

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EEC) establishing a control system applicable to the common fisheries policy

(92/C 280/04)

*COM(92) 392 final**(Submitted by the Commission on 1 October 1992)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, pursuant to Article 8 of Council Regulation (EEC) No .../... establishing a Community system for fisheries and aquaculture, the Council must introduce a Community control system;

Whereas the success of the common fisheries policy involves implementing an effective system of control covering all aspects of the policy;

Whereas, to achieve this aim, such a system must therefore include rules for the monitoring of conser-

vation and resource management measures, structural measures and measures on the common organization of the market, and certain provisions to deal with failure to carry out the abovementioned measures, and must apply right across the whole of the seafood industry from the producer to the consumer;

Whereas application of this system can achieve the desired result only if the industry recognizes its justification and the need for it;

Whereas, whilst monitoring is first and foremost the responsibility of Member States, only the Commission can ensure the effectiveness and fairness of the steps taken by the Member States with regard to the level of the monitoring and the prevention of infringements;

Whereas experience gained in the application of Council Regulation (EEC) No 2241/87 establishing certain control measures for fishing activities ⁽¹⁾, as amended by Regulation (EEC) No 3483/88 ⁽²⁾, has shown that there is a need to strengthen control of the application of the rules governing conservation of fishery resources;

Whereas compliance with measures for the conservation and management of fishery resources requires an increased sense of responsibility on the part of all operators in the fishing industry;

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

Whereas the policy on the management of fishery resources, which is based in particular on total allowable catches (TACs) and quotas and technical measures, must be supplemented by management of the fishing effort, which involves monitoring fishing activities and capacities;

Whereas, to ensure that all catches and landings are monitored, the Member States must monitor, in all maritime waters, the activities of Community vessels and all related activities whose inspection would allow verification of the implementation of the rules concerning the common fisheries policy;

Whereas implementation of the common fisheries policy necessitates measures to monitor vessels flying the flag of a third country present in Community waters, and in particular a system for communicating their movements and the species held on board;

Whereas it may prove necessary to limit directly the activity of vessels or their geographical deployment in particular fisheries; whereas satellite surveillance is an appropriate solution;

Whereas the installation of a continuous position-finding system for fishing vessels must be done progressively hereafter, taking into account technological changes required to implement the system;

Whereas detailed information on catches, including discards, is required to manage the TACs and quotas regarding the species listed in Annex II to Commission Regulation (EEC) No 2166/83 establishing a licensing system for certain fisheries in an area north of Scotland (Shetland area) ⁽¹⁾ and to comply with the minimum sizes laid down in Council Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources ⁽²⁾, as last amended by Regulation (EEC) No 345/92 ⁽³⁾, and those laid down in Regulation (EEC) No 1866/86 laying down certain measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound ⁽⁴⁾, as last amended by Regulation (EEC) No 2156/91 ⁽⁵⁾;

⁽¹⁾ OJ No L 206, 30. 7. 1983, p. 71.

⁽²⁾ OJ No L 288, 11. 10. 1986, p. 1.

⁽³⁾ OJ No L 42, 18. 2. 1992, p. 15.

⁽⁴⁾ OJ No L 162, 18. 6. 1986, p. 1.

⁽⁵⁾ OJ No L 201, 24. 7. 1991, p. 1.

whereas this information requires a logbook to be kept by each skipper of a fishing vessel;

Whereas it is essential to confirm or clarify at the time of landing the information contained in the logbook; whereas to this end those involved in the landing and marketing of catches should declare the quantities landed, transshipped and placed on sale, and the quantities transported prior to first sale should be specifically registered at the port of landing;

Whereas the information contained in the landing, transshipment and sale declarations is the basis for appropriate measures to manage resources closely; whereas it is therefore essential that the Member States carefully verify the accuracy of this information, in particular by comparing the various documents;

Whereas the catch limits must be administered at Member State and Community level; whereas the Member States should therefore register all landings and notify them to the Commission; whereas, to this end, it may be necessary to require the first placing on the market of certain vulnerable species to be by sale at public auction;

Whereas it is also important to be prepared for the date on which a TAC or quota is exhausted; whereas the Member States must accordingly send the Commission a consumption forecast for the stocks or groups of stocks subject to TACs or quotas; whereas delay in sending the information may not enable the stock or stocks subject to TACs or quotas to be satisfactorily managed; whereas the Commission should therefore be authorized to halt fishing as a precaution when it considers that the quota, allocation or share available to the Member States concerned is likely to be exhausted;

Whereas, in order to ensure the conservation and management of all the resources used, the provisions relating to the logbook, the landing and sales declarations and the information concerning transshipments and registration of catches should be extended to stocks which are not subject to a TAC or quota;

Whereas the Member States must be informed of the results of the activities of their vessels in waters under the jurisdiction of a non-member country or in international waters; whereas the skippers of these vessels should accordingly be subject to the obligations relating to the logbook and the landing and transshipment declarations; whereas the information gathered by the Member States should be sent to the Commission;

Whereas the fast and efficient processing of information relating to catches requires the use of computer technology; whereas the Commission must have access by computer transmission to this information so as to carry out its supervisory duties; whereas the confidentiality of the corresponding information must be ensured;

Whereas compliance with the provisions relating to the use of fishing gear cannot be adequately ensured where nets of different mesh sizes are carried; whereas the monitoring provisions adopted to this end cannot, however, be applied to vessels which also fish outside Community waters where different mesh sizes are permitted;

Whereas it is necessary that, if the fishermen of a Member State have exhausted a quota allocated to that State or if the TAC is used up, the obligation to prohibit fishing should be the subject of a Commission decision;

Whereas harm to the conservation and management of fishery resources is caused in all circumstances where a Member State fails to respect its allocated quota; whereas a system of penalties in respect of the Member State concerned should therefore be provided for;

Whereas certain fisheries cannot be managed by monitoring catches alone; whereas they should therefore be subject to a licensing system; whereas the implementation of such systems involves in particular the establishment of a procedure to communicate the positions and movements of vessels;

Whereas, where a vessel has not complied with a conservation rule, it must be subject to additional precautionary control measures;

Whereas the main aim of the common fisheries policy is to adjust fishing capacities to available resources; whereas Article 7 of Regulation (EEC) No .../... establishing a Community system for fisheries and aquaculture stipulates that it is the duty of the Council to set the objectives and strategies for the restructuring of fishing efforts; whereas, it is necessary that compliance with the measures on the common organization of the market is assured, in particular by the persons to whom

these measures apply; whereas, therefore, it is vital that each Member State carry out, in addition to the financial checks already provided for in Community rules, technical checks to ensure that the provisions set by the Council are complied with;

Whereas the Commission, in order to fulfil its duty of supervising the operations of the national inspection agencies, must be able to organize its inspection visits freely and to guarantee its agents sufficient autonomy from the national administrations;

Whereas the action taken on infringements differs from one Member State to another, causing fishermen to feel unfairly treated; whereas the absence of dissuasive penalties in certain Member States reduces the effectiveness of controls; whereas, in the light of these observations, the Member States should take all the necessary non-discriminatory measures to guard against and prosecute irregularities, particularly by establishing a system of minimum penalties which effectively deprive the wrong-doer of the commercial gain resulting from the infringement;

Whereas administrative procedures allow infringements to be dealt with quickly; whereas the application of penal sanctions varies from one Member State to another; whereas the Member States should accordingly introduce into their range of legal measures provisions for the effective and dissuasive suppression of infringements;

Whereas the possibility for the Member State of registration to ensure that the rules on the conservation and management of fishery resources are observed is reduced where the Member State of landing does not effectively prosecute irregularities; whereas provision must therefore be made to count catches made illegally against the quota of the Member State of landing if that State has not brought effective proceedings;

Whereas the grant of aid should be dependent upon compliance with national and Community legislation on fisheries; whereas at the same time authorization should be established at Member State and Community level so that national or Community aid could be suspended, reduced, cancelled or no longer paid out where the legislation is not complied with;

Whereas the Member States should report regularly to the Commission on their inspection activities and on the measures taken as regards infringements of Community measures;

Whereas, in order to facilitate implementation of the planned provisions, a procedure establishing close cooperation between the Member States and the Commission in a management committee should be adopted;

Whereas detailed rules for the application of certain measures laid down in this Regulation should be adopted;

Whereas this Regulation should not affect the national provisions on monitoring which fall within its scope and which go beyond its minimum provisions, provided that they are in conformity with Community law;

Whereas, for reasons of clarity, Regulation (EEC) No 2241/87 should therefore be replaced,

HAS ADOPTED THIS REGULATION:

Article 1

1. In order to ensure compliance with all the rules concerning the common fisheries policy, a Community system is hereby established including in particular provisions for the technical monitoring of:

- conservation and resource management measures,
- structural measures,
- measures concerning the common organization of the market,

as well as certain provisions relating to the penalties to be applied in cases where the abovementioned measures are not observed.

2. Each Member State shall adopt, in accordance with Community rules, appropriate measures to ensure the effectiveness of the system. It shall place sufficient means at the disposal of its competent authorities to enable them to perform their task of inspection and control as laid down in this Regulation.

3. The system shall apply to all fishing activities and to all associated activities carried out within the territory and within the maritime waters subject to the sovereignty or jurisdiction of the Member States; it shall also apply to the activities of fishing vessels flying the flag of Member States which operate in the waters of non-member countries and on the high seas, without prejudice to the special provisions contained in fisheries agreements concluded between the Community and non-member countries or in international conventions.

TITLE I

Inspection and monitoring of fishing vessels and their activities

Article 2

1. In order to ensure compliance with all the rules in force concerning conservation and control measures, each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and all activities whose inspection would enable verification of the implementation of this Regulation, including the activities of landing, selling, transporting and storing fish and recording landings and sales.

2. Fishing vessels flying the flag of a third country and sailing in maritime waters subject to the sovereignty or jurisdiction of a Member State shall be subject to a system of communication of movements and of catches held on board.

Member States shall notify the Commission of the measures taken to ensure compliance with these procedures.

3. Each Member State shall monitor, outside the maritime waters subject to its sovereignty or jurisdiction, the fishing activities of vessels flying its flag in cases where such control is required to ensure compliance with Community rules applicable in those waters.

4. In order to ensure that inspection is as effective and economical as possible, Member States shall coordinate their monitoring activities. To that end they may set up joint inspection programmes to allow the inspection of fishing vessels flying the flag of a Member State in the waters referred to in paragraphs 1 and 3. They shall take measures to permit their competent authorities and the Commission to be regularly informed on a reciprocal basis of the experience gained.

Article 3

1. In order to improve the effectiveness of surveillance of fishing activities, a continuous position monitoring system, either land or satellite based and using satellite communications for data transmission, shall be installed for fishing vessels before 31 December 1995.

To that end all fishing vessels of an overall length greater than 10 metres and flying the flag of, or registered in, a Member State must be fitted, before

31 December 1995, with equipment enabling them to communicate by satellite, to a designated control centre, their geographical position determined to a minimum accuracy of 100 metres, their speed and their course.

2. The Member State whose flag a vessel is flying or in which a vessel is registered shall take the necessary measures to ensure that the data transmitted by its fishing vessels are recorded in computer-readable form, regardless of the waters in which they are operating or the port they are in.

Where its fishing vessels are operating in waters subject to the sovereignty or jurisdiction of another Member State, the flag Member State shall ensure immediate communication of these data to the competent authorities in the Member State concerned.

3. The data gathered pursuant to this Article may not be used for any purpose other than that for which they are requested.

The Commission, the Member States' competent authorities and officials and other agents are obliged not to divulge the data they gather pursuant to this Article and which are, by their nature, covered by business confidentiality.

4. Each Member State shall ensure that the data recorded in accordance with paragraph 2 is stored on computer for a period of three years, commencing at the start of the year following that in which it is recorded, so that they can be checked.

5. The obligations described in paragraph 1 shall not apply to fishing vessels flying the flag of, or registered in, a Member State which are making a trip not exceeding 24 hours, measured from the time of departure from port to the time of return to port.

Article 4

1. In carrying out the task conferred on them, Member States shall ensure that the provisions and measures referred to in Article 2 are complied with. Moreover, they shall act in such a way as to avoid undue interference with normal fishing activities. They shall also ensure that there is no discrimination as regards the sector and vessels chosen for inspection.

2. The persons responsible for the fishing vessels inspected shall cooperate in facilitating inspections carried out in accordance with paragraph 1.

Article 5

In accordance with the procedure laid down in Article 39, detailed rules may be adopted for the implementation of Articles 2, 3 and 4, concerning in particular:

- (a) the identification of officially designated inspectors, of inspection vessels and of such other like means of inspection as may be used by a Member State;
- (b) the procedure to be used by inspectors and skippers of fishing vessels if an inspector wishes to board a vessel;
- (c) the procedure to be used by inspectors, having boarded a fishing vessel, in inspecting that vessel, its gear or its catches;
- (d) the report to be drawn up by inspectors after each boarding;
- (e) the marking and identification of fishing vessels and their gear;
- (f) the certification of the characteristics of fishing vessels related to fishing activities;
- (g) the recording of data relating to the position of fishing vessels and the transmission of such data to the Member States and the Commission;
- (h) the system for communicating movements and fishery products held on board, applicable to fishing vessels flying the flag of a third country.

TITLE II

Monitoring of catches

Article 6

1. Skippers of fishing vessels flying the flag of, or registered in, a Member State and fishing for a stock or group of stocks subject to TACs or quotas shall keep a logbook of their operations indicating the quantities of each species caught and held on board, the date and location of such catches by reference to the smallest zone for which a TAC or quota has been fixed, and the type of gear used.

2. Skippers of fishing vessels flying the flag of, or registered in, a Member State and fishing for species subject to the minimum sizes defined by Regulation (EEC) No 3094/86 or Regulation (EEC) No 1866/86, must record in their logbook the quantities of each species caught and held on board and the date and

location of the catches by reference to the zone or geographical region for which the minimum size has been fixed.

3. Skippers of fishing vessels flying the flag of, or registered in, a Member State and fishing for species listed in Annex II to Regulation (EEC) No 2166/83 must record in their logbook the quantities of each species caught and held on board and the date and location of the catches by reference to the zone or geographical region for which the list of species in the above Annex II has been fixed.

4. Skippers of fishing vessels must record in their logbooks the quantities caught and discarded at sea, the date and location of the catches and the main species involved.

5. The obligations described in paragraphs 1 to 4 shall not apply to the skippers of fishing vessels whose overall length is less than, or equal to, 10 metres and flying the flag of, or registered in, a Member State. However, the Commission may for biological reasons decide, in accordance with the procedure laid down in Article 39, not to apply the aforementioned exemption to certain categories of fishing vessel.

6. Skippers of fishing vessels must record the data referred to in paragraphs 1 to 4 on paper or in computer-readable form.

Article 7

1. The skipper of a fishing vessel flying the flag of, or registered in, a Member State who wishes to make use of landing locations in another Member State must inform the competent authorities in that Member State at least six hours in advance of:

— the landing location(s) and estimated time of arrival there,

and

— the quantities of each species to be landed.

2. Public auction centres and bodies designated by Member States which are responsible for first marketing of fishery products landed by vessels flying the flag of, or registered in, a Member State shall submit a declaration to the competent authorities of the Member State in which they are carrying out the operation.

3. For products in respect of which the first sale is carried out under conditions other than those referred to in paragraph 2, the skipper of the vessel concerned or his

representative shall submit to the authorities of the Member State whose landing facilities he is using a declaration on landing after each trip.

Skippers of vessels flying the flag of, or registered in, a Member State and whose length overall is less than, or equal to, 10 metres may be exempted from this obligation.

4. The declarations referred to in paragraphs 2 and 3 shall contain as a minimum the following information:

— the name of the skipper and the external identification and name of the fishing vessel which has landed the products in question,

— the name of the vessel's owners,

— the port and date of landing,

— the dates and times of the fishing trip,

— the description, presentation and weight of all the species,

— the catch areas, by reference to the zone defined in paragraphs 1 to 3 of Article 6.

5. The declarations referred to in paragraphs 2 and 3 shall be notified by the authorities of the State receiving them to the competent authorities of the Member State whose flag the vessel is flying, or in which it is registered, within 48 hours.

The Member States shall keep a register of the names and addresses of the centres and bodies referred to in paragraph 2.

6. The persons signing the declarations referred to in paragraphs 2 and 3 shall be responsible for their accuracy. They shall keep one copy of the documents submitted to the competent authorities for three years from the start of the year following that in which the information submitted to the competent authorities is recorded.

7. Quantities of species caught which are not declared in accordance with paragraphs 2 to 5, or any proceeds from their sale, shall be confiscated by the competent authorities in the Member State of landing, without prejudice to other applicable penalties.

Article 8

The following provisions shall apply without prejudice to the provisions provided for in fisheries agreements concluded between the Community and certain non-member countries:

— fishing vessels flying the flag of, or registered in, a third country and which are authorized to carry out fishing activities in the maritime waters under the

sovereignty or jurisdiction of a Member State shall keep a logbook containing the information described in Article 6,

- each Member State shall ensure that the skipper of a fishing vessel flying the flag of, or registered in, a third country, or his representative, shall on landing submit to the authorities of the Member State whose landing facilities he is using a declaration for the accuracy of which the skipper, in the first instance, is responsible, listing the quantities landed and the date and location of each catch,
- the skipper of a fishing vessel flying the flag of, or registered in, a third country must notify the competent authorities of the Member State whose landing facilities he wishes to use at least 72 hours in advance of his time of arrival at the port of landing.

The skipper may not carry out any landing operation if the competent authorities of the Member State are not present at the time.

Article 9

Member States shall take the necessary measures to verify the accuracy of the information referred to in Articles 6, 7 and 8 and shall guarantee the Commission access to it via computer at any time.

Article 10

1. Without prejudice to Article 7, the skipper of a fishing vessel flying the flag of, or registered in, a Member State who:

- transships to another vessel, hereinafter referred to as 'the receiving vessel', any quantities of catches of a stock or group of stocks subject to a TAC or quota irrespective of the place of transshipment,

or

- directly lands such quantities outside Community territory,

shall, at the time of the transshipment or of the landing, inform the Member State whose flag his vessel is flying, or in which his vessel is registered, of the species and quantities involved and of the date of transshipment or of landing and of the location of catches by reference to the smallest zone for which a TAC or quota has been fixed.

2. At the latest 24 hours before the beginning and at the end of a transshipment or a series of transshipments, when this takes place in a port or maritime waters subject to the sovereignty or jurisdiction of a Member State, the skipper of the receiving vessel shall inform the competent authorities of that Member State of the quantities of catches of a stock or group of stocks subject to a TAC or quota on board his vessel.

The skipper of the receiving vessel shall keep details of the quantities of catches of a stock or group of stocks subject to a TAC or quota received by transshipment, of the date of receipt, and of the vessel transshipping such catches to the receiving vessel. This requirement shall be deemed to be met by retaining copies of the transshipment declaration provided in accordance with the detailed rules for recording information on Member States' catches of fish.

At the end of the transshipment or series of transshipments the skipper of the receiving vessel shall transmit these details to the competent authorities referred to above within 24 hours.

The skipper of the receiving vessel shall also keep details of the quantities of catches of a stock or group of stocks subject to a TAC or quota which are transshipped by the receiving vessel to a third vessel, and shall inform the competent authorities referred to above of such transshipment at least 24 hours before it takes place. Following transshipment, the skipper shall inform the said authorities of the quantities transshipped.

The skipper of the receiving vessel and the skipper of the third vessel referred to above shall permit the competent authorities referred to above to verify the accuracy of the information and details required by this paragraph.

3. Member States shall take appropriate measures to verify the accuracy of the information received pursuant to paragraphs 1 and 2, and shall, where appropriate, inform the Member State or Member States in which the receiving vessel and the fishing vessel transshipping to the receiving vessel are registered, or whose flag they are flying, of such information and of the results of verification.

4. Paragraphs 2 and 3 shall also apply to a receiving vessel flying the flag of, or registered in, a third country.

Article 11

Where transshipment or landing is to take place more than 15 days after the catch, the information required in Articles 7 and 10 shall be submitted to the competent authorities of the Member State whose flag the vessels are flying or in which the vessels are registered, not later than 15 days after the catch.

Article 12

1. All quantities landed in a port of a Member State by a fishing vessel flying the flag of, or registered in, a Member State which have not been declared pursuant to Article 7 (2) and which are transported to a location

other than the place of landing, shall be separately recorded by the competent authorities in the port of landing. Such records shall contain the following information for each transport operation:

- the name and identifying marks of the vessel(s) having landed the quantities in question,
- the quantities (in kilograms live weight) of each species landed and transported and the location of the catch by reference to the smallest zone for which a TAC or quota has been fixed,
- the date of the recording, the identification of the means of transport used and the destination of the quantities landed.

2. The skipper or his representative and the competent control authorities shall be responsible for the accuracy of the record.

A copy of the record shall accompany the shipment of the quantities concerned as far as their arrival at the sale location.

The shipper shall be responsible for the accuracy of the documents accompanying the shipment.

Article 13

1. Member States shall ensure that all landings by fishing vessels flying the flag of, or registered in, a Member State shall be recorded in computer-readable form. For this purpose, Member States may require that the first marketing be by sale at public auction.

2. For species which are particularly vulnerable biologically it may be required, in accordance with the procedure laid down in Article 39, that the first marketing be by sale at public auction.

3. Where landings are not placed on the market for the first time by sale at public auction, Member States shall ensure that the quantities involved are notified to the public auction centres or to the bodies designated by such States.

4. The Commission shall have access via computer to the records referred to in paragraphs 1, 2 and 3.

Article 14

1. Before the 15th of each month, each Member State shall notify the Commission by computer transmission of the quantities of each stock or group of stocks subject to TACs or quotas landed during the preceding month and shall provide it with any information received pursuant to Articles 10 and 11.

Notifications to the Commission shall indicate the location of the catches as laid down in Articles 6 and 7 and the nationality of the fishing vessels concerned.

Each Member State shall inform the Commission of a quota consumption forecast with anticipated date of exhaustion in respect of the species for which the catches made by fishing vessels flying its flag or registered there are deemed to have exhausted 70 % of the quota, allocation or share available to that Member State.

Without prejudice to the other provisions of this paragraph Member States shall, where catches of stocks or groups of stocks subject to TACs or quotas may reach TAC or quota levels, provide the Commission, at its request, with more detailed or more frequent information than this paragraph requires.

2. The Commission shall keep available to Member States, on computer, the notifications received pursuant to this Article.

3. Where the Commission finds that a Member State has not complied with the deadline for transmitting the data on monthly catches as provided for in paragraph 1, it may set the date on which, for a stock or group of stocks, the catches subject to a quota or other form of quantity restriction and taken by fishing vessels flying the flag of, or registered in, that Member State shall be deemed to have exhausted 70 % of the quota, allocation or share available to that Member State and may set the estimated date on which the quota, allocation or available share may be exhausted.

4. Each Member State shall guarantee storage of the documents and computer databases administered by its competent authorities in accordance with Articles 6, 7 and 10 and the particular detailed rules for the application of those Articles, in such a way as to be able to trace back such data as forms the basis of the notification to the Commission referred to in paragraph 1, for a period of three years from the beginning of the year following the year in which the landings concerned were made.

Article 15

1. Without prejudice to Article 14, the Member State of landing or transshipment shall transmit to the Member State concerned data relating to landings or transshipments carried out in their ports or in their maritime waters by fishing vessels flying the flag of, or registered in, that latter Member State and concerning a particular stock or group of stocks subject to a quota allocated to that Member State.

The information shall contain the name and external identifying marks of the vessel concerned, the quantities of fish in the particular stock or group of stocks landed or transshipped by that vessel and the date and location of the landing or transshipment.

It shall be transmitted within four working days of the landing or transshipment.

2. The Member State of landing or transshipment shall notify the Commission by computer transmission of this information at the same time as it notifies the Member State of registration of it.

Article 16

In accordance with the procedure laid down in Article 39, stocks, groups of stocks or species other than those referred to in Article 6 (1), (2) and (3), may be made subject to Articles 6 to 15.

Article 17

1. Without prejudice to the provisions of fisheries agreements concluded between the Community and third countries, Member States shall take the necessary measures to ensure monitoring of the catches of species made by their vessels operating in waters subject to the sovereignty or jurisdiction of third countries and on the high seas, and to ensure verification and recording of transshipments and landings of such catches.

2. The control and verification measures shall ensure compliance with the following obligations on the part of the vessel owners and/or skippers:

- a logbook shall be kept on board the fishing vessels, in which the skippers shall record their catches,
- a landing declaration shall be submitted to the authorities of the Member State of landing during landings carried out in Community ports,
- the flag Member State shall be informed of the details of each transshipment of fish onto third-country fishing vessels and of landings carried out directly in third countries.

Article 18

1. Each Member State shall notify the Commission by computer transmission before the end of the first month of each calendar quarter of the quantities caught in the fishing waters referred to in Article 17 and landed during the previous quarter and of all information received pursuant to Article 17 (2).

2. For catches made in third-country waters the information notified in accordance with paragraph 1 shall be broken down by third country and stock and by reference to the smallest statistical zone defined for the fishery concerned.

Catches made on the high seas shall be notified by reference to the smallest statistical zone defined by the international convention governing the catch location and by species or group of species for all the stocks in the fishery concerned.

3. The Commission shall keep available to the Member States the information it receives pursuant to this Article.

Article 19

1. Member States shall carry out regular comparisons relating, *inter alia*, to:

- the information contained in the logbooks referred to in Articles 6, 17 and 18,
- the declaration of catches referred to in Articles 7, 17 and 18,
- the documents relating to the first placing on the market of quantities landed referred to in Article 7,
- the information contained in the shipment documents referred to in Article 12,
- the results of the inspections carried out by the competent bodies referred to in Article 2.

2. Member States shall inform the Commission at its request of the comparison procedures used, the results of the comparisons and the action taken, particularly measures taken when infringements were discovered.

The Commission shall have access by computer transmission without delay to all the information referred to in paragraph 1 and to the files drawn up as part of catch inspections.

3. Information acquired pursuant to this Article may only be used for the purpose for which it was requested.

The Commission, the competent authorities in the Member States and officials and other agents are obliged not to divulge information acquired pursuant to this Article which is, by its nature, covered by professional secrecy.

TITLE III

Monitoring of the use of fishing gear*Article 20*

During a fishing trip no vessel flying the flag of, or registered in, a Member State may carry nets of different mesh sizes. However, vessels authorized to fish in the waters of a third country may carry on board the net or nets intended for use in those waters provided that they are of a larger mesh size than that used in Community waters.

Where vessels work together using a net hauled between them, the composition of the catches on each of the vessels must conform to the net on board the vessel with the smallest mesh size.

Unused nets on board vessels must be stowed so that they may not readily be used and in accordance with the following conditions:

- (a) nets, weights and similar gear shall be disconnected from their trawl boards and towing and hauling wires or ropes;
- (b) nets which are on or above deck shall be securely lashed to some part of the superstructure.

TITLE IV

Regulation and suspension of fishing activities*Article 21*

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

2. Each Member State shall determine the date from which the catches of a stock or group of stocks subject to quota made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that stock or group of stocks. As from that date, it shall provisionally prohibit fishing for that stock or group of stocks by such vessels as well as the retention on board, the transshipment and the landing of fish taken after that date and shall decide on a date up to which transshipments and landings or final declarations of catches are permitted. The Commission shall be notified forthwith of

this measure and shall then inform the other Member States.

3. Following notification under paragraph 2 or on its own initiative, the Commission shall fix, on the basis of the information available, the date on which, for a stock or group of stocks, the catches subject to a TAC, quota or other quantitative limitation made by fishing vessels flying the flag of, or registered in, any Member State are deemed to have exhausted the quota, allocation or share available to that Member State or, as the case may be, to the Community.

When an assessment of the situation as referred to in the first subparagraph is made, the Commission shall advise the Member States concerned of the prospects of fishing being halted as a result of a TAC being exhausted.

Fishing vessels flying the flag of, or registered in, a Member State shall cease fishing in respect of a stock or of a group of stocks subject to a quota or TAC on the date on which the quota allocated for the stock or group of stocks in question to that Member State is deemed to have been exhausted or on the date on which the TAC for the species constituting the stock or group of stocks in question is deemed to have been exhausted; such vessels shall equally cease retention on board, transshipment, landing or arranging for transshipment or landing in respect of such catches taken after that date.

4. When the Commission has, by virtue of the first subparagraph of paragraph 3, halted fishing because of the exhaustion of the TAC, quota, allocation or share available to the Community and it appears to the Commission that a Member State has not exhausted its quota, allocation or share of the stock or group of stocks concerned, the following provisions shall apply.

If the prejudice suffered by the Member State for which fishing has been prohibited before its quota was exhausted has not been removed by action in accordance with the procedure laid down in Article 6 (4) of Regulation (EEC) No .../.., measures shall be adopted with the aim of remedying, in an appropriate manner, the prejudice caused, in accordance with the procedure laid down in Article 39. These measures may involve making deductions from the quota, allocation or share of the Member State which has overfished, the quantities so deducted to be allocated appropriately to the Member States whose fishing activities were halted before their quotas were exhausted. These deductions and the consequent allocations shall be made taking into account as a matter of priority the species and zones for which the annual quotas, allocations or shares were fixed. These deductions or allocations may be made during the year in which the prejudice occurred or in the succeeding year or years.

Detailed rules for the application of this paragraph, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure laid down in Article 39.

Article 22

1. This Article shall apply to fishing activities by vessels flying the flag of, or registered in, a Member State if that Member State makes such activities subject to a licensing system and:

- (a) informs the Commission and the other Member States of the activities in question,
- (b) immediately upon issuing a licence informs the Commission and the other Member States of the name and external identifying marks of the licensed vessel, and
- (c) immediately informs the Commission and the other Member States of the suspension or withdrawal of such a licence.

2. The catching, retention on board, transshipment or landing of fish shall be prohibited unless the vessel is licensed for such activities and the licence has not been withdrawn or suspended.

Article 23

1. Skippers of fishing vessels flying the flag of, or registered in, a Member State in which fishing activities are subject to a Community licensing system shall ensure that the competent inspection authorities are notified of:

- each entry into and departure from the zone for which the licence is issued,
- each entry into and departure from a port situated within the abovementioned zone.

2. Where its licence has been suspended or withdrawn, a fishing vessel flying the flag of a Member State for which the licence was issued shall cease to retain on board or to land the species covered by the licence.

Article 24

1. Where a fishing vessel flying the flag of, or registered in, a Member State and registered in that Member State has seriously or repeatedly failed to comply with the rules concerning conservation, the technical measures or the control measures adopted by the Community or by that Member State under Article 6 (2) of Regulation (EEC) No .../... or Article 40 of this Regulation, the Member State concerned shall subject the vessel in question to additional control measures providing that, for a maximum of one year from the recording of the infringement, catches from a stock or group of stocks subject to a quota allocated to that Member State may be landed or transhipped in a port

or within the maritime waters of another Member State or a third country only if the vessel has on board a document certified by the Member State of registration and stating that it has inspected the boat within the last two months.

The Member State of registration shall inform the Commission and the other Member States of the name and external identifying marks and numbers of the vessel on which the said additional control measures have been imposed and of the quota concerned.

2. A vessel subject to additional control measures as referred to in paragraph 1 shall be prohibited from landing or transshipping catches subject to the quota concerned in a port or within the maritime waters of a Member State other than the Member State of registration or of a third country unless the certified document referred to in the first subparagraph of paragraph 1 is on board the vessel.

Article 25

When the Commission has, by virtue of Article 21 (3), halted fishing because of the exhaustion of the quota, allocation or share available to a Member State and it appears to the Commission that that Member State has exceeded its quota, allocation or share of the stock or group of stocks concerned, the Commission shall, in accordance with the procedure laid down in Article 39, adopt measures based on the following principles:

- (a) deductions shall be made from the annual quota, allocation or share of the Member State which has overfished;
- (b) such deductions shall correspond to the quantities caught in excess of the allocation plus a penalty coefficient fixed on the basis of the following parameters:
 - the degree of overfishing,
 - any cases of overfishing in previous years,
 - the biological status of the stock concerned.

These deductions shall be made taking into account as a matter of priority the species and zones for which the annual quotas, allocations or shares were fixed. These deductions may be made during the year in which the overfishing occurred or in the succeeding year or years and may relate to the species concerned and/or other species fished in a similar manner.

TITLE V

Inspection and monitoring of certain measures to improve and adjust structures in the fisheries sector, including aquaculture*Article 26*

In order to ensure compliance with the objectives and strategies set by the Council in accordance with Article 7 of Regulation (EEC) No .../92, in particular the quantitative objectives concerning the fishing capacity of the Community fleets and the adjustment of their activities, each Member State shall organize regular checks, in its territory and within the maritime waters under its sovereignty or jurisdiction, of all persons concerned by the implementation of the abovementioned objectives.

Article 27

1. Each Member State shall adopt provisions to verify the implementation of the objectives referred to in Article 26. To that end, it shall carry out technical controls, particularly in the following areas:

- (a) restructuring, renewal and modernization of the fishing fleet;
- (b) adaptation of fishing capacity by means of temporary or definitive cessation;
- (c) restriction of the activity of certain fishing vessels;
- (d) restriction of the design and number of fishing gear and of the method by which it is used, in particular nets;
- (e) development of the aquaculture industry and coastal areas.

2. Member States shall notify the Commission without delay of the provisions and control methods adopted in accordance with paragraph 1.

3. If it appears to the Commission that a Member State has not complied with the provisions of paragraph 1 it may decide on the means to be employed to oblige the Member State to comply.

4. The decision referred to in paragraph 3 shall be taken in accordance with the procedure laid down in Article 39. It shall be addressed to the Member State concerned.

Article 28

1. Detailed rules for the application of Article 27 may be adopted in accordance with the procedure laid down in Article 39, particularly regarding:

- (a) verification of the engine power of fishing vessels;
- (b) verification of the registered tonnage of fishing vessels;
- (c) verification of the period during which a fishing vessel is immobilized;
- (d) verification of the specifications of fishing gear and their number per fishing vessel.

2. Member States shall communicate to the Commission without delay information on the verification methods used together with the names and addresses of the bodies responsible for carrying out the verification.

Article 29

The Commission may, where a Member State fails to comply with the objective referred to in Article 2 (2) (a) of Regulation (EEC) No 4028/86⁽¹⁾, restrict the number of days at sea authorized for certain categories of vessel flying the flag of, or registered in, that Member State. Where the objective was defined by fishery or group of fisheries the restrictions shall apply to the fleets concerned.

Such restrictions must at least offset the amount by which the objective was exceeded, as laid down in the programme approved by the Commission pursuant to Article 4 of Regulation (EEC) No 4028/86.

TITLE VI

Inspection and monitoring of certain measures concerning the common organization of the market in fishery products*Article 30*

1. In order to ensure compliance with the technical aspects of the rules regarding the measures defined in Council Regulation (EEC) No 3687/91⁽²⁾, each Member State shall organize on its own territory regular checks of all persons involved in the application of the measures.

⁽¹⁾ OJ No L 376, 31. 12. 1986, p. 7.

⁽²⁾ OJ No L 354, 23. 12. 1991, p. 1.

2. The checks shall concern the technical aspects of applying:

- (a) the marketing standards, and in particular minimum sizes;
- (b) the price arrangements, in particular:
 - withdrawal of products from the market for purposes other than human consumption,
 - storage and/or processing of products withdrawn from the market.

Member States shall carry out comparisons between the documents relating to the first placing on the market of the quantities referred to in Article 7 and the quantities landed referred to by the documents, particularly as regards their weight.

3. Member States shall notify the Commission of information relating to the control measures adopted, the competent control authorities, the type of infringements discovered and the action taken.

TITLE VII

Implementation and verification of monitoring

Article 31

1. Member States shall provide the Commission with such information as it may request on the implementation of this Regulation. In submitting a request for information, the Commission shall specify the time limit within which the information is to be supplied.

2. If the Commission considers that irregularities have occurred in the implementation of this Regulation or that the existing monitoring provisions and methods are not effective it shall inform the Member State or States concerned, which shall then conduct an administrative enquiry in which Commission officials may participate.

The Member State or States concerned shall inform the Commission of the progress and results of the enquiry and provide the Commission with a copy of the report of the enquiry and the main data used in the preparation of the report.

3. Without prejudice to the monitoring carried out by Member States in accordance with national laws, regulations and administrative provisions, and to ensure that Member States comply with this Regulation, the Commission may verify its application on the spot.

Checks carried out by the Commission within its powers shall be effected by the Commission's officials.

During land, sea or air inspections the checks effected by the authorized officials may concern the following in particular:

- fishing activities and any connected activity by fishing vessels,
- books and other professional documents, including the taking of copies,
- computerized data,
- fishing gear and quantities caught and held on board,
- premises where an activity governed by Community rules is carried out,
- compliance with structural measures under the common fisheries policy, including the technical conditions under which operations financed by the Community budget are implemented and verified,
- compliance with provisions relating to the common market organization.

Officials of the Member State involved may participate in the checks.

4. Member States shall cooperate with the Commission, at its request, in the fulfilment of its task. They shall in particular take the necessary measures to ensure that inspection missions organized by the Commission are not subjected to publicity injurious to the quality of the inspection and control operations.

Where the Commission or its authorized officials encounter difficulties in the execution of their duties, the Member State concerned shall provide the Commission with the means to accomplish its task.

However, where sea or air inspection is concerned, in duly substantiated cases where the relevant national departments must carry out other priority tasks relating to, in particular, defence, security or customs inspection, the authorities of the Member State shall retain the right to defer or redirect inspection operations as referred to in paragraph 3; in such circumstances the Member State shall cooperate with the Commission in making alternative arrangements.

5. In the case of sea or air inspections the commander of the vessel or aircraft shall be in sole charge of the operations, taking account of the obligation on the part of his authorities to apply this Regulation. The officials authorized by the Commission shall abide by the rules and practices laid down by the commander.

6. (a) In the event that officials authorized by the Commission discover apparent infringements of the Community rules referred to Article 1, the Commission shall inform the Member State thereof without delay by means of a report. The Member State shall take all action called for by the report.

(b) Without prejudice to the provisions of paragraph (a), officials authorized by the Commission may, on discovering an apparent infringement during inspections, inform the competent authorities of the Member State concerned without delay so that they may investigate the infringement and carry out any further enquiries needed to establish the action to be taken.

7. The Member States responsible for prosecuting infringements shall give equal weight to reports drawn up by the competent authorities of another Member State or agents appointed by the Commission as they do to those drawn up by their own authorities and shall follow them up in the same manner.

TITLE VIII

Measures to be taken in the case of non-compliance with the rules in force

Article 32

1. Where the competent authorities in a Member State find that the rules are not being complied with, for instance after monitoring or inspection carried out pursuant to this Regulation, they shall initiate administrative or criminal proceedings against the natural or legal persons responsible.

2. Such proceedings initiated by the competent authorities of the Member States must be liable, in accordance with the relevant provisions of national legislation, to lead to a penalty which shall result in deterrent financial and/or economic consequences for the parties concerned as well as the elimination of any financial profit from the infringement.

3. Without prejudice to national law, the Member States shall take all necessary measures to arrive at the result referred to in paragraph 2, which may be, depending on the gravity of the offence:

- fines,
- seizure of prohibited fishing gear and catches,
- sequestration of the vessel,

- temporary immobilization of the vessel,
- suspension of the licence,
- withdrawal of the licence.

4. The provisions of this Article shall not prevent the Member State of landing or transshipment from transferring prosecution of an infringement to the competent authorities of the Member State of registration with the agreement of the latter and on condition that the transfer is more likely to achieve the result referred to in paragraph 2. The Commission shall be notified of any such transfer by the Member State of landing or transshipment.

Article 33

1. Where an infringement of the provisions of Articles 21 (3), 22, 23 or 24 is discovered by a competent authority, the competent authorities of the Member State of landing or transshipment shall initiate proceedings in accordance with Article 32 against the skipper of the vessel involved or against any other responsible person.

2. If the Member State of landing or transshipment is not the Member State of registration and its competent authorities do not undertake criminal or administrative proceedings or do not transfer prosecution in accordance with Article 32 (4), the quantities illegally landed or transshipped may be set against the quota allocated to that former Member State.

The quantities of fish to be set against that Member State's quota shall be fixed in accordance with the procedure laid down in Article 39 after the Commission has consulted the two Member States concerned and, in the case of infringements of Articles 22, 23 or 24, after the Member State of registration has so requested.

If the Member State of landing or transshipment no longer has a corresponding quota at its disposal, Article 21 (4) shall apply *mutatis mutandis* and the quantities of fish illegally landed or transshipped are deemed to be equivalent to the amount of the prejudice suffered, as mentioned in that Article, by the Member State of registration.

Article 34

1. The competent authorities of the Member State of landing or transshipment shall without delay notify the Commission and the flag Member State or the Member State of registration of any infringement of the Community rules referred to in Article 1, indicating the name and the identification marks of the vessel involved, the names of the skipper and the owner, the circumstances of the infringement, any criminal or administrative proceedings or other measures taken and any legal ruling relating to such infringement.

2. Following a notified administrative or legal ruling or any other case of discovery of an infringement noted in an inspection report drawn up by the competent authorities of a Member State of landing or transshipment or by officials authorized by the Commission, the flag Member State or the Member State of registration shall take all suitable measures as set out in Article 32 (3) to achieve the result referred to in paragraph 2 of that Article.

The flag Member State or the Member State of registration shall notify the Commission without delay of any measures taken, along with the name and the external identification of the vessel concerned.

Article 35

In the event of non-compliance with the provisions of this Regulation, Member States may decide not to grant, to suspend, to reduce or to cancel the financial aid they grant under the common fisheries policy. The Commission and the beneficiary shall be notified of the decision.

Article 36

Without prejudice to Article 35, the Commission may decide not to grant, to suspend, to reduce or to cancel its financial aid provided for in Regulation (EEC) No 4028/86 and in Regulation (EEC) No 3687/91 in the event that the provisions of this Regulation are not complied with. Such measures shall be adopted by the Commission in accordance with the procedure laid down in Article 47 of Regulation (EEC) No 4028/86 or in Article 36 of Regulation (EEC) No 3687/91, as the case may be.

Article 37

1. Member States shall notify the Commission regularly of any laws, regulations or administrative provisions adopted by them in order to prevent and prosecute irregularities.

They shall notify each year the minimum and maximum amount of the fines provided for in respect of each type of infringement and the nature of the penalties they apply.

2. Member States shall notify the Commission regularly of the results of inspections or monitoring carried out pursuant to this Regulation, including the number and type of infringements discovered and the action taken. At the request of the Commission, Member States shall notify it of the amounts of the fines imposed for specific infringements.

3. The Commission shall provide the Member States with a summary of the information received in accordance with paragraphs 1 and 2.

TITLE IX

General provisions

Article 38

Each year Member States shall transmit to the Commission a report on the implementation of this Regulation, containing an assessment of the technical and human resources used and the measures which may help to alleviate any shortcomings discovered.

Article 39

Detailed rules for implementing Articles 6 to 38 of this Regulation shall be adopted in accordance with the procedure laid down in Article 14 of Regulation (EEC) No .../...

Article 40

This Regulation shall apply without prejudice to any national control measures which go beyond its minimum requirements, provided that they comply with Community law and are in conformity with the common fisheries policy.

The national measures referred to in the first paragraph shall be communicated to the Commission in accordance with Article 2 (2) of Council Regulation (EEC) No 101/76⁽¹⁾.

Article 41

1. Regulation (EEC) No 2241/87 is hereby repealed.

2. References to the Regulation repealed by virtue of paragraph 1 shall be construed as references to this Regulation.

Article 42

This Regulation shall enter into force on 1 January 1993.

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

⁽¹⁾ OJ No L 20, 28. 1. 1976, p. 19.