other fisheries control technologies if these technologies lead to an improved compliance with rules of the common fisheries policy in a cost effective way.
- (17) Member States should monitor the activities of their fishing vessels in and outside Community waters. To facilitate effective monitoring masters of Community fishing vessels of 10 metres' length overall or more should be obliged to keep a fishing logbook and submit landing and transhipment declarations. In order to make use of modern technologies, for fishing vessels of 12 metres' length overall or more, the fishing logbook should be in electronic form and the landing and transhipment declarations should be submitted electronically.
- (18) The information contained in the fishing logbooks of fishing vessels should be verified at the time of landing. Accordingly, those involved in the landing and marketing of fish and fishery products should be required to declare the quantities landed, transhipped, offered for sale or purchased.
- (19) For small fishing vessels of less than 10 metres' length overall an obligation to keep a fishing logbook or to complete a landing declaration would constitute a disproportionate burden in relation to their fishing capacity. In order to ensure an adequate level of control over such vessels, Member States should monitor their activities by the implementation of a sampling plan.
- (20) Transhipments at sea escape any proper control by flag or coastal states and therefore constitute a possible way for operators to carry illegal catch. To improve controls, transhipment operations in the Community should be authorised only in designated ports.
- (21) The Member States' authorities should be able to monitor landings in their ports. To that end fishing vessels engaged in fisheries on stocks subject to a multiannual plan that are under the obligation to record fishing logbook data electronically should be required to pre-notify those authorities of their intention to land in their ports. Member States should be allowed to deny access if the required information is not complete.
- (22) Since the management of fishing resources is based on fishing opportunities it should be ensured that catches and deployed effort are correctly recorded and that the catches and deployed effort are charged against the quotas and effort allocations of the flag Member State. Fisheries should be closed if the available quota or effort allocation have been exhausted.
- (23) In view of the capacity requirements in the Community fishing fleet as contained in Article 13 of Regulation (EC) No 2371/2002, Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets registered in the Community outermost regions <sup>(1)</sup>, Commission Regulation (EC) No 1438/2003 of 12 August 2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002 <sup>(2)</sup> and Commission Regulation (EC) No 2104/2004 of 9 December 2004 laying down detailed implementation rules for Council Regulation (EC) No 639/2004 <sup>(3)</sup>, instruments should be introduced for the control of the fleet capacity which should include the monitoring of the engine power and of the use of fishing gear. For that reason Member States should take measures to ensure that the total capacity of the fishing licences does not exceed the maximum capacity levels and ensure that the propulsion engine power of fishing vessels does not exceed the certified engine power of those vessels. Member States should for this purpose certify the propulsion engine power of fishing vessels whose propulsion engine power exceeds 120 kW and also verify on the basis of a sampling plan the consistency of engine power with other available information.
- (24) Particular measures should apply in case of multiannual plans as a particular form to protect the concerned stocks. Transhipments of catches of stocks subject to a multiannual plan should be allowed only in designated ports and only if these catches have been weighed.
- (25) Special provisions should be foreseen that only allowed gears are used and that lost gear is retrieved.
- (26) Special rules should apply to fishing restricted areas. The procedure for the establishment and lifting of real time closures for fishing grounds should be clearly established.

<sup>(1)</sup> OJ L 102, 7.4.2004, p. 9.

<sup>(2)</sup> OJ L 204, 13.8.2003, p. 21.

<sup>(3)</sup> OJ L 365, 10.12.2004, p. 19.

- (27) As recreational fisheries can have a significant impact on fish resources, Member States should ensure that they are conducted in a manner compatible with the objectives of the common fisheries policy. For stocks under a recovery plan Member States should collect catch data of recreational fisheries. Where such fisheries have a significant impact on the resources, the Council should have the possibility to decide on specific management measures.
- (28) In order to establish a comprehensive control regime, the whole chain of production and marketing should be covered by such a regime. It should include a coherent traceability system complementing the provisions contained in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety <sup>(1)</sup>, and an enhanced control of producer organisations. It should also protect the interests of consumers by providing the information concerning the commercial designation, the production method and the catch area at each stage of the marketing as contained in Commission Regulation (EC) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products <sup>(2)</sup>. It should ensure the monitoring of producer organisations in accordance with Commission Regulation (EC) No 2508/2000 of 15 November 2000 laying down the detailed rules for the application of Council Regulation (EC) No 104/2000 as regards operational programmes in the fisheries sector <sup>(3)</sup>.
- (29) To ensure that all catches are properly controlled Member States should ensure that all fisheries products are first marketed or registered at an auction centre or to registered buyers or to producer organisations. As the exact weight of catches needs to be known to follow the utilisation of quotas, Member States should ensure that all fisheries products are weighed unless sampling plans based on a common methodology are in place.
- (30) In order to follow the way of the catch and to be able to verify their coherence with catch data, registered buyers, registered auctions or other bodies or persons authorised by Member States should submit sales notes. If they have an annual turnover in first sales of fisheries products of more than EUR 200 000 the sales notes should be transmitted electronically.
- (31) In order to ensure compliance with Community conservation and trade measures, steps should be taken to require all fishery products for which neither a sales note nor a take-over declaration has been submitted and which are transported to a place other than that of landing to be accompanied by a transport document identifying their nature, origin and weight unless a transport document has been transmitted electronically before the transport.
- (32) Member States should carry out regular checks on producer organisations to ensure that they meet the legal requirements. They should also carry out checks regarding the price and intervention arrangements.
- (33) Member States should carry out surveillance in Community waters and take the necessary measures if a sighting or detection does not correspond to the information available to them.
- (34) The concept and the tasks of control observers should be clearly established for future control observer schemes. At the same time rules should also be established on the conduct of inspections.
- (35) For the consistent and effective prosecution of infringements, provision should be made to enable inspection and surveillance reports drawn up by Commission officials, Community inspectors and officials of Member States to be used in the same way as national reports. At the same time Member States should set up an electronic database providing the inspection and surveillance reports of their officials.
- (36) To enhance a common level of control in Community waters a list of Community inspectors should be established and their tasks and competences should be clarified. For the same reason inspections of fishing vessels outside the waters of the inspecting Member State should be possible under certain conditions.
- (37) In the case of an infringement it should be ensured that the appropriate measures are taken and that the infringement can effectively be followed up irrespective of where it occurs. In certain cases of serious infringements there should be an enhanced follow-up to enable immediate investigation. In this respect Member States should also be obliged to take appropriate measures where an infringement has been discovered by a Community inspector. Under certain conditions it should be possible to transfer the proceedings to the flag Member State or the Member State of which the offender holds the citizenship.

<sup>(1)</sup> OJ L 31, 1.2.2002, p. 1.

<sup>(2)</sup> OJ L 278, 23.10.2001, p. 6.

<sup>(3)</sup> OJ L 289, 16.11.2000, p. 8.

- (38) Nationals of Member States should be deterred from committing infringements of the rules of the common fisheries policy. Since action taken following infringements of those rules differs widely from one Member State to another, thereby causing discrimination and unfair competition rules for fishermen and given that the absence of dissuasive, proportionate and effective sanctions in certain Member States reduces the effectiveness of controls, it is appropriate to introduce administrative sanctions in combination with a point system for serious infringements to provide a real deterrent.
- (39) The persistence of a high number of serious infringements of the rules of the common fisheries policy within Community waters or by Community operators is to a large extent attributable to the non-deterrent level of sanctions for serious infringements of those rules laid down in national legislation. That weakness is compounded by the wide discrepancy in the levels of sanctions between Member States, which encourages illegal operators to operate in waters or within the territory of the Member States where the sanctions are lowest. It is therefore appropriate to complement the maximum levels of sanctions for serious infringements of the rules of the common fisheries policy as laid down in Article 44 of Regulation (EC) No 1005/2008 with dissuasive sanctions, taking into account the nature of the damage, value of the fishery products obtained by committing the serious infringement, the economic situation of the offender and any repetition of an infringement. Immediate enforcement measures and complementary measures should also be laid down.
- (40) The establishment of sanctions should be complemented by a point system for serious infringements on the basis of which a fishing licence should be suspended if a certain number of points have been attributed to the holder of a fishing licence following the imposition of sanctions for serious infringements. If the fishing licences have been suspended five times on the basis of this system and again the number of points are attributed the fishing licence should be withdrawn altogether. In this context Member States should enter in a national register all infringements of the rules of the common fisheries policy.
- (41) To ensure the achievement of the objectives of the common fisheries policy the Commission should be able to take effective corrective measures. To this end the management capacity of the Commission and its capacity to intervene in a manner proportionate to the level of non-compliance by a Member State should be strengthened. The Commission should be empowered to undertake inspections without prior notice and in an independent way, so as to verify the control operations carried out by the competent authorities of Member States.
- (42) For the purposes of protecting the Community financial interest and securing the overriding interest in the conservation of fisheries resources, the financial assistance in the framework of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund <sup>(1)</sup> and Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of Sea <sup>(2)</sup> should be made conditional upon compliance by Member States with their obligations in the fields of fisheries control and thus suspension and cancellation of such financial assistance should be foreseen in cases of an inadequate implementation of the rules of common fisheries policy by Member States which affects the effectiveness of the measures being financed.
- (43) Powers should be conferred to the Commission to close a fishery when the quota of a Member State or a TAC itself is exhausted. The Commission should also be empowered to deduct quotas and effort allocations to ensure the limitation of fishing opportunities are fully complied with. The Commission should also have the capacity to take emergency measures if there is evidence that fishing activities or measures of a Member State undermine the conservation and management measures of management plans or threaten the marine eco-system.
- (44) The exchange of data in electronic form with other Member States and the Commission or the body designated by it should be ensured. The Commission or the body designated by it should be in a position to access directly the fisheries data of Member States to enable it to verify that Member States comply with their obligations and to intervene where inconsistencies are identified.
- (45) For a better communication the competent authorities of Member States should set up websites with general information available on a publicly accessible part and operational information on a secure part of the website. It should also be ensured that the competent authorities of Member States for the implementation of this Regulation cooperate with each other, the Commission, the body designated by the Commission and the competent authorities of third countries.
- (46) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>. All measures adopted by the Commission to implement this Regulation should comply with the proportionality principle.

<sup>(1)</sup> OJ L 223, 15.8.2006, p. 1.

<sup>(2)</sup> OJ L 160, 14.6.2006, p. 1.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

(47) The mandate of the Community Fisheries Control Agency should be adjusted and extended to support the uniform implementation of the control system of the common fisheries policy, to ensure the organisation of operational cooperation, to provide assistance to Member States and to enable it to set up an emergency unit where a serious risk to the common fisheries policy is identified. It should also be enabled to provide itself with the necessary equipment to carry out joint deployment plans and to cooperate in the implementation of the EU Integrated Maritime Policy.

(48) Data collected and exchanged in the framework of this Regulation should be treated in accordance with applicable rules on confidentiality. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup> should apply to the processing of personal data activities carried out by the Member States when applying this Regulation. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 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 <sup>(2)</sup> should govern the processing of personal data activities carried out by the Commission in the application of this Regulation.

(49) In order to bring the Community legislation in line with this Regulation certain Regulations pertaining to control provisions should be amended.

(50) As this Regulation will establish a new, comprehensive control regime, Regulation (EEC) No 2847/93, Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits <sup>(3)</sup>, and Council Regulation (EC) No 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing <sup>(4)</sup> should be repealed.

(51) In order to provide the Member States with the necessary time to adapt to some of the new obligations laid down in this Regulation, it is convenient to defer the applicability of certain provisions to a later date,

HAS ADOPTED THIS REGULATION:

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(3)</sup> OJ L 171, 6.7.1994, p. 7.

<sup>(4)</sup> OJ L 408, 30.12.2006, p. 1.

## TITLE I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter

This Regulation establishes a Community system for control, inspection and enforcement (hereinafter referred to as Community control system) to ensure compliance with the rules of the common fisheries policy.

#### Article 2

##### Scope

1. This Regulation shall apply to all activities covered by the common fisheries policy carried out on the territory of Member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag Member State, by nationals of Member States.

2. Activities within maritime waters of the overseas territories and countries referred to in Annex II of the Treaty shall be treated as taking place within maritime waters of third countries.

#### Article 3

##### Relationship with international and national provisions

1. This Regulation shall apply without prejudice to special provisions contained in fisheries agreements concluded between the Community and third countries or applicable in the framework of regional fisheries management organisations or similar agreements to which the Community is a Contracting Party or a non-contracting Cooperating Party.

2. This Regulation shall apply without prejudice to any national control measures which go beyond its minimum requirements, provided that they comply with Community legislation and are in conformity with the common fisheries policy. At the request of the Commission, Member States shall notify those control measures.

#### Article 4

##### Definitions

For the purposes of this Regulation, the definitions set out in Regulation (EC) No 2371/2002 shall apply. The following definitions shall also apply:

1. 'fishing activity' means searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fisheries products;

2. 'rules of the common fisheries policy' means Community legislation on the conservation, management and exploitation of living aquatic resources, on aquaculture and on processing, transport and marketing of fisheries and aquaculture products;
3. 'control' means monitoring and surveillance;
4. 'inspection' means any check which is carried out by officials regarding compliance with the rules of the common fisheries policy and which is noted in an inspection report;
5. 'surveillance' means the observation of fishing activities on the basis of sightings by inspection vessels or official aircrafts and technical detection and identification methods;
6. 'official' means a person authorised by a national authority, the Commission or the Community Fisheries Control Agency to carry out an inspection;
7. 'Community inspectors' means officials of a Member State or of the Commission or the body designated by it, whose names are contained in the list established in accordance with Article 79;
8. 'control observer' means a person authorised by a national authority to observe the implementation of the rules of the common fisheries policy;
9. 'fishing licence' means an official document conferring on its holder the right, as determined by national rules, to use a certain fishing capacity for the commercial exploitation of living aquatic resources. It contains minimum requirements concerning the identification, technical characteristics and fitting out of a Community fishing vessel;
10. 'fishing authorisation' means a fishing authorisation issued in respect of a Community fishing vessel in addition to its fishing licence, entitling it to carry out specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;
11. 'automatic identification system' means an autonomous and continuous vessel identification and monitoring system which provides means for ships to electronically exchange with other nearby ships and authorities ashore ship data including identification, position, course and speed;
12. 'vessel monitoring system data' means data on the fishing vessel identification, geographical position, date, time, course and speed transmitted by satellite-tracking devices installed on board fishing vessels to the fisheries monitoring centre of the flag Member State;
13. 'vessel detection system' means a satellite based remote sensing technology which can identify vessels and detect their positions at sea;
14. 'fishing restricted area' means any marine area under the jurisdiction of a Member State which has been defined by the Council and where fishing activities are either limited or banned;
15. 'fisheries monitoring centre' means an operational centre established by a flag Member State and equipped with computer hardware and software enabling automatic data reception, processing and electronic data transmission;
16. 'transhipment' means the unloading of all or any fisheries or aquaculture products on board a vessel to another vessel;
17. 'risk' means the likelihood of an event that may occur and would constitute a violation of the rules of the common fisheries policy;
18. 'risk management' means the systematic identification of risks and the implementation of all measures necessary for limiting the occurrence of these risks. This includes activities such as collecting data and information, analysing and assessing risks, preparing and taking action, and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies;
19. 'operator' means the natural or legal person who operates or holds any undertaking carrying out any of the activities related to any stage of production, processing, marketing, distribution and retail chains of fisheries and aquaculture products;
20. 'lot' means a quantity of fisheries and aquaculture products of a given species of the same presentation and coming from the same relevant geographical area and the same fishing vessel, or group of fishing vessels, or the same aquaculture production unit;
21. 'processing' means the process by which the presentation was prepared. It includes filleting, packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other manner;
22. 'landing' means the initial unloading of any quantity of fisheries products from on board a fishing vessel to land;
23. 'retail' means the handling and/or processing of products of living aquatic resources and their storage at the point of sale or delivery to the final consumer, and includes distribution;

24. 'multiannual plans' means recovery plans as referred to in Article 5 of Regulation (EC) No 2371/2002, management plans as referred to in Article 6 of Regulation (EC) No 2371/2002 as well as other Community provisions adopted on the basis of Article 37 of the Treaty and providing for specific management measures for particular fish stocks for several years;
25. 'coastal State' means the State in the waters under the sovereignty or jurisdiction or in the ports of which an activity takes place;
26. 'enforcement' means any actions taken to ensure compliance with the rules of the common fisheries policy;
27. 'certified engine power' means the maximum continuous engine power which can be obtained at the output flange of an engine according to the certificate issued by the Member State's authorities or classification societies or other operators assigned by them;
28. 'recreational fisheries' means non-commercial fishing activities exploiting marine living aquatic resources for recreation, tourism or sport;
29. 'relocation' means fishing operations where the catch or part thereof is transferred or moved from shared fishing gear to a vessel or from a fishing vessel's hold or its fishing gear to a keep net, container or cage outside the vessel in which the live catch is kept until landing;
30. 'relevant geographical area' means a sea area that is considered as a unit for the purposes of geographical classification in fisheries expressed by reference to a FAO sub-area, division or sub-division, or where applicable an ICES statistical rectangle, fishing effort zone, economic zone or area bounded by geographical coordinates;
31. 'fishing vessel' means any vessel equipped for commercial exploitation of living aquatic resources;
32. 'fishing opportunity' means a quantified legal entitlement to fish, expressed in terms of catches and/or fishing effort.

## TITLE II

## GENERAL PRINCIPLES

## Article 5

## General principles

1. Member States shall control the activities carried out by any natural or legal person within the scope of the common fisheries policy on their territory and within waters under their sovereignty or jurisdiction, in particular fishing activities, transshipments, transfer of fish to cages or aquaculture installations including fattening installations, landing, import, transport, processing, marketing and storage of fisheries and aquaculture products.

2. Member States shall also control access to waters and resources and control activities outside Community waters carried out by Community fishing vessels flying their flag and, without prejudice to the primary responsibility of the flag Member State, by their nationals.

3. Member States shall adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement of activities carried out within the scope of the common fisheries policy. They shall make available to their competent authorities and officials all adequate means to enable them to carry out their tasks.

4. Each Member State shall ensure that control, inspection and enforcement are carried out on a non-discriminatory basis as regards sectors, vessels or persons, and on the basis of risk management.

5. In each Member State, a single authority shall coordinate the control activities of all national control authorities. It shall also be responsible for coordinating the collection, treatment and certification of information on fishing activities and for reporting to, cooperating with and ensuring the transmission of information to the Commission, the Community Fisheries Control Agency established in accordance with Regulation (EC) No 768/2005 <sup>(1)</sup>, other Member States and, where appropriate, third countries.

6. In accordance with the procedure laid down in Article 103, the payment of contributions from the European Fisheries Fund pursuant to Regulation (EC) No 1198/2006 and of Community financial contributions to measures referred to in Article 8(a) of Regulation (EC) No 861/2006 shall be conditional upon respect by the Member States of their obligation to ensure compliance with and enforcement of the rules of the common fisheries policy related to, or having an impact on the effectiveness of, the measures being financed, and to operate and maintain an effective control, inspection and enforcement system to this effect.

7. In accordance with their respective responsibilities, the Commission and the Member States shall ensure that the objectives of this Regulation are fulfilled in the management and control of Community financial assistance.

## TITLE III

## GENERAL CONDITIONS FOR ACCESS TO WATERS AND RESOURCES

## Article 6

## Fishing licence

1. A Community fishing vessel may be used for commercial exploitation of living aquatic resources only if it has a valid fishing licence.

<sup>(1)</sup> OJ L 128, 21.5.2005, p. 1.

2. The flag Member State shall ensure that the information contained in the fishing licence is accurate and consistent with that contained in the Community fishing fleet register referred to in Article 15 of Regulation (EC) No 2371/2002.

3. The flag Member State shall suspend temporarily the fishing licence of a vessel which is subject to temporary immobilisation decided by that Member State or which has had its fishing authorisation suspended in accordance with Article 45(4) of Regulation (EC) No 1005/2008.

4. The flag Member State shall withdraw permanently the fishing licence of a vessel which is the subject of a capacity adjustment measure referred to in Article 11(3) of Regulation (EC) No 2371/2002, or which has had its fishing authorisation withdrawn in accordance with Article 45(4) of Regulation (EC) No 1005/2008.

5. The flag Member State shall issue, manage and withdraw the fishing licence in accordance with the detailed rules adopted in accordance with the procedure referred to in Article 119.

#### Article 7

##### Fishing authorisation

1. A Community fishing vessel operating in Community waters shall be authorised to carry out specific fishing activities only insofar as they are indicated in a valid fishing authorisation when the fisheries or fishing zones where the activities are authorised are subject to:

- (a) a fishing effort regime;
- (b) a multiannual plan;
- (c) a fishing restricted area;
- (d) fishing for scientific purposes;
- (e) other cases laid down in Community legislation.

2. Where a Member State has a specific national fishing authorisation scheme, it shall send to the Commission at its request a summary of the information contained in the authorisation issued and the related aggregated figures on fishing effort.

3. Where the flag Member State has adopted national provisions in the form of a national fishing authorisation scheme for the allocation to individual vessels of the fishing opportunities available to it, it shall send to the Commission at its request information on the fishing vessels authorised to engage in a fishing activity in a given fishery, in particular concerning the external identification number, the name of the fishing vessels concerned, and the individual fishing opportunities allocated to them.

4. A fishing authorisation shall not be issued if the fishing vessel concerned does not have a fishing licence obtained in accordance with Article 6 or if its fishing licence has been suspended or withdrawn. A fishing authorisation shall be automatically withdrawn where the fishing licence corresponding to the vessel has been withdrawn permanently. It shall be suspended where the fishing licence has been suspended temporarily.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

#### Article 8

##### Marking of the fishing gear

1. The master of a fishing vessel shall respect conditions and restrictions relating to the marking and identification of fishing vessels and their gear.

2. Detailed rules for the marking and identification of fishing vessels and their gear shall be adopted in accordance with the procedure referred to in Article 119.

#### Article 9

##### Vessel monitoring system

1. Member States shall operate a satellite-based vessel monitoring system for effective monitoring of fishing activities of the fishing vessels flying their flag wherever those vessels may be and of fishing activities in the Member States' waters.

2. Without prejudice to specific provisions contained in multiannual plans, a fishing vessel of 12 metres' length overall or more shall have installed on board a fully functioning device which allows that vessel to be automatically located and identified through the vessel monitoring system by transmitting position data at regular intervals. It shall also allow the fisheries monitoring centre of the flag Member State to poll the fishing vessel. For fishing vessels of 12 metres' length overall or more and less than 15 metres' length overall this Article shall apply as from 1 January 2012.

3. When a fishing vessel is in the waters of another Member State, the flag Member State shall make available the vessel monitoring system data of that vessel by automatic transmission to the fisheries monitoring centre of the coastal Member States. The vessel monitoring system data shall also be made available upon request to the Member State in whose ports a fishing vessel is likely to land its catches or in the waters of which the fishing vessel is likely to continue its fishing activities.

4. If a Community fishing vessel operates in the waters of a third country or in areas of the high sea where the fishing resources are managed by an international organisation and, if the agreement with that third country or the applicable rules of that international organisation so provide, those data shall also be made available to that country or organisation.

5. A Member State may exempt Community fishing vessels of less than 15 metres' length overall flying its flag from the requirement to be fitted with a vessel monitoring system if they:

- (a) operate exclusively within the territorial seas of the flag Member State; or

(b) never spend more than 24 hours at sea from the time of departure to the return to port.

6. Third country fishing vessels of 12 metres' length overall or more and third country auxiliary fishing vessels engaged in activities ancillary to fishing activities operating in Community waters shall have installed on board a fully functioning device which allows such a vessel to be automatically located and identified by the vessel monitoring system by transmitting position data at regular intervals in the same way as Community fishing vessels.

7. Member States shall establish and operate fisheries monitoring centres, which shall monitor fishing activities and fishing effort. The fisheries monitoring centre of a particular Member State shall monitor the fishing vessels flying its flag, whatever the waters in which they are operating or the port they are in, as well as Community fishing vessels flying the flag of other Member States and fishing vessels of third countries to which a vessel monitoring system applies operating in the waters under the sovereignty or the jurisdiction of that particular Member State.

8. Each flag Member State shall appoint the competent authorities responsible for the fisheries monitoring centre and shall take the appropriate measures to ensure that its fisheries monitoring centre has the proper staffing resources and is equipped with computer hardware and software enabling automatic data processing and electronic data transmission. Member States shall provide for back-up and recovery procedures in case of system failure. Member States may operate a joint fisheries monitoring centre.

9. A Member State may oblige or authorise any fishing vessels flying its flag to be fitted with a vessel monitoring system.

10. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

#### Article 10

##### Automatic identification system

1. In accordance with Annex II Part I point 3 of the Directive 2002/59/EC, a fishing vessel exceeding 15 metres' length overall shall be fitted with and maintain in operation an automatic identification system which meets the performance standards drawn up by the International Maritime Organisation according to chapter V, Regulation 19, section 2.4.5 of the 1974 SOLAS Convention.

2. Paragraph 1 shall apply:

(a) as from 31 May 2014 to Community fishing vessels of 15 metres' length overall or more and less than 18 metres' length overall;

(b) as from 31 May 2013 to Community fishing vessels of 18 metres' length overall or more and less than 24 metres' length overall;

(c) as from 31 May 2012 to Community fishing vessels of 24 metres' length overall or more and less than 45 metres' length overall.

3. Member States may use the automatic identification system data when such data are available for the purpose of cross-checking with other available data in accordance with Articles 109 and 110. For that purpose Member States shall ensure that data from the automatic identification system for fishing vessels flying their flag are available to their national fisheries control authorities.

#### Article 11

##### Vessel detection system

Where Member States have clear evidence of a cost benefit in relation to the traditional control means in the detection of fishing vessels, they shall use a vessel detection system allowing them to match the positions derived by remotely sensed images sent to earth by satellites or other equivalent systems with the data received by vessel monitoring system or automatic identification system, in order to assess the presence of fishing vessels in the area. Member States shall ensure that their fisheries monitoring centres possess the technical capacity to use a vessel detection system.

#### Article 12

##### Transmission of data for surveillance operations

Data from the vessel monitoring system, the automatic identification system and the vessel detection system collected in the framework of this Regulation may be transmitted to Community agencies and competent authorities of the Member States engaged in surveillance operations for the purpose of maritime safety and security, border control, protection of the marine environment and general law enforcement.

#### Article 13

##### New technologies

1. The Council may decide on the basis of Article 37 of the Treaty on the obligation to use electronic monitoring devices and traceability tools such as genetic analysis. In order to assess the technology to be used, Member States, on their own initiative or in cooperation with the Commission or the body designated by it, shall carry out pilot projects on traceability tools such as genetic analysis before 1 June 2013.

2. The Council may decide on the basis of Article 37 of the Treaty on the introduction of other new fisheries control technologies when these technologies lead to improved compliance with the rules of the common fisheries policy in a cost-effective way.

TITLE IV  
CONTROL OF FISHERIES

CHAPTER I

*Control of the use of fishing opportunities*

Section 1

**General provisions**

*Article 14*

**Completion and submission of the fishing logbook**

1. Without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels of 10 metres' length overall or more shall keep a fishing logbook of their operations, indicating specifically all quantities of each species caught and kept on board above 50 kg of live-weight equivalent.

2. The fishing logbook referred to in paragraph 1 shall contain in particular the following information:

- (a) the external identification number and the name of the fishing vessel;
- (b) the FAO alpha-3 code of each species and the relevant geographical area in which the catches were taken;
- (c) the date of catches;
- (d) the date of departure from and of arrival to port, and the duration of the fishing trip;
- (e) the type of gear, mesh size and dimension;
- (f) the estimated quantities of each species in kilograms live weight or, where appropriate, the number of individuals;
- (g) the number of fishing operations.

3. The permitted margin of tolerance in estimates recorded in the fishing logbook of the quantities in kilograms of fish retained on board shall be 10 % for all species.

4. Masters of Community fishing vessels shall also record in their fishing logbook all estimated discards above 50 kg of live-weight equivalent in volume for any species.

5. In fisheries subject to a Community regime of fishing effort, masters of Community fishing vessels shall record and account in their fishing logbooks for the time spent in an area as follows:

- (a) with regard to towed gear:
  - (i) entry into, and exit from the port located in that area;
  - (ii) each entry into, and exit from maritime areas where specific rules on access to waters and resources apply;

- (iii) the catch retained on board by species in kilograms live weight at the time of exit from that area or before entry into a port located in that area;

- (b) with regard to static gear:

- (i) entry into, and exit from the port located in that area;
- (ii) each entry into, and exit from maritime areas where specific rules on access to waters and resources apply;
- (iii) the date and time of setting or re-setting of the static gear in these areas;
- (iv) the date and time of the completion of fishing operations using the static gear;
- (v) the catch retained on board by species in kilograms live weight at the time of exit from that area or before entry into a port located in that area.

6. Masters of Community fishing vessels shall submit the fishing logbook information as soon as possible and not later than 48 hours after landing:

- (a) to their flag Member State; and
- (b) if the landing has taken place in a port of another Member State, to the competent authorities of the port Member State concerned.

7. To convert stored or processed fish weight into live fish weight, masters of Community fishing vessels shall apply the conversion factor established in accordance with the procedure referred to in Article 119.

8. Masters of third country fishing vessels operating in Community waters shall record the information referred to in this Article in the same way as masters of Community fishing vessels.

9. The accuracy of the data recorded in the fishing logbook shall be the responsibility of the master.

10. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*Article 15*

**Electronic completion and transmission of fishing logbook data**

1. Masters of Community fishing vessels of 12 metres' length overall or more shall record by electronic means the information referred to in Article 14, and shall send it by electronic means to the competent authority of the flag Member State at least once a day.

2. Masters of Community fishing vessels of 12 metres' length overall or more shall send the information referred to in Article 14 at the request of the competent authority of the flag Member State, and shall in any event transmit the relevant fishing logbook data after the last fishing operation has been completed and before entering port.

3. Paragraph 1 shall apply:

(a) as from 1 January 2012 to Community fishing vessels of 12 metres' length overall or more and less than 15 metres' length overall;

(b) as from 1 July 2011 to Community fishing vessels of 15 metres' length overall or more and less than 24 metres' length overall; and

(c) as from 1 January 2010 to Community fishing vessels of 24 metres' length overall or more.

4. A Member State may exempt masters of Community fishing vessels of less than 15 metres' length overall flying its flag from paragraph 1 if they:

(a) operate exclusively within the territorial seas of the flag Member State; or

(b) never spend more than 24 hours at sea from the time of departure to the return to port.

5. Masters of Community fishing vessels that electronically record and report data on their fishing activities shall be exempt from the obligation to complete a paper fishing logbook, a landing declaration and a transhipment declaration.

6. Member States may conclude bilateral agreements on the use of electronic reporting systems on vessels flying their flags within the waters under their sovereignty or jurisdiction. The vessels falling within the scope of such agreements shall be exempt from completing a paper fishing logbook within those waters.

7. A Member State may oblige or authorise masters of fishing vessels flying its flag as of 1 January 2010 to electronically record and transmit the data referred to in Article 14.

8. The competent authorities of a coastal Member State shall accept electronic reports received from the flag Member State containing the data from fishing vessels referred to in paragraphs 1 and 2.

9. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

#### Article 16

### Fishing vessels not subject to fishing logbook requirements

1. Each Member State shall monitor, on the basis of sampling, the activities of fishing vessels which are not subject to the requirements specified in Articles 14 and 15 in order to ensure compliance by these vessels with the rules of the common fisheries policy.

2. For the purposes of the monitoring referred to in paragraph 1, each Member State shall establish a sampling plan based on the methodology adopted by the Commission in accordance with the procedure referred to in Article 119 and transmit it every year by 31 January to the Commission indicating the methods used for the establishment of this plan. The sampling plans shall be, as far as possible, stable over time and standardised within relevant geographical areas.

3. Member States requiring fishing vessels of less than 10 metres' length overall flying their flag to submit fishing logbooks referred to in Article 14, in accordance with their national law, shall be exempted from the obligation laid down in paragraphs 1 and 2 of this Article.

4. By way of derogation from paragraphs 1 and 2 of this Article, sales notes submitted in accordance with Articles 62 and 63 shall be accepted as an alternative measure to sampling plans.

#### Article 17

### Prior notification

1. Masters of Community fishing vessels of 12 metres' length overall or more engaged in fisheries on stocks subject to a multi-annual plan, which are under the obligation to record fishing logbook data electronically in accordance with Article 15, shall notify the competent authorities of their flag Member State at least four hours before the estimated time of arrival at port of the following information:

(a) the external identification number and the name of the fishing vessel;

(b) the name of the port of destination and the purposes of the call, such as landing, transhipment or access to services;

(c) the dates of the fishing trip and the relevant geographical areas in which the catches were taken;

(d) the estimated date and time of arrival at port;

(e) the quantities of each species recorded in the fishing logbook;

(f) the quantities of each species to be landed or transhipped.

2. When a Community fishing vessel intends to enter a port in a Member State other than the flag Member State, the competent authorities of the flag Member State shall immediately upon receipt forward the electronic prior notification to the competent authorities of the coastal Member State.

3. The competent authorities of the coastal Member State may give permission to an earlier entry at port.

4. The electronic fishing logbook data referred to in Article 15 and the electronic prior notification may be sent in a single electronic transmission.

5. The accuracy of the data recorded in the electronic prior notification shall be the responsibility of the master.

6. The Commission, in accordance with the procedure referred to in Article 119, may exempt certain categories of fishing vessels from the obligation set out in paragraph 1 for a limited period, which may be renewed, or make provision for another notification period taking into account, inter alia, the type of fisheries products, the distance between the fishing grounds, landing places and ports where the vessels in question are registered.

#### Article 18

##### Prior notification of landing in another Member State

1. Masters of Community fishing vessels which are not under the obligation to record fishing logbook data electronically pending the entry into force of the provisions referred to in Article 15(3) and who intend to use port or landing facilities in a coastal Member State other than their flag Member State shall notify the competent authorities of the coastal Member State at least four hours before the estimated time of arrival at the port of the information referred to in Article 17(1).

2. The competent authorities of the coastal Member State may give permission to an earlier entry.

#### Article 19

##### Authorisation to access to port

The competent authorities of the coastal Member State may deny access to port to fishing vessels if the information referred to in Articles 17 and 18 is not complete, except in cases of force majeure.

#### Article 20

##### Transshipment operations

1. Transshipments at sea shall be prohibited in Community waters. They shall be allowed only subject to an authorisation and to the conditions laid down in this Regulation in ports or places close to the shore of Member States designated for this purpose, and in accordance with the conditions laid down in Article 43(5).

2. If the transshipment operation is interrupted, permission may be required before the transshipment operation is resumed.

3. For the purposes of this Article, relocation, pair trawling activities and fishing operations involving joint action by two or more Community fishing vessels shall not be considered as transshipment.

#### Article 21

##### Completion and submission of the transshipment declaration

1. Without prejudice to specific provisions contained in multi-annual plans, masters of Community fishing vessels of 10 metres' length overall or more involved in a transshipment operation shall complete a transshipment declaration, indicating specifically all quantities of each species transhipped or received above 50 kg of live-weight equivalent.

2. The transshipment declaration referred to in paragraph 1 shall contain at least the following information:

- (a) the external identification number and the name of both the transshipping and the receiving fishing vessels;
- (b) the FAO alpha-3 code of each species and the relevant geographical area in which the catches were taken;
- (c) the estimated quantities of each species in kilograms in product weight, broken down by type of product presentation or, where appropriate, the number of individuals;
- (d) the port of destination of the receiving fishing vessel;
- (e) the designated port of transshipment.

3. The permitted margin of tolerance in estimates recorded in the transshipment declaration of the quantities in kilograms of fish transhipped or received shall be 10 % for all species.

4. The masters of both the transshipping and the receiving fishing vessel shall each submit a transshipment declaration, as soon as possible and not later than 48 hours after transshipment:

- (a) to their flag Member State (s); and
- (b) if the transshipment has taken place in a port of another Member State, to the competent authorities of the port Member State concerned.

5. The masters of both the transshipping and the receiving fishing vessel shall each be responsible for the accuracy of the data recorded in their transshipment declaration.

6. The Commission, in accordance with the procedure referred to in Article 119, may exempt certain categories of fishing vessels from the obligation laid down in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, inter alia, the type of fishery products and the distance between the fishing grounds, transshipping places and ports where the vessels in question are registered.

7. Transshipment declaration procedures and forms shall be determined in accordance with the procedure referred to in Article 119.

*Article 22***Electronic completion and transmission of transshipment declaration data**

1. Masters of Community fishing vessels of 12 metres' length overall or more shall record by electronic means the information referred to in Article 21 and shall send it by electronic means to the competent authority of the flag Member State within 24 hours after completion of the transshipment operation.
2. Paragraph 1 shall apply:
  - (a) as from 1 January 2012 to Community fishing vessels of 12 metres' length overall or more and less than 15 metres' length overall;
  - (b) as from 1 July 2011 to Community fishing vessels of 15 metres' length overall or more and less than 24 metres' length overall; and
  - (c) as from 1 January 2010 to Community fishing vessels of 24 metres' length overall or more.
3. A Member State may exempt masters of Community fishing vessels of less than 15 metres' length overall flying its flag from paragraph 1 if they:
  - (a) operate exclusively within the territorial seas of the flag Member State; or
  - (b) never spend more than 24 hours at sea from the time of departure to the return to port.
4. The competent authorities of a coastal Member State shall accept electronic reports received from the flag Member State containing the data from fishing vessels referred to in paragraphs 1 and 2.
5. When a Community fishing vessel transships its catches in a Member State other than the flag Member State, the competent authorities of the flag Member State shall immediately upon receipt forward the transshipment declaration data by electronic means to the competent authorities of the Member State where the catch was transhipped and where the catch is destined.
6. A Member State may oblige or authorise masters of fishing vessels flying its flag as of 1 January 2010 to electronically record and transmit the data referred to in Article 21.
7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*Article 23***Completion and submission of the landing declaration**

1. Without prejudice to specific provisions contained in multiannual plans, the master of a Community fishing vessel of 10 metres' length overall or more, or his representative, shall complete a landing declaration, indicating specifically all quantities of each species landed.

2. The landing declaration referred to in paragraph 1 shall contain at least the following information:

- (a) the external identification number and the name of the fishing vessel;
- (b) the FAO alpha-3 code of each species and the relevant geographical area in which the catches were taken;
- (c) the quantities of each species in kilograms in product weight, broken down by type of product presentation or, where appropriate, the number of individuals;
- (d) the port of landing.

3. The master of a Community fishing vessel or his representative shall submit the landing declaration, as soon as possible and not later than 48 hours after the completion of the landing:

- (a) to their flag Member State; and
- (b) if the landing has taken place in a port of another Member State, to the competent authorities of the port Member State concerned.

4. The accuracy of the data recorded in the landing declaration shall be the responsibility of the master.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*Article 24***Electronic completion and transmission of landing declaration data**

1. The master of a Community fishing vessel of 12 metres' length overall or more, or his representative, shall record by electronic means the information referred to in Article 23, and shall send it by electronic means to the competent authority of the flag Member State within 24 hours after completion of the landing operation.

2. Paragraph 1 shall apply:

- (a) as from 1 January 2012 to Community fishing vessels of 12 metres' length overall or more and less than 15 metres' length overall;
- (b) as from 1 July 2011 to Community fishing vessels of 15 metres' length overall or more and less than 24 metres' length overall; and
- (c) as from 1 January 2010 to Community fishing vessels of 24 metres' length overall or more.

3. A Member State may exempt masters of Community fishing vessels of less than 15 metres' length overall flying its flag from paragraph 1 if they:

- (a) operate exclusively within the territorial seas of the flag Member State; or

- (b) never spend more than 24 hours at sea from the time of departure to the return to port.

4. When a Community fishing vessel lands its catches in a Member State other than the flag Member State, the competent authorities of the flag Member State shall immediately upon receipt forward the landing declaration data by electronic means to the competent authorities of the Member State where the catch was landed.

5. The master of a Community fishing vessel, or his representative, who records by electronic means the information referred to in Article 23 and who lands his catch in a Member State other than the flag Member State shall be exempt from the requirement to submit a paper landing declaration to the coastal Member State.

6. A Member State may oblige or authorise masters of fishing vessels flying its flag as of 1 January 2010 to electronically record and transmit the data referred to in Article 23.

7. The competent authorities of a coastal Member State shall accept electronic reports received from the flag Member State containing the data from fishing vessels referred to in paragraphs 1 and 2.

8. Landing declaration procedures and forms shall be determined in accordance with the procedure referred to in Article 119.

#### Article 25

##### Vessels not subject to landing declaration requirements

1. Each Member State shall monitor, on the basis of sampling, the activities of fishing vessels which are not subject to the landing declaration requirements specified in Articles 23 and 24 in order to ensure compliance by these vessels with the rules of the common fisheries policy.

2. For the purposes of the monitoring referred to in paragraph 1, each Member State shall establish a sampling plan based on the methodology adopted by the Commission in accordance with the procedure referred to in Article 119, and transmit it every year by 31 January to the Commission indicating the methods used for the establishment of this plan. The sampling plans shall be, as far as possible, stable over time and standardised within relevant geographical areas.

3. Member States requiring fishing vessels of less than 10 metres' length overall flying their flag to submit landing declarations referred to in Article 23, in accordance with their national law, shall be exempted from the obligation laid down in paragraphs 1 and 2 of this Article.

4. By way of derogation from paragraphs 1 and 2 of this Article, sales notes submitted in accordance with Articles 62 and 63 shall be accepted as an alternative measure to sampling plans.

#### Section 2

##### Control of fishing effort

#### Article 26

##### Monitoring of fishing effort

1. Member States shall control the compliance with fishing effort regimes in geographical areas where maximum allowable fishing effort applies. They shall ensure that fishing vessels flying their flag are present in a geographical area subject to a fishing effort regime when carrying on board or, where appropriate, deploying a fishing gear or gears subject to that fishing effort regime or, where appropriate, operating in a fishery subject to that fishing effort regime only if the maximum allowable fishing effort available to them has not been reached and if the effort available to the individual fishing vessel has not been exhausted.

2. Without prejudice to special rules, where a fishing vessel carrying on board or, where appropriate, deploying a fishing gear or gears subject to a fishing effort regime or operating in a fishery subject to a fishing effort regime crosses during the same day two or more geographical areas subject to that fishing effort regime, the fishing effort deployed shall be counted against the maximum allowable fishing effort related to such fishing gear or such fishery and to the geographical area in which the largest proportion of time was spent during that day.

3. Where a Member State has authorised a fishing vessel in accordance with Article 27(2) to use more than one fishing gear or gears belonging to more than one grouping of fishing gears subject to a fishing effort regime during a certain fishing trip in a geographical area subject to that fishing effort regime, the fishing effort deployed during that trip shall be counted simultaneously against the maximum allowable fishing effort available to this Member State and related to each of such gears or groupings of fishing gears and to such geographical area.

4. Where fishing gears belong to the same grouping of fishing gears subject to the fishing effort regime, the fishing effort deployed in a geographical area by fishing vessels when carrying those gears on board shall be counted only once against the maximum allowable fishing effort related to such grouping of fishing gears and to such geographical area.

5. Member States shall regulate the fishing effort of their fleet in geographical areas subject to a fishing effort regime when carrying on board or, where appropriate, deploying a fishing gear or gears subject to that fishing effort regime or operating in a fishery subject to that fishing effort regime by taking appropriate action if the available maximum allowable fishing effort is about to be reached to ensure that the deployed fishing effort does not exceed the set limits.

6. A day present within an area shall be any continuous period of 24 hours or part thereof during which a fishing vessel is present within the geographical area and absent from port or where appropriate deploying its fishing gear. The time from which the continuous period of a day present in the area is measured is at the discretion of the Member State whose flag is flown by the fishing vessel concerned. A day absent from port shall be any continuous period of 24 hours or part thereof during which the fishing vessel is absent from port.

#### Article 27

##### Notification of fishing gear

1. Without prejudice to specific rules, in relevant geographical areas subject to a fishing effort regime where gear restrictions apply or where maximum allowable fishing effort were set for different fishing gears or groupings of fishing gears, the master of a fishing vessel or his representative shall notify to the competent authorities of the flag Member State before a period to which maximum allowable fishing effort applies which fishing gear or, where applicable, fishing gears he intends to use during the forthcoming period. Until such notification is provided the fishing vessel shall not be entitled to fish within the geographical areas to which the fishing effort regime applies.

2. Where a fishing effort regime allows the use of gears belonging to more than one grouping of fishing gears in a geographical area, the use of more than one fishing gear during a fishing trip shall be subject to a prior authorisation by the flag Member State.

#### Article 28

##### Fishing effort report

1. When the Council so decides for Community fishing vessels which are not equipped with a functioning vessel monitoring system as referred to in Article 9 or which do not transmit fishing logbook data electronically as referred to in Article 15 and which are subject to a fishing effort regime, the masters of these fishing vessels shall communicate by telex, fax, telephone message or e-mail duly recorded by the recipient or by radio via a radio station approved under Community rules the following information in the form of a fishing effort report to the competent authorities of his flag Member State and, where appropriate, to the coastal Member State immediately before each entry into and exit from a geographical area subject to that fishing effort regime:

- (a) the name, external identification mark, radio call sign and name of the master of the fishing vessel;
- (b) the geographical location of the fishing vessel to which the communication refers;
- (c) the date and time of each entry into and exit from the area and, where applicable, parts thereof;

- (d) the catch retained on board by species in kilograms live weight.

2. Member States may implement, in accordance with Member States concerned by the fishing activities of the former's vessels, alternative control measures to ensure compliance with effort reporting obligations. These measures shall be as effective and transparent as the reporting obligations in paragraph 1 and shall be notified to the Commission before being implemented.

#### Article 29

##### Exemptions

1. A fishing vessel carrying on board fishing gears subject to a fishing effort regime may transit across a geographical area subject to that fishing effort regime if it has no fishing authorisation to operate in that geographical area or it has first notified its competent authorities of its intention to transit. While the fishing vessel is within that geographical area, any fishing gear subject to that fishing effort regime and carried on board shall be lashed and stowed in accordance with conditions laid down in Article 47.

2. A Member State may choose not to count against any available maximum allowable fishing effort the activity of a fishing vessel undertaking non-fishing related activities in a geographical area subject to a fishing effort regime provided that the fishing vessel first notifies its flag Member State of its intention to do so, of the nature of its activity and that it surrenders its fishing authorisation for that time. Such fishing vessels shall not carry any fishing gear or fish during that time.

3. A Member State may choose not to count against any maximum allowable fishing effort the activity of a fishing vessel in a geographical area subject to a fishing effort regime which has been present in that geographical area but was unable to fish because it was assisting another fishing vessel in need of emergency aid or because it was transporting an injured person for emergency medical aid. Within one month after taking that decision, the flag Member State shall inform the Commission and provide evidence of the emergency aid supplied.

#### Article 30

##### Exhaustion of fishing effort

1. Without prejudice to Articles 29 and 31, in a geographical area where fishing gears are subject to a fishing effort regime a fishing vessel carrying on board such fishing gear or gears shall remain in port or out of that geographical area for the remainder of a period in which such fishing effort regime applies if:

- (a) it has exhausted the share of the maximum allowable fishing effort related to such geographical area and to such fishing gear or gears that has been assigned to it; or

(b) the maximum allowable fishing effort related to such geographical area and to such fishing gear or gears available to its flag Member State has been exhausted.

2. Without prejudice to Article 29, in a geographical area where a fishery is subject to a fishing effort regime, a fishing vessel shall not operate in that fishery in that area if:

(a) it has exhausted the share of the maximum allowable fishing effort related to that geographical area and to that fishery that has been assigned to it; or

(b) the maximum allowable fishing effort related to that geographical area and to that fishery available to its flag Member State has been exhausted.

#### Article 31

### Fishing vessels excluded from the application of a fishing effort regime

This Section shall not apply to fishing vessels to the extent that they are exempted from the application of a fishing effort regime.

#### Article 32

### Detailed rules

Detailed rules for the application of this Section may be adopted in accordance with the procedure referred to in Article 119.

#### Section 3

### Recording and exchange of data by Member States

#### Article 33

### Recording of catches and fishing effort

1. Each flag Member State shall record all relevant data, in particular data referred to in Articles 14, 21, 23, 28 and 62, on fishing opportunities as referred to in this Chapter, expressed both in terms of landings and, where appropriate, fishing effort, and shall keep the originals of those data for a period of three years or longer in accordance with national rules.

2. Without prejudice to specific rules laid down in Community legislation, before the 15th of each month, each flag Member State shall notify the Commission or the body designated by it, by computer transmission of the aggregated data:

(a) for the quantities of each stock or group of stocks subject to TACs or quotas landed during the preceding month; and

(b) for the fishing effort deployed during the preceding month for each fishing area subject to a fishing effort regime or, where appropriate, for each fishery subject to a fishing effort regime.

3. By way of derogation from paragraph 2(a), for quantities landed from 1 January 2010 until 31 December 2010, Member States shall record quantities landed by fishing vessels of other Member States in their ports and notify them to the Commission in accordance with the procedures set out in this Article.

4. Each flag Member State shall notify the Commission by electronic means, before the end of the first month of each calendar quarter, of the quantities of stocks in aggregated form other than those mentioned in paragraph 2 landed during the preceding quarter.

5. All catches of a stock or a group of stocks subject to quota made by Community fishing vessels shall be charged against the quotas applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.

6. Catches taken in the framework of scientific research which are marketed and sold shall be counted against the quota applicable to the flag Member State insofar as they exceed 2 % of the quotas concerned. Article 12(2) of Council Regulation (EC) No 199/2008 of 25 February 2008 establishing a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy <sup>(1)</sup> shall not apply to scientific research voyages during which such catches are taken.

7. Without prejudice to Title XII, Member States may until 30 June 2011 carry out pilot projects with the Commission and body designated by it on the real-time remote access to Member States data recorded and validated according to this Regulation. The data access format and procedures shall be considered and tested. Member States shall inform the Commission before 1 January 2011 if they plan to carry out pilot projects. As from 1 January 2012 the Council may decide on a different way and frequency of data transmission by Member States to the Commission.

8. Except for effort deployed by fishing vessels that are excluded from the application of a fishing effort regime, all fishing effort deployed by Community fishing vessels when carrying on board or, where appropriate, using a fishing gear or gears subject to a fishing effort regime or operating in a fishery subject to a fishing effort regime in a geographical area subject to that fishing effort regime shall be counted against the maximum allowable fishing effort related to such geographical area and to such fishing gear or such fishery available to the flag Member State.

<sup>(1)</sup> OJ L 60, 5.3.2008, p. 1.

9. Fishing effort deployed in the framework of scientific research by a vessel carrying a fishing gear or gears subject to a fishing effort regime or operating in a fishery subject to a fishing effort regime in a geographical area subject to that fishing effort regime shall be counted against the maximum allowable fishing effort related to such fishing gear or gears or such fishery and to such geographical area of its flag Member State if the catches taken during the deployment of this effort are marketed and sold insofar as they exceed 2 % of the fishing effort allocated. Article 12(2) of Regulation (EC) No 199/2008 shall not apply to scientific research voyages during which such catches are taken.

10. The Commission may adopt formats for the transmission of the data referred to in this Article in accordance with the procedure referred to in Article 119.

#### Article 34

##### **Data on the exhaustion of fishing opportunities**

A Member State shall inform the Commission, without delay, when it establishes that:

- (a) the catches of a stock or group of stocks subject to a quota made by the fishing vessels flying its flag are deemed to have exhausted 80 % of that quota; or
- (b) 80 % of the maximum fishing effort level related to a fishing gear or a fishery and to a geographical area and applicable to all or a group of the fishing vessels flying its flag is deemed to have been reached.

In such an eventuality, it shall provide the Commission, at the Commission's request, with more detailed and more frequent information than provided for in Article 33.

#### Section 4

##### **Closure of fisheries**

#### Article 35

##### **Closure of fisheries by Member States**

1. Each Member States shall establish the date from which:
  - (a) the catches of a stock or group of stocks subject to a quota made by the fishing vessels flying its flag shall be deemed to have exhausted that quota;
  - (b) the maximum allowable fishing effort related to a fishing gear or a fishery and to a geographical area and applicable to all or a group of the fishing vessels flying its flag shall be deemed to have been reached.

2. As from the date referred to in paragraph 1, the Member State concerned shall prohibit fishing either for the stock or group of stocks whose quota has been exhausted, in the relevant fishery or when carrying on board the relevant fishing gear in the geographical area where the maximum allowable fishing effort has been reached, by all or part of the fishing vessels flying its flag and in particular the retention on board, the transshipments, the relocations and the landings of fish taken after that date and shall decide on a date up to which transshipments, transfers and landings or final declarations of catches are permitted.

3. The decision referred to in paragraph 2 shall be made public by the Member State concerned and immediately communicated to the Commission. It shall be published in the *Official Journal of the European Union* (C series) and on the public website of the Commission. As from the date that the decision has been made public by the Member State concerned, Member States shall ensure that no retention on board, transshipments, relocations or landings either of the relevant fish or when carrying on board relevant fishing gears in relevant geographical areas by fishing vessels or a group of the vessels flying the flag of the Member State concerned take place in their waters and on their territory.

4. The Commission shall make available to Member States by electronic means the notifications received pursuant to this Article.

#### Article 36

##### **Closure of fisheries by the Commission**

1. Where the Commission finds that a Member State has not complied with the obligation to notify the monthly data on fishing opportunities as provided for in Article 33(2), it may set the date on which 80 % of the fishing opportunities of that Member State are deemed to have been exhausted and it may set the estimated date on which the fishing opportunities shall be deemed to have been exhausted.

2. On the basis of the information under Article 35 or on its own initiative, where the Commission finds that fishing opportunities available to the Community, a Member State or group of Member States are deemed to have been exhausted, the Commission shall inform the Member States concerned thereof and shall prohibit fishing activities for the respective area, gear, stock, group of stocks or fleet involved in those specific fishing activities.

#### Article 37

##### **Corrective measures**

1. When the Commission has prohibited fishing because of the alleged exhaustion of the fishing opportunities available to a Member State or group of Member States or to the Community and it transpires that a Member State has not in fact exhausted its fishing opportunities, this Article shall apply.

2. If the prejudice suffered by the Member State for which fishing has been prohibited before its fishing opportunities were exhausted has not been removed, measures shall be adopted with the aim of remedying in an appropriate manner the prejudice caused, in accordance with the procedure referred to in Article 119. These measures may involve making deductions from the fishing opportunities of any Member State which has overfished and allocating the quantities so deducted appropriately to the Member States whose fishing activities were prohibited before their fishing opportunities were exhausted.

3. The deductions referred to in paragraph 2 and the consequent allocations shall be made taking into account as a matter of priority the species and relevant geographical areas for which the fishing opportunities were fixed. They may be made during the year in which the prejudice occurred or in the succeeding year or years.

4. Detailed rules for the application of this Article, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure referred to in Article 119.

## CHAPTER II

### **Control of fleet management**

#### Section 1

### **Fishing capacity**

#### Article 38

### **Fishing capacity**

1. Member States shall be responsible for carrying out the necessary checks in order to ensure that the total capacity corresponding to the fishing licences issued by a Member State, in GT and in kW, shall at any moment not be higher than the maximum capacity levels for that Member State established in accordance with:

- (a) Article 13 of Regulation (EC) No 2371/2002;
- (b) Regulation (EC) No 639/2004;
- (c) Regulation (EC) No 1438/2003; and
- (d) Regulation (EC) No 2104/2004.

2. Detailed rules for the application of this Article, and in particular regarding:

- (a) registration of fishing vessels;
- (b) verification of the engine power of fishing vessels;
- (c) verification of the tonnage of fishing vessels;
- (d) verification of the type, number and characteristics of the fishing gear;

may be adopted in accordance with the procedure referred to in Article 119.

3. Member States shall inform the Commission as part of the report referred to in Article 118 of the check methods used, together with the names and addresses of the bodies responsible for carrying out the verifications referred to in paragraph 2 of this Article.

## Section 2

### **Engine power**

#### Article 39

### **Monitoring of engine power**

1. It shall be prohibited to fish with a fishing vessel that is equipped with an engine the power of which exceeds the one established in the fishing licence.

2. Member States shall ensure that the certified engine power is not exceeded. Member States shall inform the Commission as part of the report referred to in Article 118 on the control measures they have undertaken to ensure that the certified engine power is not exceeded.

3. Member States may charge parts or all costs arising from the certification of engine power to the operators of the fishing vessels.

#### Article 40

### **Certification of engine power**

1. Member States shall be responsible for certifying engine power and issuing engine certificates for Community fishing vessels whose propulsion engine power exceeds 120 kilowatts (kW), except vessels using exclusively static gear or dredge gear, auxiliary vessels and vessels used exclusively in aquaculture.

2. A new propulsion engine, a replacement propulsion engine and a propulsion engine that has been technically modified of fishing vessels referred to in paragraph 1 shall be officially certified by the Member States' competent authorities as not being capable of developing more maximum continuous engine power than stated in the engine certificate. Such a certificate shall only be issued if the engine is not capable of developing more than the stated maximum continuous engine power.

3. Member States' competent authorities may assign the certification of engine power to classification societies or to other operators having the necessary expertise for the technical examination of engine power. Those classification societies or other operators shall only certify a propulsion engine as not being capable of exceeding the officially stated power if there is no possibility to increase the performance of the propulsion engine above the certified power.

4. It shall be prohibited to use a new propulsion engine, a replacement propulsion engine or a propulsion engine that has been technically modified if such engine has not been officially certified by the Member State concerned.

5. This Article shall apply for fishing vessels subject to a fishing effort regime as from 1 January 2012. For other fishing vessels it shall apply as from 1 January 2013.

6. Detailed rules for the application of this Section shall be adopted in accordance with the procedure referred to in Article 119.

#### Article 41

### Verification of engine power

1. Member States shall undertake, following a risk analysis, data verification, established on a sampling plan based on the methodology adopted by the Commission in accordance with the procedure referred to in Article 119, of the consistency of engine power using all the information available to the administration concerning the technical characteristics of the vessel concerned. In particular they shall verify the information contained in:

- (a) vessel monitoring system records;
- (b) the fishing logbook;
- (c) the Engine International Air Pollution Prevention (EIAPP) Certificate issued for the engine in accordance with Annex VI to the Marpol 73/78 Convention;
- (d) class certificates issued by a recognised ship inspection and survey organisation within the meaning of Directive 94/57/EC;
- (e) the sea trial certificate;
- (f) the Community Fishing Fleet Register; and
- (g) any other documents providing relevant information on vessel power or any related technical characteristics.

2. Following the analysis of the information referred to in paragraph 1, where there are indications that the engine power of a fishing vessel is greater than the power stated on its fishing licence, Member States shall proceed to a physical verification of the engine power.

#### CHAPTER III

### Control of multiannual plans

#### Article 42

### Transshipment in port

1. Fishing vessels engaged in fisheries subject to a multiannual plan shall not tranship their catches on board of any other vessel in a designated port or in places close to the shore unless they have been weighed in accordance with Article 60.

2. By way of derogation from paragraph 1, fishing vessels may tranship pelagic catches subject to a multiannual plan in designated ports or places close to the shore which have not been weighed provided that a control observer or an official is present on board the receiving vessel or an inspection is carried out before the departure of the receiving vessel after the transshipment is completed. The master of the receiving vessel is responsible for informing the competent authorities of the coastal Member State 24 hours before the estimated departure of the receiving vessel. The control observer or official shall be designated by the competent authorities of the flag Member State of the receiving vessel. If the receiving vessel engages in fishing activities before or after having received such catches, it shall carry on board the control observer or official until the landing of the received catches. The receiving vessel shall land the received catches in a port of a Member State designated for this purpose in accordance with the conditions laid down in Article 43(4) where the catch shall be weighed in accordance with Articles 60 and 61.

#### Article 43

### Designated ports

1. The Council may decide, when adopting a multiannual plan, on a threshold applicable to the live weight of species subject to a multiannual plan, above which a fishing vessel shall be required to land its catches in a designated port or a place close to the shore.

2. Where more than the threshold of fish as referred to in paragraph 1 is to be landed, the master of a Community fishing vessel shall ensure that such landing is only made in a designated port or a place close to the shore in the Community.

3. When the multiannual plan is applied in the framework of a regional fisheries management organisation, the landings or transshipments may take place in the ports of a Contracting Party or a non-contracting Cooperating Party of that organisation, in accordance with the rules laid down by that regional fisheries management organisation.

4. Each Member State shall designate ports or places close to the shore in which landings referred to in paragraph 2 shall take place.

5. For a port or place close to the shore to be determined as a designated port, the following conditions shall be met:

- (a) established landing or transshipment times;
- (b) established landing or transshipment places;
- (c) established inspection and surveillance procedures.

6. Where a port or place close to the shore has been determined as a designated port for the landing of a given species subject to a multiannual plan, it may be used for the landing of any other species.

7. Member States shall be exempted from paragraph 5(c) if the national control action programme adopted in accordance with Article 46 contains a plan on how to perform control in designated ports, ensuring the same level of control by competent authorities. The plan shall be deemed satisfactory if agreed by the Commission in accordance with the procedure referred to in Article 119.

*Article 44*

**Separate stowage of demersal catches subject to multiannual plans**

1. All catches of demersal stocks subject to a multiannual plan retained on board a Community fishing vessel of 12 metres' length overall or more shall be placed in boxes, compartments or containers separately for each of such stocks in such a way that they are identifiable from other boxes, compartments or containers.

2. Masters of Community fishing vessels shall keep the catches of demersal stocks subject to a multiannual plan according to a stowage plan that describes the location of the different species in the holds.

3. It shall be prohibited to retain on board a Community fishing vessel in any box, compartment or container any quantity of catches of demersal stocks subject to a multiannual plan mixed with any other fisheries product.

*Article 45*

**Real time use of quotas**

1. When accumulated catches of stocks subject to a multiannual plan have reached a certain threshold of the national quota, data on catches shall be sent more frequently to the Commission.

2. The Council shall decide on the relevant threshold to apply and the frequency of the communication of the data referred to in paragraph 1.

*Article 46*

**National control action programmes**

1. Member States shall define a national control action programme applicable to each multiannual plan. All national control action programmes shall be notified to the Commission or made available on the secure part of the Member State's website in accordance with Article 115(a).

2. Member States shall set out specific inspection benchmarks in accordance with Annex I. Such benchmarks shall be defined in accordance with risk management and shall be revised periodically after an analysis of the results achieved has been made. Inspection benchmarks shall evolve progressively until the target benchmarks defined in Annex I are reached.

CHAPTER IV

**Control of technical measures**

Section 1

**Use of fishing gear**

*Article 47*

**Fishing gear**

In fisheries in which it is not allowed to use more than one type of gear, any other gear shall be lashed and stowed so that it may not readily be used, in accordance with the following conditions:

- (a) nets, weights and similar gear shall be disconnected from their trawl boards and towing and hauling wires and ropes;
- (b) nets which are on or above deck shall be securely lashed and stowed;
- (c) longlines shall be stowed in lower decks.

*Article 48*

**Retrieval of lost gear**

1. A Community fishing vessel shall have the equipment on board to retrieve lost gear.

2. The master of a Community fishing vessel that has lost gear or part of it shall attempt to retrieve it as soon as possible.

3. If the lost gear cannot be retrieved, the master of the vessel shall inform the competent authority of its flag Member State, which shall then inform the competent authority of the coastal Member State, within 24 hours of the following:

- (a) the external identification number and the name of the fishing vessel;
- (b) the type of lost gear;
- (c) the time when the gear was lost;
- (d) the position where the gear was lost;
- (e) the measures undertaken to retrieve the gear.

4. If the gear that is retrieved by the competent authorities of the Member States has not been reported as lost, these authorities may recover the cost from the master of the fishing vessel that lost the gear.

5. A Member State may exempt Community fishing vessels of less than 12 metres' length overall flying its flag from the requirement set out in paragraph 1 if they:

- (a) operate exclusively within the territorial seas of the flag Member State; or
- (b) never spend more than 24 hours at sea from the time of departure to the return to port.

#### Article 49

### Catch composition

1. If catches which have been retained on board any Community fishing vessel have been taken with nets with different minimum mesh sizes during the same voyage, the species composition shall be calculated for each part of the catch which has been taken under different conditions. To that end, all changes from the mesh size previously used as well as the catch composition on board at the moment of any such change shall be entered into the fishing logbook.

2. Without prejudice to Article 44, detailed rules on the keeping on board of a stowage plan, by species, of processed products, indicating where they are located in the hold, may be adopted in accordance with the procedure referred to in Article 119.

#### Section 2

### Control of fishing restricted areas

#### Article 50

### Control of fishing restricted areas

1. Fishing activities of Community fishing vessels and third country fishing vessels in fishing zones where a fishing restricted area has been established by the Council shall be controlled by the fisheries monitoring centre of the coastal Member State, which shall have a system to detect and record the vessels' entry into, transit through and exit from the fishing restricted areas.

2. In addition to paragraph 1, the Council shall establish a date from which the fishing vessels shall have an operational system on board which shall alert the master of the entry and exit into a fishing restricted area.

3. The frequency of data transmissions shall be of at least once every 30 minutes when a fishing vessel enters a fishing restricted area.

4. Transit through a fishing restricted area is allowed for all fishing vessels that are not authorised to fish in such areas subject to the following conditions:

- (a) all gears carried on board are lashed and stowed during the transit; and
- (b) the speed during transit is not less than six knots except in case of force majeure or adverse conditions. In such cases, the master shall immediately inform the fisheries monitoring centre of the flag Member State which shall then inform the competent authorities of the coastal Member State.

5. This Article shall apply to Community fishing vessels and third country fishing vessels of 12 metres' length overall or more.

#### Section 3

### Real-time closure of fisheries

#### Article 51

### General provisions

1. When a trigger catch level of a particular species or group of species as defined in accordance with the procedure referred to in Article 119 has been reached, the area concerned shall be temporarily closed to the relevant fisheries in accordance with this Section.

2. The trigger catch level shall be calculated on the basis of a sampling methodology adopted by the Commission in accordance with the procedure referred to in Article 119, as the percentage or weight of a particular species or group of species compared to the total catch in a haul of the fish concerned.

3. Detailed rules for the application of this Section may be adopted in accordance with the procedure referred to in Article 119.

#### Article 52

### Trigger catch in two hauls

1. Where the quantity of catches exceeds a trigger catch level in two consecutive hauls, the fishing vessel shall change the fishing area by at least five nautical miles, or two nautical miles for fishing vessels of less than 12 metres' length overall, from any position of the previous haul before continuing fishing and shall inform without delay the competent authorities of the coastal Member State.

2. The Commission in accordance with the procedure referred to in Article 119, at its own initiative or at the request of the Member State concerned, may modify distances referred to in paragraph 1.

#### Article 53

### Real-time closure by Member States

1. When an official, control observer or research platform detects that a trigger catch level has been reached, the official, the control observer of the coastal Member State or the person who is participating in a joint operation under a Joint Deployment Plan shall inform without delay the competent authorities of the coastal Member State.

2. On the basis of the information received in accordance with paragraph 1 the coastal Member State shall decide the real-time closure of the area concerned without delay. It may also use the information received in accordance with Article 52, or any available information for this decision. The decision establishing the real-time closure shall define clearly the geographical area of the affected fishing grounds, the duration of the closure and the conditions governing fisheries in that area during the closure.

3. If the area referred to in paragraph 2 straddles jurisdictions, the Member State concerned shall without delay inform the neighbouring coastal Member State of the findings and the decision to close. The neighbouring coastal Member State shall close its part of the area without delay.

4. The real time closure referred to in paragraph 2 shall be non-discriminatory and shall only apply to fishing vessels that are equipped to catch the species concerned and/or which have an authorisation to fish on the fishing grounds concerned.

5. The coastal Member State shall inform without delay the Commission, all Member States and third countries whose fishing vessels are authorised to operate in the area concerned that a real-time closure has been established.

6. The Commission may request the Member State at any time to cancel or amend the real time closure with immediate effect if the Member State concerned has not provided sufficient information that a trigger catch level has been reached in accordance with Article 51.

7. Fishing activities in the area referred to in paragraph 2 shall be prohibited as defined in the decision establishing the real-time closure.

#### *Article 54*

#### **Real-time closure by the Commission**

1. On the basis of the information demonstrating that a trigger catch level has been reached the Commission may determine an area to be temporarily closed if the coastal Member State has not itself established such a closure.

2. The Commission shall inform without delay all Member States and third countries whose fishing vessels operate in the closed area and shall make available without delay on its official website a map with the coordinates of the area temporarily closed, specifying the duration of the closure and the conditions governing fisheries in that specific closed area.

#### *CHAPTER V*

#### ***Control of recreational fisheries***

#### *Article 55*

#### **Recreational fisheries**

1. Member States shall ensure that recreational fisheries on their territory and in Community waters are conducted in a manner compatible with the objectives and rules of the common fisheries policy.

2. The marketing of catches from recreational fisheries shall be prohibited.

3. Without prejudice to Regulation (EC) No 199/2008, Member States shall monitor, on the basis of a sampling plan, the catches of stocks subject to recovery plans by recreational fisheries practised from vessels flying their flag and from third country vessels in waters under their sovereignty or jurisdiction. Fishing from shore shall not be included.

4. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall evaluate the biological impact of recreational fisheries as referred to in paragraph 3. Where a recreational fishery is found to have a significant impact, the Council may decide, in accordance with the procedure referred to in Article 37 of the Treaty, to submit recreational fisheries as referred to in paragraph 3 to specific management measures such as fishing authorisations and catch declarations.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

#### TITLE V

#### **CONTROL OF MARKETING**

#### *CHAPTER I*

#### ***General provisions***

#### *Article 56*

#### **Principles for the control of marketing**

1. Each Member State shall be responsible for controlling on its territory the application of the rules of the common fisheries policy at all stages of the marketing of fisheries and aquaculture products, from the first sale to the retail sale, including transport.

2. Where a minimum size has been fixed for a given species in Community legislation, operators responsible for purchasing, selling, stocking or transporting shall be able to prove the relevant geographical area of origin of the products.

3. Member States shall ensure that all fisheries and aquaculture products from catching or harvesting are put into lots prior to the first sale.

4. Quantities of less than 30 kg per single species coming from the same management area from several fishing vessels may be put into lots by the producer organisation of which the operator of the fishing vessel is a member or by a registered buyer prior to the first sale. The producer organisation and the registered buyer shall keep records for at least three years on the origin of the contents of the lots in which catches of several fishing vessels are put.

*Article 57***Common marketing standards**

1. Member States shall ensure that the products to which common marketing standards apply are displayed for first sale, offered for first sale, sold or otherwise marketed only if they comply with these standards.
2. Products withdrawn from the market in accordance with Regulation (EC) No 104/2000 shall respect common marketing standards, in particular freshness categories.
3. Operators responsible for purchasing, selling, stocking or transporting lots of fisheries and aquaculture products shall be able to prove that the products comply with the minimum marketing standards at all stages.

*Article 58***Traceability**

1. Without prejudice to Regulation (EC) No 178/2002, all lots of fisheries and aquaculture products shall be traceable at all stages of production, processing and distribution, from catching or harvesting to retail stage.
2. Fisheries and aquaculture products placed on the market or likely to be placed on the market in the Community shall be adequately labelled to ensure the traceability of each lot.
3. Lots of fisheries and aquaculture products may be merged or split after first sale only if it is possible to trace them back to catching or harvesting stage.
4. Member States shall ensure that operators have in place systems and procedures to identify any operator from whom they have been supplied with lots of fisheries and aquaculture products and to whom these products have been supplied. This information shall be made available to the competent authorities on demand.
5. The minimum labelling and information requirements for all lots of fisheries and aquaculture products shall include:

- (a) the identification number of each lot;
- (b) the external identification number and name of the fishing vessel or the name of the aquaculture production unit;
- (c) the FAO alpha-3 code of each species;
- (d) the date of catches or the date of production;

- (e) the quantities of each species in kilograms expressed in net weight or, where appropriate, the number of individuals;
  - (f) the name and address of the suppliers;
  - (g) the information to consumers provided for in Article 8 of Regulation (EC) No 2065/2001: the commercial designation, the scientific name, the relevant geographical area and the production method;
  - (h) whether the fisheries products have been previously frozen or not.
6. Member States shall ensure that the information listed in points (g) and (h) of paragraph 5 is available to the consumer at retail sale stage.

7. The information listed in points (a) to (f) of paragraph 5 shall not apply to fisheries and aquaculture products imported into the Community with catch certificates submitted in accordance with Regulation (EC) No 1005/2008.

8. Member States may exempt from the requirements set out in this Article small quantities of products sold directly from fishing vessels to consumers, provided that these do not exceed the value of EUR 50 per day. Any amendment to this threshold shall be adopted in accordance with the procedure referred to in Article 119.

9. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*CHAPTER II***Post-landing activities***Article 59***First sale of fisheries products**

1. Member States shall ensure that all fisheries products are first marketed or registered at an auction centre or to registered buyers or to producer organisations.
2. The buyer of fisheries products from a fishing vessel at first sale shall be registered with the competent authorities of the Member State where the first sale takes place. For the purpose of registration, each buyer shall be identified according to its VAT number, tax identification number or other unique identifier in national databases.
3. A buyer acquiring fisheries products up to an amount of 30 kg which are not thereafter placed on the market but used only for private consumption shall be exempted from this Article. Any amendment to this threshold shall be adopted in accordance with the procedure referred to in Article 119.

*Article 60***Weighing of fishery products**

1. A Member State shall ensure that all fishery products are weighed on systems approved by the competent authorities unless it has adopted a sampling plan approved by the Commission and based on the risk-based methodology adopted by the Commission in accordance with the procedure referred to in Article 119.
2. Without prejudice to specific provisions, the weighing shall be carried out on landing prior to the fisheries products being held in storage, transported or sold.
3. By way of derogation from paragraph 2, Member States may permit fisheries products to be weighed on board the fishing vessel subject to a sampling plan as referred to in paragraph 1.
4. Registered buyers, registered auctions or other bodies or persons which are responsible for the first marketing of fisheries products in a Member State shall be responsible for the accuracy of the weighing operation unless, in accordance with paragraph 3, the weighing takes place on board a fishing vessel, in which case it shall be the master's responsibility.
5. The figure resulting from the weighing shall be used for the completion of landing declarations, transport document, sales notes and take-over declarations.
6. The competent authorities of a Member State may require that any quantity of fisheries products first landed in that Member State is weighed in the presence of officials before being transported elsewhere from the place of landing.
7. Detailed rules on the risk-based methodology and procedure of weighing shall be established in accordance with the procedure referred to in Article 119.

*Article 61***Weighing of fisheries products after transport from the place of landing**

1. By way of derogation from Article 60(2), Member States may permit fisheries products to be weighed after transport from the place of landing provided that they are transported to a destination on the territory of the Member State concerned and that this Member State has adopted a control plan approved by the Commission and based on the risk-based methodology adopted by the Commission in accordance with the procedure referred to in Article 119.
2. By way of derogation from paragraph 1, the competent authorities of the Member State in which the fisheries products are landed may permit the transport before weighing of these products to registered buyers, registered auctions or other bodies or persons which are responsible for the first marketing of fisheries products in another Member State. This permission shall be subject to a common control programme between the Member States concerned as referred to in Article 94 which has been approved by the Commission and based on the risk-based

methodology adopted by the Commission in accordance with the procedure referred to in Article 119.

*Article 62***Completion and submission of sales notes**

1. Registered buyers, registered auctions or other bodies or persons authorised by Member States with an annual financial turnover in first sales of fisheries products of less than EUR 200 000 which are responsible for the first marketing of fisheries products landed in a Member State, shall submit, if possible electronically, within 48 hours after the first sale, a sales note to the competent authorities of the Member State in whose territory the first sale takes place. The accuracy of the sales note shall be the responsibility of these buyers, auctions, bodies or persons.
2. A Member State may oblige or authorise registered buyers, registered auctions or other bodies or persons authorised by Member States with an annual financial turnover in first sales of fisheries products of less than EUR 200 000 to electronically record and transmit the data mentioned in Article 64(1).
3. If the Member State in whose territory the first sale takes place is not the flag Member State of the fishing vessel that landed the fish, it shall ensure that a copy of the sales note is submitted, if possible electronically, to the competent authorities of the flag Member State upon receipt of the relevant information.
4. Where the first marketing of fisheries products does not take place in the Member State where the products have been landed, the Member State responsible for controlling the first marketing shall ensure that a copy of the sales note is submitted, if possible electronically, to the competent authorities responsible for controlling the landing of the products concerned and to the competent authorities of the flag Member State of the fishing vessel upon receipt of the sales note.

5. When the landing takes place outside the Community and the first sale takes place in a third country, the master of the fishing vessel or his representative shall forward, if possible electronically, a copy of the sales note or any equivalent document containing the same level of information to the competent authority of the flag member State within 48 hours after the first sale.

6. Where a sales note does not correspond to the invoice or to a document replacing it, as referred to in Articles 218 and 219 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>, the Member State concerned shall adopt the necessary provisions to ensure that the information on the price excluding tax for deliveries of goods to the purchaser is identical to that indicated on the invoice. Member States shall adopt the necessary provisions to ensure that the information on the price excluding tax for deliveries of goods to the purchaser is identical to that indicated on the invoice.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

*Article 63***Electronic completion and transmission of sales notes data**

1. Registered buyers, registered auctions or other bodies or persons authorised by Member States with an annual financial turnover in first sales of fisheries products of EUR 200 000 or more shall record by electronic means the information referred to in Article 64(1), and shall send it by electronic means within 24 hours after completion of the first sale to the competent authorities of the Member State in whose territory the first sale takes place.
2. Member States shall transmit in the same way, by electronic means, information on sales notes referred to in Article 62(3) and (4).

*Article 64***Content of the sales notes**

1. The sales notes referred to in Articles 62 and 63 shall contain the following data:
  - (a) the external identification number and the name of the fishing vessel that has landed the product concerned;
  - (b) the port and date of landing;
  - (c) the name of the fishing vessel's operator or master and, if different, the name of the seller;
  - (d) the name of the buyer and its VAT number, its tax identification number, or other unique identifier;
  - (e) the FAO alpha-3 code of each species and the relevant geographical area in which the catches were taken;
  - (f) the quantities of each species in kilograms in product weight, broken down by type of product presentation or, where appropriate, the number of individuals;
  - (g) for all products subject to marketing standards, as appropriate, the individual size or weight, grade, presentation and freshness;
  - (h) where appropriate, the destination of products withdrawn from the market (carry-over, use for animal feed, for production of meal for animal feed, for bait or for non-food purposes);
  - (i) the place and the date of the sale;
  - (j) where possible, the reference number and date of invoice and, where appropriate, the sales contract;
  - (k) where applicable, reference to the take-over declaration referred to in Article 66 or the transport document referred to in Article 68;
  - (l) the price.
2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*Article 65***Exemptions from sales notes requirements**

1. The Commission, in accordance with the procedure referred to in Article 119, may grant an exemption from the obligation to submit the sales note to the competent authorities or other authorised bodies of the Member State for fisheries products landed from certain categories of Community fishing vessels of less than 10 metres' length overall or for quantities landed of fisheries products not exceeding 50 kg of live weight equivalent by species. Such exemptions may be granted only in cases where the Member State in question has installed an acceptable sampling system, in accordance with Articles 16 and 25.
2. A buyer acquiring products up to an amount of 30 kg which are not thereafter placed on the market but used only for private consumption shall be exempted from the provisions laid down in Articles 62, 63 and 64. Any amendment to this threshold shall be adopted in accordance with the procedure referred to in Article 119.

*Article 66***Take-over declaration**

1. Without prejudice to specific provisions contained in multi-annual plans, when the fisheries products are intended for sale at a later stage, registered buyers, registered auctions or other bodies or persons with an annual financial turnover in first sales of fisheries products of less than EUR 200 000 which are responsible for the first marketing of fisheries products landed in a Member State shall submit within 48 hours after completion of landing a take-over declaration to the competent authorities of the Member State where the take-over takes place. The submission of the take-over declaration and its accuracy shall be the responsibility of these buyers, auctions or other bodies or persons.
2. If the Member State where the take-over takes place is not the flag Member State of the fishing vessel that landed the fish, it shall ensure that a copy of the take over declaration is submitted, if possible electronically, to the competent authorities of the flag Member State upon receipt of the relevant information.
3. The take-over declaration referred to in paragraph 1 shall contain at least the following information:
  - (a) the external identification number and name of the fishing vessel that has landed the products;
  - (b) the port and date of landing;
  - (c) the name of the vessel's operator or master;
  - (d) the FAO alpha-3 code of each species and its relevant geographical area in which the catches were taken;
  - (e) the quantities of each species stored in kilograms in product weight, broken down by type of product presentation or, where appropriate, the number of individuals;

- (f) the name and address of the facilities where the products are stored;
- (g) where applicable, reference to the transport document specified to in Article 68.

#### Article 67

##### **Electronic completion and transmission of take over declaration data**

1. Without prejudice to specific provisions contained in multiannual plans, when the fisheries products are intended for sale at a later stage, registered buyers, registered auctions or other bodies or persons with an annual financial turnover in first sales of fisheries products of EUR 200 000 or more which are responsible for the first marketing of fisheries products landed in a Member State shall record by electronic means the information referred to in Article 66 and shall send it within 24 hours by electronic means to the competent authorities of the Member State where the take-over takes place.

2. Member States shall transmit, by electronic means, information on take over declarations referred to in Article 66(2).

#### Article 68

##### **Completion and submission of the transport document**

1. Fisheries products landed into the Community, either unprocessed or after having been processed on board, for which neither a sales note nor a take-over declaration has been submitted in accordance with Articles 62, 63, 66 and 67 and which are transported to a place other than that of landing, shall be accompanied by a document drawn up by the transporter until the first sale has taken place. The transporter shall submit, within 48 hours after the loading, a transport document to the competent authorities of the Member State in whose territory the landing has taken place or other bodies authorised by it.

2. The transporter shall be exempted from the requirement of having the transport document accompanying the fisheries products if a transport document has been transmitted electronically, before the transport begins, to the competent authorities of the flag Member State which shall, in the event that the products are transported to a Member State other than the Member State of landing, immediately upon receipt forward the transport document to the competent authorities of the Member State in whose territory the first marketing is declared to take place.

3. In the event that the products are transported to a Member State other than the Member State of landing, the transporter shall also transmit, within 48 hours following the loading of the fisheries products, a copy of the transport document to the competent authorities of the Member State in whose territory the first marketing is declared to take place. The Member State of first marketing may require further information in this regard from the Member State of landing.

4. The transporter shall be responsible for the accuracy of the transport document.

5. The transport document shall indicate:

- (a) the place of destination of the consignment(s) and the identification of the transport vehicle;
- (b) the external identification number and name of the fishing vessel that has landed the products;
- (c) the FAO alpha-3 code of each species and the relevant geographical area in which the catches were taken;
- (d) the quantities of each species transported in kilograms in product weight, broken down by type of product presentation or, where appropriate, the number of individuals;
- (e) the name(s) and address(es) of the consignee(s);
- (f) the place and date of loading.

6. The competent authorities of Member States may grant exemptions from the obligation set out in paragraph 1 if the fisheries products are transported within a port area or not more than 20 km from the place of landing.

7. Where fisheries products that have been declared as sold in a sales note are transported to a location other than the place of landing, the transporter shall be able to prove with a document that a sales transaction has taken place.

8. The transporter shall be exempt from the obligation laid down in this Article if the transport document is replaced by a copy of the landing declaration provided for in Article 23 pertaining to the quantities transported, or any equivalent document containing the same level of information.

#### CHAPTER III

##### **Producer organisations and price and intervention arrangements**

#### Article 69

##### **Monitoring of producer organisations**

1. In accordance with Article 6(1) of Regulation (EC) No 104/2000, Member States shall carry out checks at regular intervals to ensure that:

- (a) producer organisations comply with the terms and conditions for recognition;
- (b) recognition of a producer organisation may be withdrawn if the conditions set out in Article 5 of Regulation (EC) No 104/2000 are no longer fulfilled or if recognition is based on wrong information;
- (c) recognition is immediately withdrawn retroactively if the organisation obtains or benefits from recognition by fraudulent means.

2. In order to ensure that the rules pertaining to producer organisations as laid down in Article 5 and Article 6(1)(b) of Regulation (EC) No 104/2000 are complied with, the Commission shall carry out checks and in the light of such checks may, where appropriate, request that Member States withdraw recognition.

3. Each Member State shall carry out appropriate checks to ensure that each producer organisation fulfils the obligations laid down in the operational programme for the fishing year concerned, as referred to in Regulation (EC) No 2508/2000, and shall apply the penalties provided for in Article 9(3) of Regulation (EC) No 104/2000 in the event that those obligations are not fulfilled.

#### Article 70

##### **Monitoring of price and intervention arrangements**

Member States shall carry out all the checks regarding the price and intervention arrangements, in particular:

- (a) the withdrawal of products from the market for purposes other than human consumption;
- (b) carry-over operations for stabilising, storing and/or processing of products withdrawn from the market;
- (c) private storage of products frozen at sea;
- (d) compensatory allowance for tuna intended for processing.

#### TITLE VI

#### **SURVEILLANCE**

#### Article 71

##### **Sightings at sea and detection by Member States**

1. Member States shall carry out surveillance in Community waters under their sovereignty or jurisdiction based on:

- (a) sightings of fishing vessels by inspection vessels or surveillance aircrafts;
- (b) a vessel monitoring system as referred to in Article 9; or
- (c) any other detection and identification methods.

2. If the sighting or detection does not correspond to other information available to the Member State, it shall undertake any investigations that may be necessary to determine the appropriate follow-up.

3. If the sighting or detection refers to a fishing vessel of another Member State or a third country and the information does not correspond to any other information that is available to the coastal Member State and if that coastal Member State is not in a position to undertake further action, it shall record its findings in a surveillance report and shall transmit that report without delay, if possible by electronic means, to the flag Member State or to the third country concerned. In case of a third country vessel, the surveillance report shall also be sent to the Commission or the body designated by it.

4. In the event that an official of a Member State sights or detects a fishing vessel engaged in activities that may be considered to be an infringement of the rules of the common fisheries policy, he shall without delay issue a surveillance report and send it to his competent authorities.

5. The content of the surveillance report shall be determined in accordance with the procedure referred to in Article 119.

#### Article 72

##### **Action to be taken upon information on sightings and detection**

1. Flag Member States shall, upon receipt of a surveillance report from another Member State, take prompt action on it and undertake such further investigation as is necessary to allow them to determine appropriate follow-up.

2. Member States other than the flag Member State concerned shall, where appropriate, verify whether the sighted vessel reported has carried out activities in the waters under their jurisdiction or sovereignty or if fisheries products stemming from that vessel have been landed or imported into their territory and shall investigate its record of compliance with relevant conservation and management measures.

3. The Commission or the body designated by it or, where appropriate, the flag Member State and other Member States shall also examine suitably documented information regarding sighted vessels submitted by individual citizens, civil society organisations, including environmental organisations, as well as representatives of fisheries or fish trade stakeholder interests.

#### Article 73

##### **Control observers**

1. Where a Community control observer scheme has been established by the Council, control observers on board fishing vessels shall verify the fishing vessel's compliance with the rules of the common fisheries policy. They shall implement all the tasks of the observer scheme and in particular verify and record the vessel's fishing activities and relevant documents.

2. Control observers shall be qualified for their tasks. They shall be independent of the owner, the master of the fishing vessel and any crew member. They shall not have any economic link with the operator.

3. As far as possible, control observers shall ensure that their presence on board fishing vessels does not hinder or interfere with the fishing activities and the normal operations of the vessel.

4. In the event a control observer notices a serious infringement, he shall inform without delay the competent authorities of the flag Member State.

5. Control observers shall draw up an observer report, if possible electronically, and forward it without delay, using if deemed necessary electronic means of transmission on board the fishing vessel, to their competent authorities and to the competent authorities of the flag Member State. Member States shall insert the report in the database referred to in Article 78.

6. In the event that the observer report indicates that the vessel observed has engaged in fishing activities contrary to the rules of the common fisheries policy, the competent authorities referred to in paragraph 4 shall take all appropriate action to investigate the matter.

7. Masters of Community fishing vessels shall provide adequate accommodation for assigned control observers, facilitate their work and avoid interference with the discharge of their duties. Masters of Community fishing vessels shall also provide control observers access to relevant parts of the vessel, including the catch, and to the vessel's documents including electronic files.

8. All costs arising from the operation of control observers under this Article shall be borne by the flag Member States. Member States may charge those costs, in part or in full, to the operators of the fishing vessels flying their flags involved in the relevant fishery.

9. Detailed rules for the application of this Article may be adopted in accordance with the procedure referred to in Article 119.

## TITLE VII

### INSPECTION AND PROCEEDINGS

#### CHAPTER I

#### *General provisions*

#### *Article 74*

#### **Conduct of inspections**

1. Member States shall set up and keep up to date a list of officials responsible for carrying out inspections.

2. Officials shall carry out their duties in accordance with Community law. They shall conduct inspections in a non-discriminatory manner at sea, in ports, during transport, on processing premises and during the marketing of the fisheries products.

3. Officials shall check in particular:

- (a) the legality of the catch kept on board, stored, transported, processed or marketed and the accuracy of the documentations or electronic transmissions relating to it;
- (b) the legality of the fishing gear used for the targeted species and for the catches kept on board;
- (c) if appropriate, the stowage plan and the separate stowage of species;
- (d) the marking of gears; and
- (e) the information on the engine referred to in Article 40.

4. Officials may examine all relevant areas, decks and rooms. They may also examine catches, processed or not, nets or other gear, equipment, containers and packages containing fish or fisheries products and any relevant documents or electronic transmissions which they deem necessary to verify compliance with the rules of the common fisheries policy. They may also question persons deemed to have information on the matter that is the subject of the inspection.

5. Officials shall conduct inspections in such manner as to cause the least disturbance or inconvenience to the vessel or transport vehicle and its activities, and to the storing, processing and marketing of the catch. They shall, as far as possible, prevent any degradation of the catch during the inspection.

6. Detailed rules for the application of this Article, in particular on the methodology and the conduct of an inspection, shall be adopted in accordance with the procedure referred to in Article 119.

#### *Article 75*

#### **Duties of the operator**

1. The operator shall facilitate the safe access to the vessel, transport vehicle or room where the fisheries products are stored, processed or marketed. It shall ensure the safety of the officials and shall not obstruct, intimidate or interfere with the officials in the performance of their duties.

2. Detailed rules for the application of this Article may be adopted in accordance with the procedure referred to in Article 119.

*Article 76***Inspection report**

1. Officials shall draw up an inspection report after each inspection and shall forward it to their competent authorities. Where possible, this report shall be recorded and transmitted by electronic means. In the case of the inspection of a fishing vessel flying the flag of another Member State, a copy of the inspection report shall be sent without delay to the flag Member State concerned if an infringement has been found in the course of the inspection. In the case of the inspection of a fishing vessel flying the flag of a third country, a copy of the inspection report shall be sent without delay to the competent authorities of the third country concerned if an infringement has been found in the course of the inspection. In case of an inspection carried out in the waters under the jurisdiction of another Member State, a copy of the inspection report shall be sent without delay to that Member State.

2. Officials shall communicate their findings from the inspection to the operator, who shall have the possibility to comment on the inspection and its findings. The operator's comments shall be reflected in the inspection report. Officials shall indicate in the fishing logbook that an inspection has been made.

3. A copy of the inspection report shall be sent as soon as possible to the operator, and in any case no later than 15 working days after the completion of the inspection.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*Article 77***Admissibility of inspection and surveillance reports**

Inspection and surveillance reports drawn up by Community inspectors or officials of another Member State or Commission officials shall constitute admissible evidence in administrative or judicial proceedings of any Member State. For establishing facts they shall be treated as equivalent to inspection and surveillance reports of the Member States.

*Article 78***Electronic database**

1. Member States shall set up and keep up to date an electronic database where they upload all inspection and surveillance reports drawn up by their officials.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

*Article 79***Community inspectors**

1. A list of Community inspectors shall be established by the Commission in accordance with the procedure referred to in Article 119.

2. Without prejudice to the primary responsibility of the coastal Member States, Community inspectors may carry out inspections in accordance with this Regulation in Community waters, and on Community fishing vessels outside Community waters.

3. Community inspectors may be assigned for:

- (a) the implementation of the specific control and inspection programmes adopted in accordance with Article 95;
- (b) international fisheries control programmes, where the Community is under an obligation to provide for controls.

4. For the accomplishment of their tasks and subject to paragraph 5, Community inspectors shall have access without delay to:

- (a) all areas on board Community fishing vessels and any other vessels carrying out fishing activities, public premises or places and means of transport; and
- (b) all information and documents which are needed to fulfil their tasks, in particular the fishing logbook, landing declarations, catch certificates, the transshipment declaration, sales notes and other relevant documents;

to the same extent and under the same conditions as officials of the Member State in which the inspection takes place.

5. Community inspectors shall have no police and enforcement powers beyond the territory of their Member State of origin, or outside the Community waters under the sovereignty and jurisdiction of their Member State of origin.

6. When assigned as Community inspectors, officials of the Commission or of the body designated by it shall have no police and enforcement powers.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

## CHAPTER II

**Inspections outside the waters of the inspecting Member State***Article 80***Inspections of fishing vessels outside the waters of the inspecting Member State**

1. Without prejudice to the primary responsibility of the coastal Member State, a Member State may inspect fishing vessels flying its flag in all Community waters outside waters under the sovereignty of another Member State.

2. A Member State may carry out inspections on fishing vessels of another Member State in accordance with this Regulation relating to fishing activities in all Community waters outside waters under the sovereignty of another Member State:

- (a) following authorisation by the coastal Member State concerned; or
- (b) where a specific control and inspection programme has been adopted in accordance with Article 95.

3. A Member State shall be authorised to inspect Community fishing vessels flying the flag of another Member State in international waters.

4. A Member State may inspect Community fishing vessels flying its own flag or the flag of another Member State in waters of third countries in accordance with international agreements.

5. Member States shall designate the competent authority which shall act as the contact point for the purpose of this Article. The contact point of the Member States shall be available 24 hours a day.

#### Article 81

##### Requests for authorisation

1. Requests for authorisation of a Member State to carry out inspections on fishing vessels in Community waters outside waters under its sovereignty or jurisdiction, as referred to in Article 80(2)(a), shall be decided by the coastal Member State concerned within 12 hours of the time of the request or within an appropriate period where the reason for the request is a hot pursuit commenced in the waters of the inspecting Member State.

2. The requesting Member State shall be informed of the decision without delay. Decisions shall also be communicated to the Commission or the body designated by it.

3. Requests for authorisations shall only be refused, in whole or in part only to the extent necessary, for compelling reasons. Refusals and the reasons underlying them shall be sent without delay to the requesting Member State and to the Commission or the body designated by it.

#### CHAPTER III

##### Infringements detected in the course of inspections

#### Article 82

##### Procedure in the event of an infringement

If the information collected during an inspection or any other relevant data leads the official to believe that an infringement of the rules of the common fisheries policy has been committed, the official shall:

- (a) note the suspected infringement in the inspection report;

- (b) take all necessary action to ensure safekeeping of the evidence pertaining to such suspected infringement;

- (c) immediately forward the inspection report to his competent authority;

- (d) inform the natural or legal person suspected of having committed the infringement or which was caught in the act while committing the infringement that the infringement may result in the assignment of the appropriate number of points in accordance with Article 92. This information shall be noted in the inspection report.

#### Article 83

##### Infringements detected outside the waters of the inspecting Member State

1. If an infringement has been detected as a result of an inspection carried out in accordance with Article 80, the inspecting Member State shall without delay submit a summary inspection report to the coastal Member State or, in case of an inspection outside Community waters, to the flag Member State of the fishing vessel concerned. A full inspection report shall be submitted to the coastal and to the flag Member State within 15 days from the time of inspection.

2. The coastal Member State or, in case of an inspection outside Community waters, the flag Member State of the fishing vessel concerned shall undertake all appropriate measures in respect of the infringement referred to in paragraph 1.

#### Article 84

##### Enhanced follow-up with regard to certain serious infringements

1. The flag Member State or the coastal Member State in whose waters a fishing vessel is suspected of having:

- (a) misrecorded catches of stocks subject to a multiannual plan of more than 500 kg or 10 %, calculated as a percentage of the fishing logbook figures, whichever is the higher; or

- (b) committed any of the serious infringements referred to in Article 42 of Regulation (EC) No 1005/2008 or in Article 90(1) of this Regulation within one year of committing a first such serious infringement;

may require the fishing vessel to proceed immediately to a port for a full investigation, in addition to the measures referred to in Chapter IX of Regulation (EC) No 1005/2008.

2. The coastal Member State shall immediately and in compliance with its procedures under national law notify the flag Member State of the investigation referred to in paragraph 1.

3. Officials may remain on board a fishing vessel until a full investigation as referred to in paragraph 1 has been undertaken.

4. The master of the fishing vessel referred to in paragraph 1 shall cease all fishing activities and proceed to port if he has been requested to do so.

#### CHAPTER IV

### **Proceedings of infringements detected in the course of inspections**

#### Article 85

#### **Proceedings**

Without prejudice to Article 83(2) and Article 86, where an infringement of the rules of the common fisheries policy is discovered by the competent authorities in the course of or after an inspection, the competent authorities of the inspecting Member State shall take appropriate measures in accordance with Title VIII against the master of the vessel involved or against any other legal or natural person responsible for the infringement.

#### Article 86

#### **Transfer of proceedings**

1. The Member State in the territory or waters of which an infringement has been discovered may transfer proceedings relating to that infringement to the competent authorities of the flag Member State or the Member State of which the offender holds the citizenship, with the agreement of the Member State concerned and on condition that the transfer is more likely to achieve the result referred to in Article 89(2).

2. The flag Member State may transfer proceedings relating to an infringement to the competent authorities of the inspecting Member State, with the agreement of the Member State concerned and on condition that the transfer is more likely to achieve the result referred to in Article 89(2).

#### Article 87

#### **Infringement detected by Community inspectors**

Member States shall undertake all appropriate measures in respect of any infringement that a Community inspector has discovered in the waters under their sovereignty or jurisdiction, or on a fishing vessel flying their flag.

#### Article 88

#### **Corrective measures in the absence of proceedings by the Member State of landing or transshipment**

1. If the Member State of landing or transshipment is not the flag Member State and its competent authorities do not take appropriate measures against the natural or legal persons responsible, or do not transfer proceedings in accordance with Article 86, the quantities illegally landed or transhipped may be set against the quota allocated to the Member State of landing or transshipment.

2. The quantities of fish to be set against the quota of the Member State of landing or transshipment shall be fixed in accordance with the procedure referred to in Article 119 after the Commission has consulted the two Member States concerned.

3. If the Member State of landing or transshipment no longer has a corresponding quota at its disposal, Article 37 shall apply. To that end the quantities of fish illegally landed or transhipped shall be deemed equivalent to the amount of the prejudice suffered, as mentioned in that Article, by the flag Member State.

#### TITLE VIII

#### **ENFORCEMENT**

#### Article 89

#### **Measures to ensure compliance**

1. Member States shall ensure that appropriate measures are systematically taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules of the common fisheries policy.

2. The overall level of sanctions and accompanying sanctions shall be calculated, in accordance with the relevant provisions of national law, in such way as to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement without prejudice to the legitimate right to exercise their profession. Those sanctions shall also be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind.

3. Member States may apply a system whereby a fine is proportionate to the turnover of the legal person, or to the financial advantage achieved or envisaged by committing the infringement.

4. The competent authorities of the Member State having jurisdiction in the event of an infringement shall, without delay and in compliance with their procedures under national law, notify the flag Member States, the Member State of which the offender holds the citizenship, or any other Member State with an interest in following up the administrative action, criminal proceedings or other measures taken and of any definitive ruling relating to such infringement, including the number of points assigned in accordance with Article 92.

#### Article 90

#### **Sanctions for serious infringements**

1. In addition to Article 42 of Regulation (EC) No 1005/2008, the following activities shall also be considered as serious infringements for the purpose of this Regulation depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition:

- (a) the non-transmission of a landing declaration or a sales note when the landing of the catch has taken place in the port of a third country;
- (b) the manipulation of an engine with the aim of increasing its power beyond the maximum continuous engine power according to the engine certificate;
- (c) the failure to land any species subject to a quota caught during a fishing operation, unless such landing would be contrary to obligations provided for in the rules of the common fisheries policy in fisheries or fishing zones where such rules apply.

2. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.

3. Without prejudice to Article 44(2) of Regulation (EC) No 1005/2008, the Member States shall impose a sanction that is effectively dissuasive and, as appropriate, calculated on the value of the fisheries products obtained by committing a serious infringement.

4. In fixing the sanction, the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

5. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.

6. The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular those described in Article 45 of Regulation (EC) No 1005/2008.

#### Article 91

##### **Immediate enforcement measures**

Member States shall take immediate measures to prevent masters of fishing vessels or other natural persons and legal persons caught in the act of committing a serious infringement, as defined in Article 42 of Regulation (EC) No 1005/2008, from continuing to do so.

#### Article 92

##### **Point system for serious infringements**

1. Member States shall apply a point system for serious infringements as referred to in Article 42(1)(a) of Regulation (EC) No 1005/2008 on the basis of which the holder of a fishing licence is assigned the appropriate number of points as a result of an infringement of the rules of the common fisheries policy.

2. When a natural person has committed or a legal person is held liable for a serious infringement of the rules of the common fisheries policy, the appropriate number of points shall be assigned to the holder of the fishing licence as a result of the infringement. The points assigned shall be transferred to any future holder of the fishing licence for the fishing vessel concerned where the vessel is sold, transferred or otherwise changes ownership after the date of the infringement. The holder of the fishing licence shall be entitled to review proceedings in accordance with national law.

3. When the total number of points equals or exceeds a specified number of points, the fishing licence shall be automatically suspended for a period of at least two months. That period shall be four months if the fishing licence is suspended a second time, eight months if the fishing licence is suspended a third time and one year if the fishing licence is suspended a fourth time as a consequence of a licence holder being assigned the specified number of points. In case of the holder being assigned the specified number of points for a fifth time, the fishing licence shall be permanently withdrawn.

4. If the holder of a fishing licence does not commit, within three years from the date of the last serious infringement, another serious infringement, all points on the fishing licence shall be deleted.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

6. Member States shall also establish a point system under which the master of a vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him.

#### Article 93

##### **National register of infringements**

1. Member States shall enter in a national register all infringements of the rules of the common fisheries policy committed by vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned. Infringements of fishing vessels flying their flag or by their nationals prosecuted in other Member States shall also be entered by Member States in their national register on infringements, upon notification of the definitive ruling by the Member State having jurisdiction, pursuant to Article 90.

2. When following up an infringement of rules of the common fisheries policy, a Member State may request other Member States to provide information contained in their national register on the fishing vessels and persons suspected of having committed the infringement in question or caught in the act of committing the infringement in question.

3. Where a Member State requests information from another Member State in relation to the measures taken on an infringement, that other Member State may provide the relevant information on the fishing vessels and persons in question.

4. The data contained in the national register of infringements shall be stored only for as long as necessary for the purpose of this Regulation, but always for a minimum of three calendar years, starting from the year following that in which the information is recorded.

#### TITLE IX

### CONTROL PROGRAMMES

#### Article 94

#### Common control programmes

Member States may carry out, among themselves and on their initiative, control, inspection and surveillance programmes concerning fisheries activities.

#### Article 95

#### Specific control and inspection programmes

1. The Commission in accordance with the procedure referred to in Article 119 and in concert with the Member State concerned, may determine which fisheries shall be subject to specific control and inspection programmes.

2. The specific control and inspection programmes referred to in paragraph 1 shall state the objectives, priorities and procedures as well as benchmarks for inspection activities. Such benchmarks shall be established based on risk management and revised periodically after an analysis has been made of the results achieved.

3. When a multiannual plan has entered into force and before a specific control and inspection programme has become applicable, each Member State shall establish risk management based target benchmarks for inspection activities.

4. The Member States concerned shall adopt the necessary measures to ensure the implementation of the specific control and inspection programmes, particularly as regards required human and material resources and the periods and zones where these are to be deployed.

#### TITLE X

### EVALUATION AND CONTROL BY THE COMMISSION

#### Article 96

#### General principles

1. The Commission shall control and evaluate the application of the rules of the common fisheries policy by the Member States by means of the examination of information and documents and by conducting verifications, autonomous inspections and audits and shall facilitate coordination and cooperation between them. For this purpose the Commission may, of its own accord and by its own means, initiate and carry out inquiries, verifications, inspections and audits. It may in particular verify:

- (a) the implementation and application of the rules of the common fisheries policy by Member States and their competent authorities;
- (b) the implementation and application of the rules of the common fisheries policy in the waters of a third country in accordance with an international agreement with that country;
- (c) the conformity of national administrative practices and inspection and surveillance activities with the rules of the common fisheries policy;
- (d) the existence of the required documents and their compatibility with the applicable rules;
- (e) the circumstances in which control activities are carried out by Member States;
- (f) the detection and proceedings of infringements;
- (g) the cooperation between Member States.

2. Member States shall cooperate with the Commission in order to facilitate the accomplishment of its tasks. Member States shall ensure that the verification, autonomous inspection and audit missions carried out under this Title are not subject to publicity that is injurious to on-the-spot missions. Wherever the Commission officials encounter difficulties in the execution of their duties, the Member States concerned shall provide the Commission with the means to accomplish its task and give the Commission officials the opportunity to evaluate the specific control and inspection operations.

Member States shall afford the Commission such assistance as it needs to fulfil its tasks.

#### Article 97

#### Competences of Commission officials

1. Commission officials may carry out verifications and inspections on fishing vessels as well as on the premises of businesses and other bodies with activities relating to the common fisheries policy and shall have access to all information and documents needed to exercise their responsibilities, to the same extent and under the same conditions as officials of the Member State in which the verification and inspection take place.

2. Commission officials shall be entitled to take copies of the relevant files and to take the necessary samples if they have reasonable grounds to believe that the rules of the common fisheries policy are not complied with. They may request the identification of any person found on the inspected premises.

3. Commission officials shall have no powers going beyond those of national inspectors and they shall have no police and enforcement powers.

4. Commission officials shall present a written authority stating their identity and capacity.

5. The Commission shall issue written instructions to its officials indicating their authority and the objectives of their mission.

#### Article 98

##### Verifications

1. Wherever it is deemed necessary by the Commission, its officials may be present during control activities carried out by national control authorities. In the framework of these missions of verification, the Commission shall establish appropriate contacts with Member States with a view, wherever possible, to establishing a mutually acceptable verification programme.

2. The Member State concerned shall ensure that the bodies or persons concerned accept to be submitted to the verifications referred to in paragraph 1.

3. If the control and inspection operations envisaged in the framework of the initial verification programme cannot be carried out for factual reasons, the Commission officials, in liaison and agreement with the competent authorities of the Member State concerned, shall modify the initial verification programme.

4. In case of sea or air controls and inspections, the commander of the vessel or aircraft shall be in sole charge of the control and inspection operations. In exercising his command he shall take due account of the verification programme referred to in paragraph 1.

5. The Commission may arrange for its officials visiting a Member State to be accompanied by one or more officials from another Member State as observers. Upon request from the Commission the sending Member State shall nominate, at short notice if necessary, the national officials selected as observers. Member States may also draw up a list of national officials whom the Commission may invite to be present at such controls and inspections. The Commission can invite national officials included in that list or those notified to the Commission at its discretion. The Commission shall, where appropriate, place the list at the disposal of all the Member States.

6. Commission officials may decide, if they consider it necessary, to carry out missions of verification referred to in this Article without prior notice.

#### Article 99

##### Autonomous inspections

1. When there is reason to believe that irregularities occur in the application of the rules of the common fisheries policy, the Commission may carry out autonomous inspections. It shall carry out such inspections of its own accord and without the presence of officials of the Member State concerned.

2. All operators may be subject to autonomous inspections where these are considered necessary.

3. In the framework of autonomous inspections on the territory or in waters under the sovereignty or jurisdiction of a Member State, the procedural rules of that Member State shall apply.

4. If a serious infringement of the provisions of this Regulation is discovered by Commission officials on the territory or in waters under the sovereignty or jurisdiction of a Member State, Commission officials shall inform without delay the competent authorities of the Member State concerned which shall undertake all appropriate measures in respect of such infringement.

#### Article 100

##### Audits

The Commission may carry out audits of the control systems of Member States. The audits may include in particular the evaluation of:

- (a) the quota and the effort management system;
- (b) data validation systems, including systems of cross-checks of vessel monitoring systems, catch, effort and marketing data and data related to the Community fishing fleet register as well as the verification of licences and fishing authorisations;
- (c) the administrative organisation, including the adequacy of the available staff and the available means, the training of staff, the delimitation of functions of all authorities involved in control as well as the mechanisms in place to coordinate the work and the joint evaluation of the results of those authorities;
- (d) the operational systems, including procedures for control of designated ports;
- (e) national control action programmes including the establishment of inspection levels and their implementation;
- (f) the national system of sanctions, including the adequacy of the sanctions imposed, duration of proceedings, economic benefits forfeited by offenders and the deterrent nature of such system of sanctions.

*Article 101***Verification, autonomous inspection and audit reports**

1. The Commission shall inform the Member States concerned of the preliminary findings of verifications and of autonomous inspections within one day after they have taken place.
2. Commission officials shall draw up a verification, autonomous inspection or audit report after each verification, autonomous inspection or audit. The report shall be made available to the Member State concerned within one month after the conclusion of the verification, autonomous inspection or audit. Member States shall have the possibility to comment on the findings of the report within one month.
3. Member States shall take the necessary action on the basis of the report referred to in paragraph 2.
4. The Commission shall publish the finalised verification, autonomous inspection and audit reports, together with the comments of the Member State concerned, on the secure part of its official website.

*Article 102***Follow-up of verification, autonomous inspection and audit reports**

1. Member States shall provide the Commission with any relevant information as that may request on the implementation of this Regulation. In submitting a request for information, the Commission shall specify a reasonable time limit within which the information is to be supplied.
2. If the Commission considers that irregularities have occurred in the implementation of the rules of the common fisheries policy or that the existing control provisions and methods in particular Member States are not effective it shall inform the Member States concerned, which shall then conduct an administrative inquiry in which Commission officials may participate.
3. The Member States concerned shall inform the Commission of the results of the inquiry and forward a report to the Commission drawn up not more than three months after the Commission's request. This period may be extended by the Commission, on a duly reasoned request from the Member State, for a reasonable delay.
4. If the administrative inquiry referred to in paragraph 2 does not lead to the removal of the irregularities or if the Commission identifies shortcomings in the control system of a Member State during the verifications or autonomous inspections referred to in Articles 98 and 99 or in the audit referred to in Article 100, the Commission shall establish an action plan with that Member State. The Member State shall take all necessary measures to implement that action plan.

## TITLE XI

**MEASURES TO ENSURE COMPLIANCE BY MEMBER STATES WITH COMMON FISHERIES POLICY OBJECTIVES**

## CHAPTER I

**Financial measures***Article 103***Suspension and cancellation of Community financial assistance**

1. The Commission may decide to suspend for a maximum period of 18 months all or part of the payments of the Community financial assistance under Regulation (EC) No 1198/2006 and Article 8(a) of Regulation (EC) No 861/2006 where there is evidence that:
  - (a) the effectiveness of the measures being financed is or is likely to be affected by non-compliance with the rules of the common fisheries policy, in particular in the fields of conservation and management of fisheries resources, the adaptation of fleet and fisheries control;
  - (b) the non-compliance is directly attributable to the Member State concerned; and
  - (c) the non-compliance may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system,

and where the Commission concludes, on the basis of the information available and, where appropriate, after examination of the Member State's explanations, that the Member State concerned has not taken adequate measures to remedy the situation and is not in a position to do so in the immediate future.

2. Where, during the period of suspension, the Member State concerned still fails to demonstrate that it has taken remedial action to ensure compliance with and the enforcement of applicable rules in the future or that there is no serious risk that the future effective operation of the Community control and enforcement system will be impaired, the Commission may cancel all or part of the Community financial assistance the payment of which was suspended pursuant to paragraph 1. Such cancellation shall only be made after the corresponding payment has been suspended for 12 months.
3. Before taking the measures referred to in paragraphs 1 and 2, the Commission shall inform in writing the Member State concerned of its findings relating to failures in the control system of the Member State and its intention to adopt the decision referred to paragraph 1 or 2, and shall request it to take remedial action within a period to be determined by the Commission according to the gravity of the infringement, which shall not be less than one month.

4. If the Member State fails to reply to the letter referred to in paragraph 3 within the period to be determined in accordance with that paragraph, the Commission may take the decision referred to in paragraph 1 or 2 on the basis of the information available at that time.

5. The percentage by which payments may be suspended or cancelled shall be proportionate to the nature and importance of the Member State's non-compliance with applicable rules on conservation, control, inspection or enforcement and the gravity of the threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system and shall take into account the extent to which the effectiveness of the measures being financed is or is likely to be affected. It shall take into account, and be limited by, the relative share of the fishery and fishery-related activities, to which non-compliance relates, within the measures financed by the financial assistance referred to in paragraph 1.

6. Decisions under this Article shall be taken with due regard to all relevant circumstances and in such a way that a real economic link exists between the subject matter of the compliance failure and the measure to which the suspended payment or cancelled Community financial assistance relates.

7. A suspension shall be discontinued if the conditions laid down in paragraph 1 are no longer met.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

## CHAPTER II

### **Closure of fisheries**

#### Article 104

#### **Closure of fisheries for failure to comply with the common fisheries policy objectives**

1. Where a Member State does not respect its obligations for the implementation of a multiannual plan, and where the Commission has evidence that the failure to respect those obligations constitutes a serious threat to the conservation of the stock concerned, the Commission may provisionally close the fisheries affected by those shortcomings for the Member State concerned.

2. The Commission shall inform in writing the Member State concerned of its findings and the relevant documentation and set a deadline of no more than ten working days for the Member State to demonstrate that the fisheries can be safely exploited.

3. The measures referred to in paragraph 1 shall only apply if the Member State fails to respond to the request of the Commission within the deadline given in paragraph 2 or if the response is considered unsatisfactory or is clearly indicative of the fact that the necessary measures have not been implemented.

4. The Commission shall lift the closure after the Member State has demonstrated in writing to the satisfaction of the Commission that the fisheries can be safely exploited.

## CHAPTER III

### **Deduction and transfers of quotas and fishing effort**

#### Article 105

#### **Deduction of quotas**

1. When the Commission has established that a Member State has exceeded the quotas which have been allocated to it, the Commission shall operate deductions from future quotas of that Member State.

2. In the case of an overfishing of a quota, allocation or share of a stock or a group of stocks available to a Member State in a given year the Commission shall operate deductions in the following year or years from the annual quota, allocation or share of the Member State which has overfished by applying a multiplying factor according to the following table:

Extent of overfishing relative to the permitted landings	Multiplying factor
Up to 5 %	Overfishing * 1,0
Over 5 % up to 10 %	Overfishing * 1,1
Over 10 % up to 20 %	Overfishing * 1,2
Over 20 % up to 40 %	Overfishing * 1,4
Over 40 % up to 50 %	Overfishing * 1,8
Any further overfishing greater than 50 %	Overfishing * 2,0

However, a deduction equal to the overfishing \* 1,00 shall apply in all cases of overfishing relative to permitted landing equal to, or less than, 100 tonnes.

3. In addition to the multiplying factors referred to in paragraph 2, a multiplying factor of 1,5 shall apply if:

- a Member State has repeatedly overfished its quota, allocation or share of the stock or group of stocks over the previous two years and these overfishings have been the subject of deductions as referred to in paragraph 2;
- the available scientific, technical and economic advice and in particular the reports drawn up by STECF have established that overfishing constitutes a serious threat to the conservation of the stock concerned; or
- the stock is subject to a multiannual plan.

4. In the case of an overfishing of a quota, allocation or share of a stock or a group of stocks available to a Member State in earlier years, the Commission, after consultation of the Member State concerned, may deduct quotas in accordance with the procedure referred to in Article 119 from future quotas of that Member State to take account of the level of overfishing.

5. If a deduction according to paragraphs 1 and 2 cannot be operated on the quota, allocation or share of a stock or group of stocks that was overfished as such because that quota, allocation or share of a stock or group of stocks is not or not sufficiently available to the Member State concerned, the Commission, after consultation of the Member State concerned, may deduct in the following year or years quotas for other stocks or groups of stocks available to that Member State in the same geographical area, or with the same commercial value in accordance with paragraph 1.

6. Detailed rules for the application of this Article, and in particular for determining the quantities concerned, may be adopted in accordance with the procedure referred to in Article 119.

#### Article 106

##### Deduction of fishing effort

1. When the Commission has established that a Member State has exceeded the fishing effort which has been allocated to it, the Commission shall operate deductions from future fishing effort of that Member State.

2. If the fishing effort in a geographical area or in a fishery available to a Member State is exceeded the Commission shall operate deductions in the following year or years from the fishing effort available to that Member State for the geographical area or the fishery concerned by applying a multiplying factor according to the following table:

Extent of excess of available fishing effort	Multiplying factor
Up to 5 %	Excess* 1,0
Over 5 % up to 10 %	Excess* 1,1
Over 10 % up to 20 %	Excess* 1,2
Over 20 % up to 40 %	Excess* 1,4
Over 40 % up to 50 %	Excess* 1,8
Any further excess greater than 50 %	Excess* 2,0

3. If a deduction according to paragraph 2 cannot be operated on the maximum allowable fishing effort that was exceeded as such because such maximum allowable fishing effort is not or not sufficiently available to the Member State concerned, the Commission may deduct in the following year or years fishing effort available to that Member State in the same geographical area in accordance with paragraph 2.

4. Detailed rules for the application of this Article, and in particular for determining the fishing effort concerned, may be adopted in accordance with the procedure referred to in Article 119.

#### Article 107

##### Deduction of quotas for failure to comply with the rules of the common fisheries policy

1. Where there is evidence that rules on stocks subject to multiannual plans are not being complied with by a Member State and that this may lead to a serious threat to the conservation of these stocks, the Commission may operate deductions in the following year or years from the annual quotas, allocations or shares of a stock or group of stocks available to that Member State, applying the proportionality principle by taking into account the damage caused to the stocks.

2. The Commission shall inform in writing the Member State concerned of its findings and set a deadline of no more than 15 working days for the Member State to demonstrate that the fisheries can be safely exploited.

3. The measures referred to in paragraph 1 shall only apply if the Member State fails to respond to the request of the Commission within the deadline given in paragraph 2 or if the response is considered unsatisfactory or is clearly indicative of the fact that the necessary measures have not been implemented.

4. Detailed rules for the application of this Article, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure referred to in Article 119.

#### CHAPTER IV

##### Emergency measures

#### Article 108

##### Emergency measures

1. If there is evidence, including based on the results of the sampling carried out by the Commission, that fishing activities and/or measures adopted by a Member State or Member States undermine the conservation and management measures adopted in the framework of multiannual plans or threaten the marine eco-system and this requires immediate action, the Commission, at the substantiated request of any Member State or on its own initiative, may decide on emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.

2. The emergency measures provided for in paragraph 1 shall be proportionate to the threat and may include, inter alia:

- (a) suspension of fishing activities of vessels flying the flag of the Member States concerned;
- (b) closure of fisheries;

- (c) prohibition against Community operators accepting landings, placing in cages for fattening or farming, or transshipments of fish and fisheries products caught by the vessels flying the flag of the Member States concerned;
- (d) prohibition against the placing on the market or use for other commercial purposes fish and fisheries products caught by the vessels flying the flag of the Member States concerned;
- (e) prohibition against the provision of live fish for fish farming in the waters under the jurisdiction of the Member States concerned;
- (f) prohibition against the accepting of live fish caught by vessels flying the flag of the Member State concerned for the purposes of fish farming in waters under the jurisdiction of the other Member States;
- (g) prohibition against fishing vessels flying the flag of the Member State concerned to fish in waters under the jurisdiction of other Member States;
- (h) modification of the fishing data submitted by Member States in an appropriate way.

3. A Member State shall communicate the request referred to in paragraph 1 simultaneously to the Commission and to the Member States concerned. The other Member States may submit their written comments to the Commission within five working days of receipt of the request. The Commission shall take a decision within 15 working days of receipt of the request.

4. The emergency measures shall have immediate effect. They shall be notified to the Member States concerned and published in the *Official Journal of the European Union*.

5. The Member States concerned may refer the Commission decision to the Council within 15 working days of receipt of the notification.

6. The Council, acting by qualified majority, may take a different decision within one month of the date of receipt of the referral.

## TITLE XII

### DATA AND INFORMATION

#### CHAPTER I

#### *Analysis and audit of data*

##### Article 109

#### **General principles for the analysis of data**

1. Member States shall set up a computerised database for the purpose of validation of data recorded in accordance with this Regulation and a validation system no later than 31 December 2013.

2. Member States shall ensure that all data recorded in accordance with this Regulation are accurate, complete and submitted within deadlines laid down in the common fisheries policy. In particular:

- (a) Member States shall perform cross-checking, analyses and verifications of the following data through automated computerised algorithms and mechanisms:
  - (i) vessel monitoring system data;
  - (ii) fishing activities data, in particular the fishing logbook, the landing declaration, the transshipment declaration and prior notification;
  - (iii) data from take-over declarations, transport documents and sales notes;
  - (iv) data from fishing licences and fishing authorisations;
  - (v) data from inspection reports;
  - (vi) data on engine power;

(b) the following data shall also be cross-checked, analysed and verified where applicable:

- (i) vessel detection system data;
- (ii) data on sightings;
- (iii) data relating to international fisheries agreements;
- (iv) data on entries into and exits from fishing areas, maritime areas where specific rules on access to waters and resources apply, regulatory areas of regional fisheries management organisations and similar organisations and waters of a third country;
- (v) automatic identification system data.

3. The validation system shall allow the immediate identification of inconsistencies, errors and missing information in the data.

4. Member States shall ensure that the database clearly displays any data inconsistencies detected by the data validation system. The database shall also flag all data that were corrected and indicate the reason for such a correction.

5. If an inconsistency in the data has been identified, the Member State concerned shall undertake the necessary investigations and, if there are reasons to suspect that an infringement has been committed, take the necessary action.

6. Member States shall ensure that the dates for data receipt, data entry, data validation and the dates for the follow-up of detected inconsistencies are clearly visible in the database.

7. If the data referred to in paragraph 2 are not transmitted by electronic means Member States shall ensure that they are entered manually into the database without delay.

8. Member States shall establish a national plan for the implementation of the validation system covering the data listed under points (a) and (b) of paragraph 2 and the follow-up of inconsistencies. The plan shall allow Member States to make priorities for the validation and cross-checks and subsequent follow up on inconsistencies based on risk management. The plan shall be submitted to the Commission for approval by 31 December 2011. The Commission shall approve the plans before 1 July 2012 having allowed for the Member States to make corrections. Amendments to the plan shall be submitted to the Commission on an annual basis for approval.

9. If the Commission has identified inconsistencies in the data entered in the database of the Member State as a result of its own investigations, and after having presented documentation and consulted with the Member State, it may require the Member State to investigate the reason for the inconsistency and to correct the data if necessary.

10. The databases established and data collected by Member States referred to in this Regulation shall be deemed authentic under the conditions established under national law.

#### Article 110

##### Access to data

1. Member States shall ensure the remote access for the Commission or the body designated by it to all data referred to in Article 115 at any time without prior notice. In addition, the Commission shall be given the possibility to download manually and automatically these data for any period or for any number of fishing vessels.

2. Member States shall grant access to Commission officials based on electronic certificates generated by the Commission or the body designated by it.

The access shall be made available on the Member States' secure part of their websites referred to in Article 115.

3. Without prejudice to paragraphs 1 and 2, Member States may until 30 June 2012 carry out pilot project(s) with the Commission or the body designated by it to provide real-time remote access to Member States data on fishing opportunities recorded and validated according to this Regulation. When both the Commission and the Member State concerned are satisfied with the outcome of the pilot project, and as long as the remote access is functioning as agreed, the Member State concerned shall no longer be obliged to report on fishing opportunities as described in Article 33(2) and (8). The data access format and procedures shall be considered and tested. Member States shall inform the Commission before 1 January 2012 if they plan to carry out pilot project(s). As from 1 January 2013 the Council may decide on a different way and frequency of data transmission by Member States to the Commission.

#### Article 111

##### Exchange of data

1. Each flag Member State shall ensure the direct electronic exchange of relevant information with other Member States, and where appropriate, the Commission or the body designated by it, in particular:

- (a) vessel monitoring system data when its vessels are present in another Member State's waters;
- (b) fishing logbook information when its vessels are fishing in another Member State's waters;
- (c) landing declarations and transshipment declarations when such operations take place in another Member States ports;
- (d) prior notification when the intended port is in another Member State.

2. Each coastal Member State shall ensure the direct electronic exchange of relevant information with other Member States, and where appropriate, the Commission or the body designated by it, in particular by sending:

- (a) sales notes information to the flag Member State when a first sale originates from another Member State's fishing vessel;
- (b) take-over declaration information when the fish is placed in storage in Member State other than the flag Member State or the Member State of landing;
- (c) sales notes and take-over declaration information to the Member State where the landing took place.

3. Detailed rules for the application of this Chapter, in particular on checking the quality, compliance with deadlines for submission of data, cross-checks, analysis, verification of the data and on establishing a standardised format for the download and exchange of data, shall be adopted in accordance with the procedure referred to in Article 119.

#### CHAPTER II

##### Confidentiality of data

#### Article 112

##### Protection of personal data

1. This Regulation leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter either the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Community institutions and bodies relating to their processing of personal data under Regulation (EC) No 45/2001 when fulfilling their responsibilities.

2. The rights of persons with regard to their registration data processed in national systems shall be exercised in accordance with the law of the Member State which stored their personal data, and in particular the provisions implementing Directive 95/46/EC, and, with regard to their registration data processed in Community systems, shall be exercised in accordance with Regulation (EC) No 45/2001.

#### Article 113

### Confidentiality of professional and commercial secrecy

1. Member States and the Commission shall take all necessary steps to ensure that the data collected and received within the framework of this Regulation shall be treated in accordance with applicable rules on professional and commercial secrecy of data.

2. The data exchanged between Member States and the Commission shall not be transmitted to persons other than those in Member States or Community institutions whose functions require them to have such access unless the Member States transmitting the data give their express consent.

3. The data referred to in paragraph 1 shall not be used for any purpose other than that provided for in this Regulation unless the authorities providing the data give their express consent for the use of the data for other purposes and on condition that the provisions in force in the Member State of the authority receiving the data do not prohibit such use.

4. Data communicated in the framework of this Regulation to persons working for competent authorities, courts, other public authorities and the Commission or the body designated by it, the disclosure of which would undermine:

- (a) the protection of the privacy and the integrity of the individual, in accordance with Community legislation regarding the protection of personal data;
- (b) the commercial interests of a natural or legal person, including intellectual property;
- (c) court proceedings and legal advice; or
- (d) the scope of inspections or investigations;

shall be subject to applicable rules on confidentiality. Information may always be disclosed if this is necessary to bring about the cessation or prohibition of an infringement of the rules of the common fisheries policy.

5. The data referred to in paragraph 1 shall benefit from the same protection as is accorded to similar data by the national legislation of Member State receiving them and by the corresponding provisions applicable to Community institutions.

6. This Article shall not be construed as an obstacle to the use of the data, obtained pursuant to this Regulation, in the framework of legal actions or proceedings subsequently undertaken for failure to respect the rules of the common fisheries policy. The

competent authorities of the Member State transmitting the data shall be informed of all the instances where those data are utilised for these purposes.

7. This Article shall not prejudice the obligations pursuant to international conventions concerning mutual assistance in criminal matters.

#### CHAPTER III

### Official websites

#### Article 114

### Official websites

1. For the purpose of this Regulation each Member State shall set up before 1 January 2012 at the latest an official website accessible via Internet and containing the information listed in Articles 115 and 116. Member States shall communicate the Internet address of their official website to the Commission. The Commission may decide to develop common standards and procedures to ensure transparent communication between the Member States themselves as well as between the Member States, the Community Fisheries Control Agency and the Commission, including transmission of regular snapshots on records of fishing activities in relation to fishing possibilities.

2. Each Member State's official website shall be composed of a publicly accessible part and a secure part. On that website each Member State shall establish, maintain and keep up to date the data necessary for control purposes in accordance with this Regulation.

#### Article 115

### The publicly accessible part of the website

On the publicly accessible part of their websites Member States shall publish without delay or provide a direct link to:

- (a) the names and addresses of the competent authorities responsible for issuing fishing licences, and fishing authorisations referred to in Article 7;
- (b) the list of designated ports for the purpose of transshipment specifying their operating hours, as referred to in Article 20;
- (c) one month after the entry into force of a multiannual plan, and after approval by the Commission, the list of designated ports, specifying their operating hours as referred to in Article 43, and within 30 days thereafter, the associated conditions for recording and reporting the quantities of the species under the multiannual plan for each landing;
- (d) the decision establishing the real-time closure, and defining clearly the geographical area of the affected fishing grounds, the duration of the closure and the conditions governing fisheries in that area during the closure, as referred to in Article 53(2);

- (e) the contact point details for the transmission or submission of fishing logbooks, prior notifications, transshipment declarations, landing declarations, sales notes, take-over declarations and transport documents as referred to in Articles 14, 17, 20, 23, 62, 66 and 68;
- (f) a map with the coordinates of the area of temporary real-time closures as referred to in Article 54, specifying the duration of the closure and the conditions governing fisheries in that area during the closure;
- (g) the decision to close a fishery under Article 35 and all necessary details.

#### *Article 116*

##### **The secure part of the website**

1. On the secure part of its website each Member State shall establish, maintain and keep up to date access to the following lists and databases:

- (a) the lists of officials in charge of inspections as referred to in Article 74;
- (b) the electronic database for the treatment of inspection and surveillance reports drawn up by the officials as referred to in Article 78;
- (c) the vessel monitoring system computer files recorded by its fisheries monitoring centre as referred to in Article 9;
- (d) the electronic database containing the list of all fishing licences, and fishing authorisations issued and managed in accordance with this Regulation, with a clear indication of the conditions set out and the information on all suspensions and withdrawals;
- (e) the way of measuring the continuous period of 24 hours as referred to in Article 26(6);
- (f) the electronic database containing all relevant data on fishing opportunities as referred to in Article 33;
- (g) national control action programmes as referred to in Article 46;
- (h) the electronic database for the purpose of the verification of the completeness and the quality of the data collected as referred to in Article 109.

2. Each Member State shall ensure:

- (a) the remote access for the Commission or the body designated by it to all data referred to in this Article by secure Internet connection on a 24-hour, seven-days-a-week basis;
- (b) the direct electronic exchange of relevant information with other Member States and the Commission or the body designated by it.

3. The Member State shall grant access to Commission officials based on electronic certificates generated by the Commission or the body designated by it.

4. The data contained in the secure part of the website shall be made available only for specific users authorised to that effect by either the Member State concerned or the Commission or the body designated by it. The data accessible to these persons shall be limited to the data they need in order to carry out their tasks and activities of ensuring compliance with the rules of the common fisheries policy and thus shall be bound by the rules governing the confidentiality of the use of such data.

5. The data contained in the secure part of the website shall only be stored for as long as necessary for the purpose of this Regulation, but always for a minimum of three calendar years, starting from the year following that in which the information is recorded. Personal data which are to be exchanged, in accordance with this Regulation, for historical, statistical or scientific use shall be exchanged either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted.

6. Detailed rules for the application of this Chapter shall be adopted in accordance with the procedure referred to in Article 119.

#### TITLE XIII

#### IMPLEMENTATION

##### *Article 117*

##### **Administrative cooperation**

1. The authorities responsible for the implementation of this Regulation in the Member States shall cooperate with each other, with the competent authorities of third countries, with the Commission and with the body designated by it in order to ensure compliance with this Regulation.

2. For the purposes referred to in paragraph 1, a system of mutual assistance shall be established, which shall include rules on the exchange of information upon prior request or on a spontaneous basis.

3. The Member State where fishing activities have taken place shall transmit to the Commission, at its request, by electronic means, any relevant information at the same time as it is communicated to the flag Member State of the fishing vessel.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

##### *Article 118*

##### **Reporting obligations**

1. Every five years, Member States shall transmit a report to the Commission on the application of this Regulation.

2. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up a report every five years to be submitted to the European Parliament and the Council.

3. An evaluation of the impact of this Regulation on the common fisheries policy shall be undertaken by the Commission five years after the entry into force of this Regulation.

4. Member States shall transmit to the Commission a report stating the rules that have been used for producing reports on basic data.

5. Detailed rules on the content and format of the reports by Member States for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.

#### Article 119

#### Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 30 of Regulation (EC) No 2371/2002.

2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

#### TITLE XIV

#### AMENDMENTS AND REPEALS

#### Article 120

#### Amendments to Regulation (EC) No 768/2005

Regulation (EC) No 768/2005 is hereby amended as follows:

1. in Article 3, the following point shall be added:

(i) to assist in the uniform implementation of the control system of the common fisheries policy, including in particular:

- organisation of operational coordination of control activities by Member States for the implementation of specific control and inspection programmes, control programmes related to illegal, unreported and unregulated (IUU) fishing and international control and inspection programmes,
- inspections as necessary to fulfil the Agency's tasks in accordance with Article 17a.;

2. in Article 5

(a) paragraph 1 shall be replaced by the following:

'1. Operational coordination by the Agency shall cover control of all activities covered by the common fisheries policy.;

(b) the following paragraph shall be added:

'3. For the purpose of enhanced operational coordination between Member States, the Agency may establish operational plans with the Member States concerned and coordinate their implementation.;

3. Article 7 shall be replaced by the following:

'Article 7

#### Assistance to the Commission and the Member States

The Agency shall assist the Commission and the Member States for the purpose of ensuring a high, uniform and effective fulfilment of their obligations under the rules of the common fisheries policy including the fight against IUU fishing and in their relations with third countries. The Agency shall in particular:

- (a) establish and develop a core curriculum for the training of the instructors of the fisheries inspectorate of the Member States and provide additional training courses and seminars to those officials and other personnel involved in control and inspection activities;
- (b) establish and develop a core curriculum for the training of Community inspectors before their first deployment and provide updated additional training and seminars on a regular basis to those officials;
- (c) at the request of Member States, undertake the joint procurement of goods and services relating to control and inspection activities by Member States as well as preparation for and the coordination of the implementation by Member States of joint pilot projects;
- (d) draw up joint operational procedures in relation to joint control and inspection activities undertaken by two or more Member States;
- (e) elaborate criteria for the exchange of means of control and inspection between Member States and between Member States and third countries and for the provision of such means by the Member States;
- (f) conduct risk analysis on the basis of the fisheries data on catches, landings and fisheries effort, as well as risk analysis of unreported landings including, inter alia, a comparison of data on catches and imports with data on exports and on national consumption;
- (g) on request from the Commission or of Member States develop common inspection methodologies and procedures;
- (h) assist Member States, at their request, to comply with their Community and their international obligations including the fight against IUU fishing and those arising in the framework of regional fisheries management organisations;

- (i) promote and coordinate the development of uniform risk management methodologies in the field of its competence;
- (j) coordinate and promote cooperation between Member States and common standards for the development of sampling plans defined in Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (\*).

(\*) OJ L 343, 22.12.2009, p. 1.;

4. Article 8 shall be replaced by the following:

*'Article 8*

**Implementation of Community obligations relating to control and inspection**

1. The Agency shall, at the request of the Commission, coordinate control and inspection activities by Member States on the basis of international control and inspection programmes by establishing joint deployment plans.
2. The Agency may acquire, rent or charter the equipment that is necessary for the implementation of the joint deployment plans referred to in paragraph 1.;

5. Article 9 shall be replaced by the following:

*'Article 9*

**Implementation of specific control and inspection programmes**

1. The Agency shall coordinate the implementation of specific control and inspection programmes established in accordance with Article 95 of Regulation (EC) No 1224/2009 through joint deployment plans.
2. The Agency may acquire, rent or charter the equipment that is necessary for the implementation of the joint deployment plans referred to in paragraph 1.;

6. the following Chapter shall be inserted after Chapter III:

*'CHAPTER IIIa*

**COMPETENCES OF THE AGENCY**

*Article 17a*

**Assignment of Agency officials as Community inspectors**

Officials of the Agency may be assigned in international waters as Community inspectors in accordance with Article 79 of Regulation (EC) No 1224/2009.

*Article 17b*

**Agency measures**

The Agency shall, where appropriate:

- (a) issue manuals on harmonised standards of inspections;
- (b) develop guidance material reflecting the best practices in the field of control of the common fisheries policy, including on the training of control officials, and update this on a regular basis;
- (c) provide the Commission with the necessary technical and administrative support to carry out its tasks.

*Article 17c*

**Cooperation**

1. The Member States and the Commission shall cooperate with, and afford the necessary assistance to, the Agency for the accomplishment of its mission.
2. With due regard to the different legal systems in the individual Member States, the Agency shall facilitate cooperation between Member States and between them and the Commission in the development of harmonised standards for control in accordance with Community legislation and taking into account best practices in Member States and agreed international standards.

*Article 17d*

**Emergency unit**

1. Where the Commission, of its own initiative or at the request of at least two Member States, identifies a situation involving a direct, indirect or potential serious risk to the common fisheries policy, and the risk cannot be prevented, eliminated or reduced by existing means or cannot adequately be managed, the Agency shall be immediately notified.
2. The Agency acting upon a notification by the Commission or of its own initiative shall immediately set up an emergency unit and inform the Commission thereof.

*Article 17e*

**Tasks of the emergency unit**

1. The emergency unit set up by the Agency shall be responsible for collecting and evaluating all relevant information and identifying the options available to prevent, eliminate or reduce the risk to the common fisheries policy as effectively and rapidly as possible.

2. The emergency unit may request the assistance of any public authority or private person whose expertise it deems necessary to respond to the emergency effectively.

3. The Agency shall make the necessary coordination for undertaking an adequate and timely response to the emergency.

4. The emergency unit shall, where appropriate, keep the public informed of the risks involved and the measures taken.

#### Article 17f

##### **Multiannual work programme**

1. The multiannual work programme of the Agency shall establish its overall objectives, mandate, tasks, performance indicators and the priorities for each action of the Agency over a five-year period. It shall include a presentation of the staff policy plan and an estimation of budget appropriations to be made available for the achievement of the objectives for that five-year period.

2. The multiannual work programme shall be presented according to the activity-based management system and methodology developed by the Commission. It shall be adopted by the Administrative Board.

3. The work programme referred to in Article 23(2)(c) shall refer to the multiannual work programme. It shall clearly indicate the additions, changes or deletions in comparison with the previous year's work programme, and the progress made in the achievement of the overall objectives and priorities of the multiannual work programme.

#### Article 17g

##### **Cooperation in maritime affairs**

The Agency shall contribute to the implementation of the EU Integrated Maritime Policy, and in particular conclude administrative agreements with other bodies in matters covered by this Regulation after approval by the Administrative Board. The Executive Director shall inform the Commission and the Member States thereof at an early stage of such negotiations.

#### Article 17h

##### **Detailed rules**

Detailed rules for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002.

These rules may cover in particular the formulation of plans for response to an emergency, the establishment of the emergency unit and the practical procedures to be applied.'

#### Article 121

##### **Amendments to other Regulations**

1. In Regulation (EC) No 847/96, Article 5 shall be deleted.

2. Regulation (EC) No 2371/2002 is amended as follows:

(a) Article 21 shall be replaced by the following:

'Article 21

##### **Community control and enforcement system**

Access to waters and resources and the pursuit of activities as set out in Article 1 shall be controlled and compliance with the rules of the common fisheries policy enforced. For this purpose a Community system for the control, inspection and enforcement of the rules of the common fisheries policy shall be established.'

(b) Articles 22 to 28 shall be deleted.

3. In Council Regulation (EC) No 811/2004 of 21 April 2004 establishing measures for the recovery of the northern hake stock <sup>(1)</sup>, Articles 7, 8, 10, 11, 12 and 13 shall be deleted.

4. In Council Regulation (EC) No 2115/2005 of 20 December 2005 establishing a recovery plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation <sup>(2)</sup>, Article 7 shall be deleted.

5. In Council Regulation (EC) No 2166/2005 of 20 December 2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula <sup>(3)</sup>, Chapter IV shall be deleted.

6. In Council Regulation (EC) No 388/2006 of 23 February 2006 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Bay of Biscay <sup>(4)</sup>, Chapter IV shall be deleted.

7. In Council Regulation (EC) No 509/2007 of 7 May 2007 establishing a multi-annual plan for the sustainable exploitation of the stock of sole in the Western Channel <sup>(5)</sup>, Chapter IV shall be deleted.

8. In Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea <sup>(6)</sup>, Chapter IV shall be deleted.

<sup>(1)</sup> OJ L 150, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 340, 23.12.2005, p. 3.

<sup>(3)</sup> OJ L 345, 28.12.2005, p. 5.

<sup>(4)</sup> OJ L 65, 7.3.2006, p. 1.

<sup>(5)</sup> OJ L 122, 11.5.2007, p. 7.

<sup>(6)</sup> OJ L 157, 19.6.2007, p. 1.

9. In Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multiannual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks <sup>(1)</sup>, Article 10(3) and (4), Article 11(2) and (3), Articles 12, 13, 15, Article 18(2) and (3), Articles 19 and 20, Article 22 second paragraph, Articles 23, 24 and 25 shall be deleted.

10. In Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock <sup>(2)</sup>, Articles 5 and 6 shall be deleted.

11. In Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks <sup>(3)</sup>, Articles 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 and 29 shall be deleted.

#### Article 122

##### Repeals

1. Regulation (EEC) No 2847/93 shall be repealed, except for Articles 6, 8 and 11, which shall be repealed with effect from the date of entry into force of the rules implementing Articles 14, 21 and 23 of this Regulation, and for Article 5, Article 9(5) and Articles 13, 21 and 34, which shall be repealed with effect from 1 January 2011.

2. Regulation (EC) No 1627/94 shall be repealed with effect from the date of entry into force of the rules implementing Article 7 of this Regulation.

3. Regulation (EC) No 1966/2006 shall be repealed with effect from 1 January 2011.

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

Done at Brussels, 20 November 2009.

#### Article 123

##### References

References to the repealed Regulations and the provisions deleted in accordance with Article 121 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

#### TITLE XV

##### FINAL PROVISIONS

#### Article 124

##### Entry into force

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

It shall apply from 1 January 2010.

However,

- (a) Article 33(6) and (9), Articles 37, 43, 58, 60, 61, 63, 67, 68, 73, 78 and 84, Article 90(2), (3) and (4), Articles 93 and 117 and Article 121(3) to (11) shall apply from 1 January 2011;
- (b) Articles 6, 7, 14, 21 and 23 shall apply from the date of entry into force of the rules implementing them;
- (c) Article 92 shall apply six months after the entry into force of the rules implementing it.

For the Council  
The President  
E. ERLANDSSON

<sup>(1)</sup> OJ L 248, 22.9.2007, p. 1.

<sup>(2)</sup> OJ L 344, 20.12.2008, p. 6.

<sup>(3)</sup> OJ L 348, 24.12.2008, p. 20.

## ANNEX I

## SPECIFIC INSPECTION BENCHMARKS FOR MULTIANNUAL PLANS

*Objective*

1. Each Member State shall set specific inspection benchmarks in accordance with this Annex.

*Strategy*

2. Inspection and surveillance of fishing activities shall concentrate on fishing vessels likely to catch species subject to a multiannual plan. Random inspections of transport and marketing of species subject to a multiannual plan shall be used as a complementary cross-checking mechanism to test the effectiveness of inspection and surveillance.

*Priorities*

3. Different gear types shall be subject to different levels of prioritisation, depending on the extent to which the fleets are affected by fishing opportunity limits. For that reason, each Member State shall set specific priorities.

*Target benchmarks*

4. Not later than one month from the date of entry into force of a Regulation establishing a multiannual plan, Member States shall implement their inspection schedules taking account of the targets set out below.

Member States shall specify and describe which sampling strategy will be applied.

The Commission shall have access on request to the sampling plan used by the Member State.

- (a) Level of inspection in ports

As a general rule, the accuracy to be achieved should be at least equivalent to what would be obtained by a simple random sampling method, where inspections shall cover 20 % of all landings of species subject to a multiannual plan by weight in a Member State.

- (b) Level of inspection of marketing

Inspection of 5 % of the quantities of species subject to a multiannual plan offered for sale at auction.

- (c) Level of inspection at sea

Flexible benchmark: to be set after a detailed analysis of the fishing activity in each area. Benchmarks at sea shall refer to the number of patrol days at sea in the management areas, possibly with a separate benchmark for days patrolling specific areas.

- (d) Level of aerial surveillance

Flexible benchmark: to be set after a detailed analysis of the fishing activity conducted in each area and taking the available resources at the Member State's disposal into consideration.

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## ANNEX II

## CORRELATION TABLE

Regulation (EEC) No 2847/93	This Regulation
Article 1(1)	Articles 1 and 2
Article 1(2)	Article 5(3)
Article 1(3)	Article 2
Article 2	Article 5
Article 3	Article 9
Article 4(1)	Article 5
Article 4(2)	Article 75
Article 5(a) and (b)	Article 74
Article 5(c)	Article 8
Article 6	Articles 14, 15 and 16
Article 7	Articles 17 and 18
Article 8	Articles 23, 24 and 25
Article 9(1), (2), (3), (4), (4a), (5), (6), (7), (8) and (9)	Articles 62, 63, 64, 65 and 68
Article 9(4b) and (5)	Articles 66 and 67
Article 11	Articles 20, 21 and 22
Article 13	Article 68
Article 14	Article 59
Article 15(1), (2) and (4)	Articles 33 and 34
Article 15(3)	Article 36
Article 16	Article 117
Article 17	Articles 5
Article 19	Articles 112 and 113
Title IIA	Title IV, Chapter I, Section 2
Article 20(1)	Article 47
Article 20(2)	Article 49
Article 21(1)	Article 33
Article 21(2)	Article 35
Article 21(3)	Article 36
Article 21(4)	Article 37
Article 21a	Article 35
Article 21b	Article 34
Article 21c	Article 36
Article 23	Article 105
Title V	Title IV, Chapter II, and Article 109
Article 28(1)	Article 56
Article 28(2)	Articles 57 and 70
Article 28(2a)	Article 56
Article 29	Articles 96, 97, 98 and 99
Article 30	Article 102
Article 31(1) and (2)	Articles 89 and 90
Article 31(4)	Article 86

Article 32(1)	Article 85
Article 32(2)	Article 88
Article 33	Article 86
Article 34	Article 117
Article 34a	Article 117
Article 34b	Article 98
Article 34c	Article 95
Article 35	Article 118
Article 36	Article 119
Article 37	Articles 112 and 113
Article 38	Article 3
Article 39	Article 122
Article 40	Article 124
Regulation (EC) No 1627/94	This Regulation
The entire Regulation	Article 7
Regulation (EC) No 847/96	This Regulation
Article 5	Article 106
Regulation (EC) No 2371/2002	This Regulation
Article 21	Articles 1 and 2
Article 22(1)	Articles 6, 7, 8, 9, 14 and 75
Article 22(2)	Articles 58, 59, 62, 68 and 75
Article 23(3)	Article 5(3), Article 5(5) and Article 11
Article 23(4)	Articles 105 and 106
Article 24	Article 5, Title VII and Articles 71 and 91
Article 25	Chapters III and IV of Title VII and Article 89
Article 26(1)	Article 96
Article 26(2)	Article 108
Article 26(4)	Article 36
Article 27(1)	Articles 96 to 99
Article 27(2)	Articles 101 and 102
Article 28(1)	Article 117
Article 28(3)	Articles 80, 81 and 83
Article 28(4)	Article 79
Article 28(5)	Article 74
Regulation (EC) No 811/2004	This Regulation
Article 7	Article 14(2)
Article 8	Article 17
Article 10	Article 14(3)
Article 11	Article 44
Article 12	Article 60(6)
Regulation (EC) No 2166/2005	This Regulation
Article 9	Article 14(3)
Article 10	Article 60(1)
Article 12	Article 44
Article 13	Article 60(6)

Regulation (EC) No 2115/2005	This Regulation
Article 7	Article 14(3)
Regulation (EC) No 388/2006	This Regulation
Article 7	Article 14(3)
Article 8	Article 60(1)
Article 10	Article 44
Article 11	Article 60(6)
Regulation (EC) No 509/2007	This Regulation
Article 6	Article 14(3)
Article 8	Article 44
Article 9	Article 60(6)
Regulation (EC) No 676/2007	This Regulation
Article 10	Article 14(2)
Article 11	Article 14(3)
Article 12	Article 60(1)
Article 14	Article 44
Article 15	Article 60(6)
Regulation (EC) No 1098/2007	This Regulation
Article 15	Article 14(3)
Article 19	Article 60(1)
Article 24	Article 46
Regulation (EC) No 1342/2008	This Regulation
Article 19(1)	Article 109(2)
Article 19(2)	Article 115
Article 20	Article 60
Article 22	Article 42
Article 23	Article 46
Article 24	Article 17
Article 25	Article 43
Article 26	Article 14(2)
Article 27	Article 44
Article 28	Article 60(6)