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Price: EUR 7

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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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Having regard to the opinion of the European Data Protection Supervisor ⁽⁴⁾,

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 ⁽⁵⁾, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

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

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

⁽³⁾ OJ C 211, 4.9.2009, p. 73.

⁽⁴⁾ OJ C 151, 3.7.2009, p. 11.

⁽⁵⁾ 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 ⁽⁶⁾ 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.

⁽⁶⁾ 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 ⁽¹⁾, 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 ⁽²⁾ 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 ⁽³⁾, and Member States should use the data of such a system for cross-checking purposes.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

⁽²⁾ OJ L 286, 29.10.2008, p. 33.

⁽³⁾ 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 ⁽¹⁾, 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 ⁽²⁾ and Commission Regulation (EC) No 2104/2004 of 9 December 2004 laying down detailed implementation rules for Council Regulation (EC) No 639/2004 ⁽³⁾, 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.

(1) OJ L 102, 7.4.2004, p. 9.

(2) OJ L 204, 13.8.2003, p. 21.

(3) 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 ⁽¹⁾, 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 ⁽²⁾. 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 ⁽³⁾.
- (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.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 278, 23.10.2001, p. 6.

⁽³⁾ 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 ⁽¹⁾ 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 ⁽²⁾ 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 ⁽³⁾. All measures adopted by the Commission to implement this Regulation should comply with the proportionality principle.

⁽¹⁾ OJ L 223, 15.8.2006, p. 1.

⁽²⁾ OJ L 160, 14.6.2006, p. 1.

⁽³⁾ 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 ⁽¹⁾ 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 ⁽²⁾ 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 ⁽³⁾, 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 ⁽⁴⁾ 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:

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

⁽³⁾ OJ L 171, 6.7.1994, p. 7.

⁽⁴⁾ 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 ⁽¹⁾, 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.

⁽¹⁾ 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 ⁽¹⁾ 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.

⁽¹⁾ 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 ⁽¹⁾, 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.

⁽¹⁾ 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 ⁽¹⁾, 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 ⁽²⁾, 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 ⁽³⁾, 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 ⁽⁴⁾, 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 ⁽⁵⁾, 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 ⁽⁶⁾, Chapter IV shall be deleted.

⁽¹⁾ OJ L 150, 30.4.2004, p. 1.

⁽²⁾ OJ L 340, 23.12.2005, p. 3.

⁽³⁾ OJ L 345, 28.12.2005, p. 5.

⁽⁴⁾ OJ L 65, 7.3.2006, p. 1.

⁽⁵⁾ OJ L 122, 11.5.2007, p. 7.

⁽⁶⁾ 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 ⁽¹⁾, 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 ⁽²⁾, 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 ⁽³⁾, 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

⁽¹⁾ OJ L 248, 22.9.2007, p. 1.

⁽²⁾ OJ L 344, 20.12.2008, p. 6.

⁽³⁾ 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.

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)

COUNCIL REGULATION (EC) No 1225/2009

of 30 November 2009

on protection against dumped imports from countries not members of the European Community

(codified version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽²⁾, has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) The multilateral trade negotiations concluded in 1994 led to new Agreements on the implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as 'GATT'). In the light of the different nature of the new rules for dumping and subsidies respectively, it is also appropriate to have a separate body of Community rules in each of those two areas. Consequently, the rules on protection against subsidies and countervailing duties are contained in a separate Regulation.
- (3) The agreement on dumping, namely, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'the 1994 Anti-Dumping Agreement'), contains detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations. In order to ensure a proper and transparent application of those rules, the language of the agreement should be brought into Community legislation as far as possible.
- (4) In applying the rules it is essential, in order to maintain the balance of rights and obligations which the GATT Agreement establishes, that the Community take account of how they are interpreted by the Community's major trading partners.
- (5) It is desirable to lay down clear and detailed rules on the calculation of normal value. In particular such value should in all cases be based on representative sales in the ordinary course of trade in the exporting country. It is expedient to give guidance as to when parties may be considered as being associated for the purpose of determining dumping. It is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and may be disregarded, and in which recourse may be had to remaining sales, or to constructed normal value, or to sales to a third country. It is also appropriate to provide for a proper allocation of costs, even in start-up situations, and to lay down guidance as to the definition of start-up and the extent and method of allocation. It is also necessary, when constructing normal value, to indicate the methodology to be applied in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value.
- (6) When determining normal value for non-market economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country to be used for such purpose and, where it is not possible to find a suitable third country, to provide that normal value may be established on any other reasonable basis.
- (7) It is appropriate for the Community's anti-dumping practice to take account of the changed economic conditions in Kazakhstan. In particular, it is appropriate to specify that normal value may be determined in accordance with the rules applicable to market economy countries in cases where it can be shown that market conditions prevail for one or more producers, subject to investigation in relation to the manufacture and sale of the product concerned.
- (8) It is also appropriate to grant similar treatment to imports from such countries which are members of the World Trade Organisation (WTO) at the date of the initiation of the relevant anti-dumping investigation.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 56, 6.3.1996, p. 1.

⁽³⁾ See Annex I.

- (9) It is appropriate to specify that an examination of whether market conditions prevail will be carried out on the basis of properly substantiated claims by one or more producers subject to investigation who wish to avail themselves of the possibility to have normal value determined on the basis of rules applicable to market economy countries.
- (10) It is expedient to define the export price and to enumerate the adjustments which are to be made in those cases where a reconstruction of this price from the first open-market price is deemed necessary.
- (11) For the purpose of ensuring a fair comparison between export price and normal value, it is advisable to list the factors which may affect prices and price comparability and to lay down specific rules as to when and how the adjustments should be made, including the fact that any duplication of adjustments should be avoided. It is also necessary to provide that comparison may be made using average prices although individual export prices may be compared to an average normal value where the former vary by customer, region or time period.
- (12) It is necessary to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the dumped imports have caused material injury or are threatening to cause injury. In demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by a Community industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Community.
- (13) It is advisable to define the term 'Community industry' and to provide that parties related to exporters may be excluded from such industry, and to define the term 'related'. It is also necessary to provide for anti-dumping action to be taken on behalf of producers in a region of the Community and to lay down guidelines on the definition of such region.
- (14) It is necessary to lay down who may lodge an anti-dumping complaint, including the extent to which it should be supported by the Community industry, and the information on dumping, injury and causation which such complaint should contain. It is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings.
- (15) It is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require, and should have ample opportunity to present all relevant evidence and to defend their interests. It is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time-limits, if such views and information are to be taken into account. It is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties. There should also be cooperation between the Member States and the Commission in the collection of information.
- (16) It is necessary to lay down the conditions under which provisional duties may be imposed, including the condition that they may be imposed no earlier than 60 days from initiation and no later than nine months thereafter. For administrative reasons, it is also necessary to provide that such duties may in all cases be imposed by the Commission, either directly for a nine-month period or in two stages of six and three months.
- (17) It is necessary to specify procedures for accepting undertakings which eliminate dumping and injury instead of imposing provisional or definitive duties. It is also appropriate to lay down the consequences of breach or withdrawal of undertakings and that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to supplement the findings. In accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour.
- (18) It is necessary to provide that the termination of cases should, irrespective of whether definitive measures are adopted or not, normally take place within 12 months, and in no case later than 15 months, from the initiation of the investigation. Investigations or proceedings should be terminated where the dumping is *de minimis* or the injury is negligible, and it is appropriate to define those terms. Where measures are to be imposed, it is necessary to provide for the termination of investigations and to lay down that measures should be less than the margin of dumping if such lesser amount would remove the injury, as well as to specify the method of calculating the level of measures in cases of sampling.
- (19) It is necessary to provide for retroactive collection of provisional duties if that is deemed appropriate and to define the circumstances which may trigger the retroactive application of duties to avoid the undermining of the definitive measures to be applied. It is also necessary to provide that duties may be applied retroactively in cases of breach or withdrawal of undertakings.

- (20) It is necessary to provide that measures are to lapse after five years unless a review indicates that they should be maintained. It is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of anti-dumping duties are warranted. It is also appropriate to lay down that in any recalculation of dumping which necessitates a reconstruction of export prices, duties are not to be treated as a cost incurred between importation and resale where the said duty is being reflected in the prices of the products subject to measures in the Community.
- (21) It is necessary to provide specifically for the reassessment of export prices and dumping margins where the duty is being absorbed by the exporter through a form of compensatory arrangement and the measures are not being reflected in the prices of the products subject to measures in the Community.
- (22) The 1994 Anti-Dumping Agreement does not contain provisions regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognises circumvention as a problem and has referred it to the GATT Anti-dumping Committee for resolution. Given the failure of the multilateral negotiations so far and pending the outcome of the referral to the WTO Anti-Dumping Committee, it is necessary that Community legislation should contain provisions to deal with practices, including mere assembly of goods in the Community or a third country, which have as their main aim the circumvention of anti-dumping measures.
- (23) It is also desirable to clarify which practices constitute circumvention of the measures in place. Circumvention practices may take place either inside or outside the Community. It is consequently necessary to provide that exemptions from the extended duties which may already be granted to importers may also be granted to exporters when duties are being extended to address circumvention taking place outside the Community.
- (24) It is expedient to permit suspension of anti-dumping measures where there is a temporary change in market conditions which makes the continued imposition of such measures temporarily inappropriate.
- (25) It is necessary to provide that imports under investigation may be made subject to registration upon importation in order to enable measures to be applied subsequently against such imports.
- (26) In order to ensure proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures, and also the amount of duties collected under this Regulation.
- (27) It is necessary to provide for consultation of an Advisory Committee at regular and specified stages of the investigation. The Committee should consist of representatives of Member States with a representative of the Commission as chairman.
- (28) Information provided to Member States in the Advisory Committee is often of a highly technical nature and involves an elaborate economic and legal analysis. In order to provide Member States with sufficient time to consider this information, it should be sent at an appropriate time before the date of a meeting set by the Chairman of the Advisory Committee.
- (29) It is expedient to provide for verification visits to check information submitted on dumping and injury, such visits being, however, conditional on proper replies to questionnaires being received.
- (30) It is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time-limits.
- (31) It is necessary to provide that where parties do not cooperate satisfactorily other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated.
- (32) Provision should be made for the treatment of confidential information so that business secrets are not divulged.
- (33) It is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time-limit which permits parties to defend their interests.
- (34) It is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Community interest, including the consumers' interest, and to lay down the time-limits within which such information has to be presented as well as the disclosure rights of the parties concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Principles

1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

3. The exporting country shall normally be the country of origin. However, it may be an intermediate country, except where, for example, the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.

4. For the purpose of this Regulation, 'like product' means a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 2

Determination of dumping

A. NORMAL VALUE

1. The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

In order to determine whether two parties are associated account may be taken of the definition of related parties set out in Article 143 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽¹⁾.

2. Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5 % or more of the sales volume of the product under consideration to the Community. However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular

market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

A particular market situation for the product concerned within the meaning of the first subparagraph may be deemed to exist, *inter alia*, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements.

4. Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

The extended period of time shall normally be one year but shall in no case be less than six months, and sales below unit cost shall be considered to be made in substantial quantities within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20 % of sales being used to determine normal value.

5. Costs shall normally be calculated on the basis of records kept by the party under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

If costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they shall be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in the cost allocations under this subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

Where the costs for part of the period for cost recovery are affected by the use of new production facilities requiring substantial additional investment and by low capacity utilisation rates, which are the result of start-up operations which take place within or during part of the investigation period, the average costs for the start-up phase shall be those applicable, under the abovementioned allocation rules, at the end of such a phase, and shall be included at that level, for the period concerned, in the weighted average costs referred to in the second subparagraph of paragraph 4. The length of a start-up phase shall be determined in relation to the circumstances of the producer or exporter concerned, but shall not exceed an appropriate initial portion of the period for cost recovery. For this adjustment to costs applicable during the investigation period, information relating to a start-up phase which extends beyond that period shall be taken into account where it is submitted prior to verification visits and within three months of the initiation of the investigation.

6. The amounts for selling, for general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (a) the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (b) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;
- (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

7.

- (a) In the case of imports from non-market economy countries ⁽¹⁾, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time-limits; where appropriate, a market economy third country which is subject to the same investigation shall be used.

⁽¹⁾ Including Azerbaijan, Belarus, North Korea, Tajikistan, Turkmenistan and Uzbekistan.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

- (b) In anti-dumping investigations concerning imports from Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in subparagraph (c), that market economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under subparagraph (a) shall apply.
- (c) A claim under subparagraph (b) must be made in writing and contain sufficient evidence that the producer operates under market economy conditions, that is if:
 - decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,
 - firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
 - the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,
 - the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and
 - exchange rate conversions are carried out at the market rate.

A determination whether the producer meets the abovementioned criteria shall be made within three months of the initiation of the investigation, after specific consultation of the Advisory Committee and after the Community industry has been given an opportunity to comment. This determination shall remain in force throughout the investigation.

B. EXPORT PRICE

8. The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.

9. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any reasonable basis.

In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made so as to establish a reliable export price, at the Community frontier level.

The items for which adjustment shall be made shall include those normally borne by an importer but paid by any party, either inside or outside the Community, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including usual transport, insurance, handling, loading and ancillary costs; customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods; and a reasonable margin for selling, general and administrative costs and profit.

C. COMPARISON

10. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are listed as follows:

(a) *Physical characteristics*

An adjustment shall be made for differences in the physical characteristics of the product concerned. The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference.

(b) *Import charges and indirect taxes*

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community.

(c) *Discounts, rebates and quantities*

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) *Level of trade*

(i) An adjustment for differences in levels of trade, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, shall be made where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade from the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.

(ii) However, in circumstances not envisaged under point (i), when an existing difference in level of trade cannot be quantified because of the absence of the relevant levels on the domestic market of the exporting countries, or where certain functions are shown clearly to relate to levels of trade other than the one which is to be used in the comparison, a special adjustment may be granted.

(e) *Transport, insurance, handling, loading and ancillary costs*

An adjustment shall be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer, where such costs are included in the prices charged. Those costs shall include transport, insurance, handling, loading and ancillary costs.

(f) *Packing*

An adjustment shall be made for differences in the directly related packing costs for the product concerned.

(g) *Credit*

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) *After-sales costs*

An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

(i) *Commissions*

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

The term 'commissions' shall be understood to include the mark-up received by a trader of the product or the like product if the functions of such a trader are similar to those of an agent working on a commission basis.

(j) *Currency conversions*

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except when a sale of foreign currency on forward markets is directly linked to the export sale involved, in which case the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

(k) *Other factors*

An adjustment may also be made for differences in other factors not provided for under subparagraphs (a) to (j) if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.

basis may be compared to prices of all individual export transactions to the Community, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.

12. The dumping margin shall be the amount by which the normal value exceeds the export price. Where dumping margins vary, a weighted average dumping margin may be established.

Article 3

Determination of injury

1. Pursuant to this Regulation, the term 'injury' shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both:

- (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products; and
- (b) the consequent impact of those imports on the Community industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that:

- (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and that the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

D. DUMPING MARGIN

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community, or by a comparison of individual normal values and individual export prices to the Community on a transaction-to-transaction basis. However, a normal value established on a weighted average

5. The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

7. Known factors other than the dumped imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.

8. The effect of the dumped imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

9. A determination of a threat of material injury shall be based on facts and not merely on an allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

- (a) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;
- (b) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and
- (d) inventories of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

Article 4

Definition of Community industry

1. For the purposes of this Regulation, the term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5(4), of the total Community production of those products, except that:

- (a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers;
- (b) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:
 - (i) the producers within such a market sell all or almost all of their production of the product in question in that market; and
 - (ii) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community. In such circumstances, injury may be found to exist even where a major portion of the total Community industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such a market.

2. For the purpose of paragraph 1, producers shall be considered to be related to exporters or importers only if:

- (a) one of them directly or indirectly controls the other; or
- (b) both of them are directly or indirectly controlled by a third person; or
- (c) together they directly or indirectly control a third person provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

3. Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters shall be given an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. In such cases, when evaluating the Community interest of the measures, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situations set out in Article 8(9) and (10) apply, a provisional or definitive duty may be imposed in respect of the Community as a whole. In such cases, the duties may, if practicable, be limited to specific producers or exporters.

4. The provisions of Article 3(8) shall be applicable to this Article.

Article 5

Initiation of proceedings

1. Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.

The complaint may be submitted to the Commission, or to a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives. The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to the Community industry, it shall immediately communicate such evidence to the Commission.

2. A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped

imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

- (a) the identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant. Where a written complaint is made on behalf of the Community industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers;
- (b) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (c) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Community;
- (d) information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in Article 3(3) and (5).

3. The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry.

5. The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint seeking the initiation of an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

6. If in special circumstances, it is decided to initiate an investigation without having received a written complaint by or on behalf of the Community industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify such initiation.

7. The evidence of both dumping and injury shall be considered simultaneously in the decision on whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case. Proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 % or more of Community consumption.

8. The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

9. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall do so within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Union*. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within 45 days of the date on which the complaint is lodged with the Commission.

10. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(5).

11. The Commission shall advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received pursuant to paragraph 1 to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association.

12. An anti-dumping investigation shall not hinder the procedures of customs clearance.

Article 6

The investigation

1. Following the initiation of the proceeding, the Commission, acting in cooperation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of the proceeding. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days to reply. The time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension to the 30 day period may be granted, due account being taken of the time-limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests. They shall send to the Commission the information requested together within the results of all inspections, checks or investigations carried out. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

4. The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission. Officials of the Commission shall be authorised, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

5. The interested parties which have made themselves known in accordance with Article 5(10) shall be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Union*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard.

6. Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with Article 5(10), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.

7. The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with Article 5(10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and that it is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

8. Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

9. For proceedings initiated pursuant to Article 5(9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.

Article 7

Provisional measures

1. Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.

2. The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

3. Provisional duties shall be secured by a guarantee, and the release of the products concerned for free circulation in the Community shall be conditional upon the provision of such guarantee.

4. The Commission shall take provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place 10 days, at the latest, after notification to the Member States of the action taken by the Commission.

5. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty shall be imposed.

6. The Commission shall forthwith inform the Council and the Member States of any decision taken under paragraphs 1 to 5. The Council, acting by a qualified majority, may decide differently.

7. Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission.

Article 8

Undertakings

1. Upon condition that a provisional affirmative determination of dumping and injury has been made, the Commission may accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if, after specific consultation of the Advisory Committee, it is satisfied that the injurious effect of the dumping is thereby eliminated. In such a case and as long as such undertakings are in force, provisional duties imposed by the Commission in accordance with Article 7(1) or definitive duties imposed by the Council in accordance with Article 9(4) as the case may be shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry.

2. Undertakings may be suggested by the Commission, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice consideration of the case. However, it may be determined that a threat of injury is more likely to be realised if the dumped imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to Article 20(5).

3. Undertakings offered need not be accepted if their acceptance is considered impractical, if such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

5. Where undertakings are, after consultation, accepted and where there is no objection raised within the Advisory Committee, the investigation shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the investigation be terminated. The investigation shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

6. If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases it may be required that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Regulation.

7. The Commission shall require any exporter from which an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

8. Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of Article 11, be deemed to take effect from the date on which the investigation is concluded for the exporting country.

9. In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking shall, after consultation, be withdrawn by Commission Decision or Commission Regulation, as appropriate, and the provisional duty which has been imposed by the Commission in accordance with Article 7 or the definitive duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply, provided that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

Any interested party or Member State may submit information showing *prima facie* evidence of a breach of an undertaking. The

subsequent assessment of whether or not a breach of an undertaking has occurred shall normally be concluded within six months, but in no case later than nine months following a duly substantiated request. The Commission may request the assistance of the competent authorities of the Member States in the monitoring of undertakings.

10. A provisional duty may, after consultation, be imposed in accordance with Article 7 on the basis of the best information available, where there is reason to believe that an undertaking is being breached, or in case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded.

Article 9

Termination without measures; imposition of definitive duties

1. Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest.

2. Where, after consultation, protective measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceeding shall be terminated. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

3. For a proceeding initiated pursuant to Article 5(9), injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5(7). For the same proceeding, there shall be immediate termination where it is determined that the margin of dumping is less than 2 %, expressed as a percentage of the export price, provided that it is only the investigation that shall be terminated where the margin is below 2 % for individual exporters and they shall remain subject to the proceeding and may be reinvestigated in any subsequent review carried out for the country concerned pursuant to Article 11.

4. Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. Where provisional duties are in force, a proposal for definitive action shall be submitted no later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted. The Regulation imposing the duty shall specify the duty for each supplier or, if that is impracticable, and in general where Article 2(7)(a) applies, the supplying country concerned.

Where Article 2(7)(a) applies, an individual duty shall, however, be specified for the exporters which can demonstrate, on the basis of properly substantiated claims that:

- (a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
- (b) export prices and quantities, and conditions and terms of sale are freely determined;
- (c) the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
- (d) exchange rate conversions are carried out at the market rate; and
- (e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

6. When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average margin of dumping established for the parties in the sample. For the purpose of this paragraph, the Commission shall disregard any zero and *de minimis* margins, and margins established in the circumstances referred to in Article 18. Individual duties shall be applied to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17.

Article 10

Retroactivity

1. Provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Article 7(1) or 9(4), as the case may be, enters into force, subject to the exceptions set out in this Regulation.

2. Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Council shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, 'injury'

shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or retardation, any provisional amounts shall be released and definitive duties can only be imposed from the date that a final determination of threat or material retardation is made.

3. If the definitive anti-dumping duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

4. A definitive anti-dumping duty may be levied on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 14(5), the Commission has allowed the importers concerned an opportunity to comment, and:

- (a) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found; and
- (b) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

5. In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation no more than 90 days before the application of provisional measures, provided that imports have been registered in accordance with Article 14(5), and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

Article 11

Duration, reviews and refunds

1. An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.

In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the *Official Journal of the European Union* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Community producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this paragraph, the Commission may, inter alia, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under Article 3. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

4. A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the Community following the investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

A review for a new exporter shall be initiated, and carried out on an accelerated basis, after consultation of the Advisory Committee and after Community producers have been given an opportunity to comment. The Commission regulation initiating a review shall repeal the duty in force with regard to the new exporter concerned by amending the Regulation which has imposed such duty, and by making imports subject to registration in accordance with Article 14(5) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

The provisions of this paragraph shall not apply where duties have been imposed under Article 9(6).

5. The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time-limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4. Reviews carried out pursuant to paragraphs 2 and 3 shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review. In any event, reviews pursuant to paragraphs 2 and 3 shall in all cases be concluded within 15 months of initiation. Reviews pursuant to paragraph 4 shall in all cases be concluded within nine months of the date of initiation. If a review carried out pursuant to paragraph 2 is initiated while a review under paragraph 3 is ongoing in the same proceeding, the review pursuant to paragraph 3 shall be concluded at the same time as the review pursuant to paragraph 2.

The Commission shall submit a proposal for action to the Council no later than one month before the expiry of the deadlines specified in the first subparagraph.

If the investigation is not completed within the deadlines specified in the first subparagraph, the measures shall:

- expire in investigations pursuant to paragraph 2,
- expire in the case of investigations carried out pursuant to paragraphs 2 and 3 in parallel, where either the investigation pursuant to paragraph 2 was initiated while a review under paragraph 3 was ongoing in the same proceeding or where such reviews were initiated at the same time, or
- remain unchanged in investigations pursuant to paragraphs 3 and 4.

A notice announcing the actual expiry or maintenance of the measures pursuant to this paragraph shall then be published in the *Official Journal of the European Union*.

6. Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph 2, or repealed, maintained or amended pursuant to paragraphs 3 and 4, by the Community institution responsible for their introduction. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceeding and may, automatically, be reinvestigated in any subsequent review carried out for that country pursuant to this Article.

7. Where a review of measures pursuant to paragraph 3 is in progress at the end of the period of application of measures as defined in paragraph 2, such review shall also cover the circumstances set out in paragraph 2.

8. Notwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

In requesting a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State of the territory in which the products were released for free circulation, within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of normal values and export prices to the Community for the exporter or producer to which the duty applies. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be provided to the Commission. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

The Commission shall, after consultation of the Advisory Committee, decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such review carried out in accordance with the provisions applicable for such reviews, shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The payment of any refund authorised should normally be made by Member States within 90 days of the Commission's decision.

9. In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17.

10. In any investigation carried out pursuant to this Article, the Commission shall examine the reliability of export prices in accordance with Article 2. However, where it is decided to construct the export price in accordance with Article 2(9), it shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Community.

Article 12

Reinvestigation

1. Where the Community industry or any other interested party submit, normally within two years from the entry into force of the measures, sufficient information showing that, after the original investigation period and prior to or following the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement in the resale prices or subsequent selling prices of the imported product in the Community, the investigation may, after consultation, be reopened to examine whether the measure has had effects on the abovementioned prices.

The investigation may also be reopened, under the conditions set out above, at the initiative of the Commission or at the request of a Member State.

2. During a reinvestigation pursuant to this Article, exporters, importers and Community producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices: if it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established in accordance with Article 3, export prices shall be reassessed in accordance with Article 2 and dumping margins shall be recalculated to take account of the reassessed export prices.

Where it is considered that the conditions of Article 12(1) are met due to a fall in export prices which has occurred after the original investigation period and prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices.

3. Where a reinvestigation pursuant to this Article shows increased dumping, the measures in force may, after consultation, be amended by the Council, acting on a proposal from the Commission in accordance with the new findings on export prices. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. The amount of the anti-dumping duty imposed pursuant to this Article shall not exceed twice the amount of the duty imposed initially by the Council.

4. The relevant provisions of Articles 5 and 6 shall apply to any reinvestigation carried out pursuant to this Article, except that such reinvestigation shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the reinvestigation. In any event, such reinvestigations shall in all cases be concluded within nine months of initiation of the reinvestigation.

The Commission shall submit a proposal for action to the Council no later than one month before the expiry of the deadlines specified in the first subparagraph.

If the reinvestigation is not completed within the deadlines specified in the first subparagraph, measures shall remain unchanged. A notice announcing the maintenance of the measures pursuant to this paragraph shall be published in the *Official Journal of the European Union*.

5. Alleged changes in normal value shall only be taken into account under this Article where complete information on revised normal values, duly substantiated by evidence, is made available to the Commission within the time-limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with Article 14(5) pending the outcome of the reinvestigation.

Article 13

Circumvention

1. Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

The practice, process or work referred to in the first subparagraph includes, inter alia, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures via third countries, the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the

products of the manufacturers, and, in the circumstances indicated in paragraph 2, the assembly of parts by an assembly operation in the Community or a third country.

2. An assembly operation in the Community or a third country shall be considered to circumvent the measures in force where:

- (a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, and
- (b) the parts constitute 60 % or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 % of the manufacturing cost, and
- (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

3. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which may also instruct the customs authorities to make imports subject to registration in accordance with Article 14(5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done by the Council, acting on a proposal submitted by the Commission, after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5) or on which guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply pursuant to this Article.

4. Imports shall not be subject to registration pursuant to Article 14(5) or measures where they are traded by companies which benefit from exemptions. Requests for exemptions duly supported by evidence shall be submitted within the time-limits established in the Commission regulation initiating the investigation. Where the circumventing practice, process or work takes place outside the Community, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article. Where the circumventing practice, process or work takes place inside the Community, exemptions may be granted to importers that can show that they are not related to producers subject to the measures.

These exemptions shall be granted by decision of the Commission after consultation of the Advisory Committee or decision of the Council imposing measures and shall remain valid for the period and under the conditions set down therein.

Provided that the conditions set in Article 11(4) are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures.

Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures. Any such review shall be conducted in accordance with the provisions of Article 11(5) as applicable to reviews pursuant to Article 11(3).

5. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

Article 14

General provisions

1. Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

2. Regulations imposing provisional or definitive anti-dumping duties, and regulations or decisions accepting undertakings or terminating investigations or proceedings, shall be published in the *Official Journal of the European Union*. Such regulations or decisions shall contain in particular and with due regard to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. In each case, a copy of the regulation or decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, may be adopted pursuant to this Regulation.

(1) OJ L 302, 19.10.1992, p. 1.

4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, if the Council so decides, acting on a proposal from the Commission. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable.

5. The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action. Registration shall be introduced by regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation.

7. Without prejudice to paragraph 6, the Commission may request Member States, on a case-by-case basis, to supply information necessary to monitor efficiently the application of measures. In this respect, the provisions of Article 6(3) and (4) shall apply. Any data submitted by Member States pursuant to this Article shall be covered by the provisions of Article 19(6).

Article 15

Consultations

1. Any consultations provided for in this Regulation shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately at the request of a Member State or on the initiative of the Commission and in any event within a period which allows the time-limits set by this Regulation to be adhered to.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, but no later than 10 working days before the meeting, with all relevant information.

3. Where necessary, consultation may be in writing only; in that event, the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation which the chairman shall arrange, provided that such oral consultation can be held within a period which allows the time-limits set by this Regulation to be adhered to.

4. Consultation shall cover, in particular:

- (a) the existence of dumping and the methods of establishing the dumping margin;
- (b) the existence and extent of injury;
- (c) the causal link between the dumped imports and injury;
- (d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means of putting such measures into effect.

Article 16

Verification visits

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on dumping and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

2. The Commission may carry out investigations in third countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

3. The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

Article 17

Sampling

1. In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

2. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen.

3. In cases where the examination has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time-limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

4. Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.

Article 18

Non-cooperation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. Interested parties should be made aware of the consequences of non-cooperation.

2. Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time-limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

5. If determinations, including those regarding normal value, are based on the provisions of paragraph 1, including the information supplied in the complaint, it shall, where practicable and with due regard to the time-limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

Such information may include relevant data pertaining to the world market or other representative markets, where appropriate.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

Article 19

Confidentiality

1. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation, shall, if good cause is shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why such summary is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality shall not be arbitrarily rejected.

4. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based, or disclosure of the evidence relied on by the Community authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

5. The Council, the Commission and Member States, or the officials of any of these, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission and Member States, or any information relating to consultations made pursuant to Article 15, or any internal documents prepared by the authorities of the Community or its Member States, shall not be divulged except as specifically provided for in this Regulation.

6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested. This provision shall not preclude the use of information received in the context of one investigation for the purpose of initiating other investigations within the same proceeding in relation to the product concerned.

Article 20

Disclosure

1. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and be received, in cases where a provisional duty has been applied, no later than one month after publication of the imposition of that duty. Where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time-limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, no later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Article 9. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

Article 21

Community interest

1. A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organisations may, within the time-limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted

when they are submitted within the time-limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The Commission shall examine the information which is properly submitted and the extent to which it is representative and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee. The balance of views expressed in the Committee shall be taken into account by the Commission in any proposal made pursuant to Article 9.

6. The parties which have acted in conformity with paragraph 2 may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the Council.

7. Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

Article 22

Final provisions

This Regulation shall not preclude the application of:

- (a) any special rules laid down in agreements concluded between the Community and third countries;
- (b) the Community Regulations in the agricultural sector and Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, Council Regulation (EC) No 1667/2006 of 7 November 2006 on glucose and lactose ⁽²⁾ and Council Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽³⁾. This Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping duties;
- (c) special measures, provided that such action does not run counter to obligations pursuant to the GATT.

⁽¹⁾ OJ L 318, 20.12.1993, p. 18.

⁽²⁾ OJ L 312, 11.11.2006, p. 1.

⁽³⁾ OJ L 282, 1.11.1975, p. 104.

*Article 23***Repeal**

Regulation (EC) No 384/96 is repealed.

However, the repeal of Regulation (EC) No 384/96 shall not prejudice the validity of proceedings initiated thereunder.

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

Done at Brussels, 30 November 2009.

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

*Article 24***Entry into force**

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

For the Council
The President
S. O. LITTORIN

ANNEX I

REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

Council Regulation (EC) No 384/96

(OJ L 56, 6.3.1996, p. 1)

Council Regulation (EC) No 2331/96

(OJ L 317, 6.12.1996, p. 1)

Council Regulation (EC) No 905/98

(OJ L 128, 30.4.1998, p. 18)

Council Regulation (EC) No 2238/2000

(OJ L 257, 11.10.2000, p. 2)

Council Regulation (EC) No 1972/2002

(OJ L 305, 7.11.2002, p. 1)

Council Regulation (EC) No 461/2004

(OJ L 77, 13.3.2004, p. 12)

Article 1

Article 3, only as regards the reference to Regulation (EC) No 384/96.

Council Regulation (EC) No 2117/2005

(OJ L 340, 23.12.2005, p. 17)

ANNEX II

CORRELATION TABLE

Regulation (EC) No 384/96	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2)
Article 2(3), first sentence	Article 2(3), first subparagraph
Article 2(3), second sentence	Article 2(3), second subparagraph
Article 2(4)	Article 2(4)
Article 2(5), first sentence	Article 2(5), first subparagraph
Article 2(5), second sentence	Article 2(5), second subparagraph
Article 2(5), second and third subparagraphs	Article 2(5), third and fourth subparagraphs
Article 2(6) to (9)	Article 2(6) to (9)
Article 2(10)(a) to (h)	Article 2(10)(a) to (h)
Article 2(10)(i) first sentence	Article 2(10)(i), first subparagraph
Article 2(10)(i) second sentence	Article 2(10)(i), second subparagraph
Article 2(10)(j) and (k)	Article 2(10)(j) and (k)
Article 2(11) and (12)	Article 2(11) and (12)
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(2), introductory wording and points (a) and (b)
Article 3(3)	Article 3(3)
Article 3(4)	Article 3(4), introductory wording and points (a) and (b)
Article 3(5) to (9)	Article 3(5) to (9)
Article 4(1), introductory wording	Article 4(1), introductory wording
Article 4(1)(a)	Article 4(1)(a)
Article 4(1)(b)	Article 4(1)(b), introductory wording and points (i) and (ii)
Article 4(2)	Article 4(2), first subparagraph, introductory wording and points (a), (b) and (c)
	Article 4(2), second subparagraph
Article 4(3) and (4)	Article 4(3) and (4)
Articles 5 to 22	Articles 5 to 22
Article 23	—
—	Article 23
Article 24, first paragraph	Article 24
Article 24, second paragraph	—
—	Annex I
—	Annex II

DIRECTIVES

COUNCIL DIRECTIVE 2009/158/EC

of 30 November 2009

on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs

(codified version)

(Text with EEA relevance)

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 ⁽¹⁾,

Whereas:

- (1) Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) Poultry, being live animals, and hatching eggs, being animal products, are included in the list of products in Annex I to the Treaty.
- (3) In order to ensure the rational development of poultry production, thereby increasing productivity in that sector, certain animal health rules governing intra-Community trade in poultry and hatching eggs should be laid down at Community level.
- (4) The breeding and rearing of poultry is included in the farming sector. It constitutes a source of income for part of the farming population.
- (5) In order to encourage intra-Community trade in poultry and hatching eggs, there should be no disparities as regards animal health conditions in the Member States.

(6) In order to encourage the harmonious development of intra-Community trade, a Community system should be laid down to govern imports from third countries.

(7) The provisions of this Directive should not, in principle, apply to specific trade such as exhibitions, shows and contests.

(8) In view of the nature of modern poultry farming, the best way to promote the harmonious development of intra-Community trade in poultry and hatching eggs is to monitor production establishments.

(9) It should be left to the competent authorities of the Member States to approve establishments which satisfy the conditions laid down in this Directive and to ensure that the conditions are applied.

(10) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽⁴⁾ provides for the marketing standards for products of the eggs and poultrymeat sectors. Commission Regulation (EC) No 617/2008 of 27 June 2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for hatching eggs and farmyard poultry chicks ⁽⁵⁾ lays down detailed rules for implementing that Regulation as regards marketing standards for hatching eggs and farmyard poultry chicks, and in particular as regards the granting of a distinguishing number to each production establishment and for the marking of hatching eggs. For practical reasons, the same criteria for identifying production establishments and marking hatching eggs should be adopted for the purposes of this Directive.

⁽¹⁾ Opinion of 20 October 2009 (not yet published in the Official Journal).

⁽²⁾ OJ L 303, 31.10.1990, p. 6.

⁽³⁾ See Annex VI, Part A.

⁽⁴⁾ OJ L 299, 16.11.2007, p. 1.

⁽⁵⁾ OJ L 168, 28.6.2008, p. 5.

- (11) Member States should designate the national reference laboratories and provide all the necessary details and updates. Member States should make that information available to the other Member States and the public.
- (12) In order to be the subject of intra-Community trade, poultry and hatching eggs should satisfy certain animal health requirements, so as to avoid the spread of contagious diseases.
- (13) Transport conditions should be laid down for the same reason.
- (14) Provision should be made for allowing the Commission to approve certain additional requirements in the light of the progress made by a Member State in eradicating certain poultry diseases, provided that those requirements in no case exceed those applied nationally by the Member State concerned. In this context, it could prove desirable to determine the status of the Member States or regions thereof with regard to certain diseases likely to affect poultry.
- (15) Although intra-Community trade transactions in very small quantities cannot, for practical reasons, be subject to all the Community requirements, certain essential rules should be complied with.
- (16) To ensure that the prescribed requirements are satisfied, provision should be made for the issue by an official veterinarian of a veterinary certificate to accompany the poultry and hatching eggs to their destination.
- (17) In respect of the organisation of, and the follow-up to, the checks to be carried out by the Member State of destination and the safeguard measures to be implemented, reference should be made to the general rules laid down in Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾.
- (18) Provision should be made for checks to be carried out by the Commission in cooperation with the competent authorities of Member States.
- (19) Defining Community arrangements applicable to imports from third countries requires a list to be drawn up of third countries or parts of third countries from which poultry and hatching eggs may be imported.
- (20) The choice of those countries should be based on criteria of a general nature such as the state of health of the poultry and other livestock, the organisation and powers of the veterinary services and the health regulations in force.
- (21) In addition, importation of poultry and hatching eggs should not be authorised from countries which are infected with contagious poultry diseases presenting a risk to Community livestock or which have been free from such diseases for too short a period.
- (22) The general conditions applicable to importation from third countries should be supplemented by special conditions drawn up on the basis of the health situation in each of them.
- (23) The presentation of a standard form of certificate upon importation of poultry and hatching eggs constitutes an effective means of verifying that the Community rules are being applied. Such rules may include special provisions which may vary according to the third country concerned. This should be taken into account in drawing up the standard forms of certificate.
- (24) Commission veterinary experts should be responsible for verifying that the rules are observed in third countries.
- (25) The checks carried out upon importation should cover the origin and the state of health of the poultry and hatching eggs.
- (26) Member States should be allowed, on the arrival of poultry and hatching eggs in the territory of the Community and during transit to their place of destination, to take all measures, including slaughter and disposal, required for the purpose of safeguarding public and animal health.
- (27) The constant development of poultry-rearing techniques means that periodic changes in the methods of poultry disease control will have to be made.
- (28) The measures necessary for the implementation of this Directive 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 ⁽²⁾.
- (29) This Directive is without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VI, Part B,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

1. This Directive lays down animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs.

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

2. This Directive shall not apply to poultry for exhibitions, show or contests.

Article 2

For the purposes of this Directive 'official veterinarian' and 'third country' mean the official veterinarian and third countries as defined in Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals ⁽¹⁾.

The following definitions shall also apply:

1. 'poultry' means fowl, turkeys, guinea fowl, ducks, geese, quails, pigeons, pheasants, partridges and ratites (*Ratitae*) reared or kept in captivity for breeding, the production of meat or eggs for consumption, or for re-stocking supplies of game;
2. 'hatching eggs' means eggs for incubation, laid by poultry;
3. 'day-old chicks' means all poultry less than 72 hours old, not yet fed; however, muscovy ducks (*Cairina moschata*) or their crosses may be fed;
4. 'breeding poultry' means poultry 72 hours old or more, intended for the production of hatching eggs;
5. 'productive poultry' means poultry 72 hours old or more, reared for the production of meat and/or eggs for consumption (or for restocking supplies of game);
6. 'slaughter poultry' means poultry sent direct to a slaughterhouse for slaughter as soon as possible after arrival, and in any case within 72 hours;
7. 'flock' means all poultry of the same health status kept on the same premises or in the same enclosure and constituting a single epidemiological unit. In housed poultry this will include all birds sharing the same airspace;
8. 'holding' means a facility – which may include an establishment – used for the rearing or keeping of breeding or productive poultry;
9. 'establishment' means a facility or part of a facility which occupies a single site and is devoted to the following activities:
 - (a) pedigree breeding establishment: an establishment which produces hatching eggs for the production of breeding poultry;
 - (b) breeding establishment: an establishment which produces hatching eggs for the production of productive poultry;
 - (c) rearing establishment:
 - (i) either a breeding poultry-rearing establishment which is an establishment which rears breeding poultry prior to the reproductive stage;
 - or
 - (ii) a productive poultry-rearing establishment which is an establishment which rears egg-laying productive poultry prior to the laying stage;
 - (d) hatchery: an establishment which incubates and hatches eggs and supplies day-old chicks;
10. 'authorised veterinarian' means a veterinarian instructed by the competent veterinary authority, under its responsibility, to carry out the checks provided for in this Directive in a particular establishment;
11. 'approved laboratory' means a laboratory located in the territory of a Member State, approved by the competent veterinary authority, under its responsibility, for the purpose of carrying out the diagnostic tests provided for in this Directive;
12. 'health inspection' means a visit by the official veterinarian or authorised veterinarian for the purpose of inspecting the health status of all the poultry in an establishment;
13. 'compulsorily notifiable diseases' means the diseases listed in Annex V;
14. 'outbreak' means an outbreak as defined in Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community ⁽²⁾;
15. 'quarantine station' means facilities where the poultry is kept in complete isolation and away from direct or indirect contact with other poultry, so as to permit long-term observation and testing for the diseases listed in Annex V;
16. 'sanitary slaughter' means the destruction, subject to all the necessary health safeguards including disinfection, of all poultry and products which are infected or suspected of being contaminated.

⁽¹⁾ OJ L 139, 30.4.2004, p. 321.

⁽²⁾ OJ L 378, 31.12.1982, p. 58.

CHAPTER II

RULES FOR INTRA-COMMUNITY TRADE

Article 3

1. Member States shall submit to the Commission by 1 July 1991 a plan describing the national measures which they intend to implement to ensure compliance with the rules set out in Annex II for the approval of establishments for the purposes of intra-Community trade in poultry and hatching eggs.

The Commission shall examine the plans. In accordance with the procedure referred to in Article 33(2), those plans may be approved, or amendments or additions made, before approval is given.

2. In accordance with the procedure referred to in Article 33(2), amendments or additions to a plan which has been approved in accordance with the second subparagraph of paragraph 1 of this Article may be:

- (a) approved at the request of the Member State concerned, in order to take account of a change in the situation in that Member State, or
- (b) requested, in order to take account of progress in methods of disease prevention and control.

Article 4

Each Member State shall designate a national reference laboratory to be responsible for coordinating the diagnostic methods provided for in this Directive and their use by the approved laboratories located in its territory.

Each Member State shall make the details of its national reference laboratory, and any subsequent changes, available to the other Member States and to the public.

Detailed rules for the uniform application of this Article may be adopted in accordance with the procedure referred to in Article 33(2).

Article 5

In order to be traded in the Community:

- (a) hatching eggs, day-old chicks, breeding poultry and productive poultry shall satisfy the conditions laid down in Articles 6, 15, 18 and 20. They shall also satisfy any conditions laid down pursuant to Articles 16 and 17.

In addition:

- (i) hatching eggs shall satisfy the conditions laid down in Article 8;
- (ii) day-old chicks shall satisfy the conditions laid down in Article 9;

(iii) breeding poultry and productive poultry shall satisfy the conditions laid down in Article 10;

(b) slaughter poultry shall fulfil the conditions set out in Articles 11, 15, 18 and 20 and those laid down pursuant to Articles 16 and 17;

(c) poultry (including day-old chicks) intended for restocking supplies of game shall fulfil the conditions set out in Articles 12, 15, 18 and 20 and those laid down pursuant to Articles 16 and 17;

(d) as regards salmonella, poultry intended for Finland and Sweden shall fulfil the conditions laid down pursuant to Article 13.

Article 6

Hatching eggs, day-old chicks, breeding poultry and productive poultry shall come from:

- (a) establishments which fulfil the following requirements:
 - (i) they must be approved and given a distinguishing number by the competent authority, in accordance with the rules set out in Chapter I of Annex II;
 - (ii) they must not, at the time of consignment, be the subject of any animal health restrictions applicable to poultry;
 - (iii) they must not be located in an area which for animal health reasons is subject to restrictive measures in accordance with Community legislation as a result of the outbreak of a disease to which poultry is susceptible;
- (b) a flock which at the time of consignment presents no clinical sign or suspicion of contagious poultry disease.

Article 7

Each Member State shall draw up and keep up-to-date a list of establishments approved in accordance with point (a)(i) of Article 6 and their distinguishing numbers, and shall make it available to the other Member States and to the public.

Detailed rules for the uniform application of this Article may be adopted in accordance with the procedure referred to in Article 33(2).

Article 8

1. At the time of consignment, hatching eggs shall:

- (a) come from flocks which:
 - (i) have been held for more than six weeks in one or more Community establishments as referred to in Article 6(a)(i);

- (ii) if vaccinated, have been vaccinated in accordance with the vaccination conditions in Annex III;
- (iii) have either:
 - undergone an animal health examination carried out by an official veterinarian or an authorised veterinarian during the 72 hours preceding consignment and, at the time of the examination, have shown no clinical sign or suspicion of contagious disease, or,
 - had a monthly health inspection visit by an official veterinarian or an authorised veterinarian, the most recent visit having been within 31 days of consignment. If this option is chosen there shall also be an examination by the official veterinarian or authorised veterinarian of the records of the health status of the flock and an evaluation of its current health status as assessed by up-to-date information supplied by the person in charge of the flock during the 72 hours preceding consignment. In a case where records or other information give rise to suspicion of disease, the flocks shall have had an animal health examination by the official veterinarian or authorised veterinarian that has ruled out the possibility of contagious poultry disease;
- (b) be marked in accordance with Regulation (EC) No 617/2008;
- (c) have been disinfected in accordance with the instructions of the official veterinarian.

2. If contagious poultry diseases which may be transmitted through eggs develop in the flock which supplied the hatching eggs during the period of their incubation, the hatchery involved and the authority or authorities responsible for the hatchery and the flock of origin shall be notified.

Article 9

Day-old chicks shall:

- (a) have been hatched from hatching eggs satisfying the requirements of Articles 6 and 8;
- (b) satisfy the vaccination conditions in Annex III, if they have been vaccinated;
- (c) present, at the time of consignment, no suspicion of diseases on the basis of Annex II, Chapter II, B2(g) and (h).

Article 10

At the time of consignment, breeding poultry and productive poultry shall:

- (a) have been held since hatching or for more than six weeks in one or more Community establishments as referred to in Article 6(a)(i);

- (b) satisfy the vaccination conditions in Annex III, if they have been vaccinated;
- (c) have been submitted to a health examination by an official veterinarian or authorised veterinarian during the 48 hours preceding consignment and, at the time of the examination, have presented no clinical sign or suspicion of contagious poultry disease.

Article 11

At the time of the consignment, slaughter poultry shall have come from a holding:

- (a) where they have been held since hatching or for more than 21 days;
- (b) which is not the subject of any animal health restrictions applicable to poultry;
- (c) where the health examination carried out by the official veterinarian or authorised veterinarian during the five days preceding dispatch on the flock from which the consignment to be slaughtered is to be drawn has not revealed within that flock any clinical sign or suspicion of contagious poultry disease;
- (d) which is not located in an area which for animal health reasons is subject to restrictive measures in accordance with Community legislation as a result of the outbreak of a disease to which poultry is susceptible.

Article 12

1. At the time of consignment, poultry over 72 hours old intended for restocking supplies of wild game shall have come from a holding:

- (a) where it has been held since hatching or for more than 21 days and where it has not been placed in contact with newly-arrived poultry during the two weeks preceding consignment;
- (b) which is not the subject of any animal health restrictions applicable to poultry;
- (c) where the health examination carried out by the official veterinarian or authorised veterinarian during the 48 hours preceding dispatch on the flock from which the consignment is to be drawn has not revealed within that flock any clinical sign or suspicion of contagious poultry disease;
- (d) which is not located in an area which for animal health reasons is subject to prohibition in accordance with Community legislation as a result of an outbreak of disease to which poultry is susceptible.

2. Article 6 shall not apply to the poultry referred to in paragraph 1.

Article 13

1. As regards salmonella and in respect of serotypes not mentioned in Annex II, Chapter III(A), consignments of poultry for slaughter for Finland and Sweden shall be subject to a microbiological test by sampling in the establishment of origin in accordance with Council Decision 95/410/EC of 22 June 1995 laying down the rules for the microbiological testing by sampling in the establishment of origin of poultry for slaughter intended for Finland and Sweden ⁽¹⁾.

2. The range of the test referred to in paragraph 1 and the methods to be adopted shall be determined in the light of the opinion of the European Food Safety Authority and of the operational programme which Finland and Sweden must submit to the Commission.

3. The test referred to in paragraph 1 shall not be carried out for slaughter poultry from a holding subject to a programme recognised as equivalent to that referred to in paragraph 2 in accordance with the procedure referred to in Article 33(2).

Article 14

1. The requirements of Articles 5 to 11 and 18 shall not apply to intra-Community trade in poultry and hatching eggs in respect of consignments comprising fewer than 20 units provided that they comply with paragraph 2 of this Article.

2. Poultry and hatching eggs as referred to in paragraph 1 shall, at the time of consignment, have come from flocks which:

- (a) have been held in the Community since hatching or for at least three months;
- (b) present no clinical signs of a contagious poultry disease at the time of consignment;
- (c) satisfy the vaccination conditions in Annex III, if they have been vaccinated;
- (d) are not the subject of any animal health restrictions applicable to poultry;
- (e) are not located in an area which for animal health reasons is subject to restrictive measures in accordance with Community legislation as a result of an outbreak of disease to which poultry is susceptible.

All birds in the consignment shall have been found negative in serological tests for *Salmonella pullorum* and *Salmonella gallinarum* antibodies, in accordance with Annex II, Chapter III, in the month preceding the consignment. In the case of hatching eggs or day-old chicks, the flock of origin shall be tested serologically for *Salmonella pullorum* and *Salmonella gallinarum* in the three months preceding the consignment at a level which gives 95 % confidence of detecting infection at 5 % prevalence.

⁽¹⁾ OJ L 243, 11.10.1995, p. 25.

3. The provisions of paragraphs 1 and 2 shall not apply to consignments containing ratites or hatching eggs of ratites.

Article 15

1. In the case of consignments of poultry and hatching eggs from Member States or regions of Member States which vaccinate poultry against Newcastle disease to a Member State or region of a Member State the status of which has been established in accordance with paragraph 2, the following rules shall apply:

- (a) hatching eggs shall come from flocks which are:
 - (i) not vaccinated, or
 - (ii) vaccinated using inactivated vaccine, or
 - (iii) vaccinated using a live vaccine, provided that vaccination has taken place at least 30 days before the collection of the hatching eggs;
- (b) day-old chicks (including chicks intended for restocking supplies of game) shall not be vaccinated against Newcastle disease, and shall come from:
 - (i) hatching eggs satisfying the conditions in point (a), and
 - (ii) a hatchery where working practice ensures that such eggs are incubated at completely separate times and locations from eggs not satisfying the conditions in point (a);
- (c) breeding and productive poultry shall:
 - (i) not be vaccinated against Newcastle disease, and
 - (ii) have been isolated for 14 days before consignment, at either a holding or a quarantine station under the supervision of the official veterinarian. In this connection, no poultry at the holding of origin or quarantine station, as applicable, may have been vaccinated against Newcastle disease during the 21 days preceding consignment and no bird which is not due for consignment may have entered the holding or the quarantine station during that time; in addition, no vaccination may be carried out in the quarantine stations, and
 - (iii) have undergone, during the 14 days preceding consignment, representative serological testing, with negative results, to detect Newcastle disease antibodies in accordance with detailed rules adopted in accordance with the procedure referred to in Article 33(2);

- (d) slaughter poultry shall come from flocks which:
- (i) if not vaccinated against Newcastle disease, satisfy the requirements of point (c)(iii);
 - (ii) if vaccinated, have undergone, during the 14 days preceding consignment and on the basis of a representative sample, a test to isolate Newcastle disease virus complying with detailed rules adopted in accordance with the procedure referred to in Article 33(2).

2. If a Member State or a region or regions of Member State wish to be established as Newcastle disease non-vaccinating they may present a programme as referred to in Article 16(1).

The Commission shall examine the programmes presented by the Member States. The programmes may be approved, in compliance with the criteria referred to in Article 16(1), in accordance with the procedure referred to in Article 33(2). Any additional guarantees, general or specific, which may be required in intra-Community trade may be defined in accordance with the same procedure.

Where a Member State or a region of a Member State considers it has achieved Newcastle disease non-vaccinating status, an application may be made to the Commission for Newcastle disease non-vaccinating status to be established in accordance with the procedure referred to in Article 33(2).

The elements to be taken into account for determination of a Member State's or region's status as Newcastle disease non-vaccinating shall be the data referred to in Article 17(1) and, in particular, the following criteria:

- (a) vaccination against Newcastle disease in poultry shall not have been authorised for the preceding 12 months, except for the compulsory vaccination of racing pigeons referred to in Article 17(3) of Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease ⁽¹⁾;
- (b) breeding flocks shall have been serologically monitored at least once a year for the presence of Newcastle disease according to the detailed rules adopted in accordance with the procedure referred to in Article 33(2);
- (c) the holdings shall contain no poultry which has been vaccinated against Newcastle disease in the previous 12 months, with the exception of racing pigeons vaccinated pursuant to Article 17(3) of Directive 92/66/EEC.

3. The Commission may suspend Newcastle disease non-vaccinating status in accordance with the procedure referred to in Article 33(2) in the event of either:

- (a) a serious epizootic of Newcastle disease which is not being brought under control; or
- (b) the removal of the legislative restrictions prohibiting systematic recourse to routine vaccination against Newcastle disease.

Article 16

1. Where a Member State draws up or has drawn up a voluntary or compulsory control programme for a disease to which poultry are susceptible, it may present the programme to the Commission, outlining in particular:

- (a) the distribution of the disease in its territory;
- (b) the reasons for the programme, taking into consideration the importance of the disease and the programme's likely benefit in relation to its cost;
- (c) the geographical area in which the programme will be implemented;
- (d) the status categories to be applied to poultry establishments, the standards which must be attained in each category, and the test procedures to be used;
- (e) the programme monitoring procedures;
- (f) the action to be taken if, for any reason, an establishment loses its status;
- (g) the measures to be taken if the results of the tests carried out in accordance with the provisions of the programme are positive.

2. The Commission shall examine the programmes presented by the Member States. The programmes may be approved, in compliance with the criteria referred to in paragraph 1, in accordance with the procedure referred to in Article 33(2). Any additional guarantees, general or specific, which may be required in intra-Community trade may be defined in accordance with the same procedure. Such guarantees shall not exceed those required by the Member State in its own territory.

3. Programmes submitted by Member States may be amended or supplemented in accordance with the procedure referred to in Article 33(2). Amendments or additions to programmes which have already been approved or to guarantees which have been defined in accordance with paragraph 2 of this Article may be approved in accordance with the same procedure.

Article 17

1. Where a Member State considers that its territory or part of its territory is free from one of the diseases to which poultry are susceptible, it shall present to the Commission appropriate supporting documentation, setting out in particular:

- (a) the nature of the disease and the history of its occurrence in that Member State;

⁽¹⁾ OJ L 260, 5.9.1992, p. 1.

- (b) the results of surveillance testing based on serological, microbiological or pathological investigations and on the fact that the disease must by law be notified to the competent authorities;
- (c) the period over which the surveillance was carried out;
- (d) where applicable, the period during which vaccination against the disease has been prohibited and the geographical area concerned by the prohibition;
- (e) the arrangements for verifying that the area concerned remains free from the disease.

2. The Commission shall examine documentation submitted by Member States. The additional guarantees, general or specific, which may be required in intra-Community trade may be defined in accordance with the procedure referred to in Article 33(2). Such guarantees shall not exceed those required by the Member State in its own territory.

3. The Member State concerned shall notify the Commission of any change in the particulars specified in paragraph 1. The guarantees defined pursuant to paragraph 2 may, in the light of such notification, be amended or withdrawn in accordance with the procedure referred to in Article 33(2).

Article 18

1. Day-old chicks and hatching eggs shall be transported in either:

- (a) unused purpose-designed disposable containers to be used only once and then destroyed; or
- (b) containers which may be re-used provided they are cleaned and disinfected beforehand.

2. In any event the containers referred to in paragraph 1 shall:

- (a) contain only day-old chicks or hatching eggs of the same species, category and type of poultry, coming from the same establishment;
- (b) be labelled with:
 - (i) the name of the Member State and region of origin;
 - (ii) the establishment of origin's approval number as provided for in Annex II, Chapter I(2);
 - (iii) the number of chicks or eggs in each box;
 - (iv) the poultry species to which the eggs or chicks belong.

3. Boxes holding day-old chicks or hatching eggs may be grouped for transport in appropriate containers. The number of boxes thus grouped and the indications referred to in paragraph 2(b) shall be shown on those containers.

4. Breeding and productive poultry shall be transported in crates or cages:

- (a) which contain only poultry of the same species, categories and type, coming from the same establishment;
- (b) bearing the approval number of the establishment of origin as provided for in Annex II, Chapter I(2).

5. Breeding and productive poultry and day-old chicks shall be conveyed without delay to the establishment of destination, without coming into contact with other live birds, except breeding and productive poultry or day-old chicks satisfying the conditions laid down in this Directive.

Slaughter poultry shall be conveyed without delay to the slaughterhouse of destination, without coming into contact with other poultry, except slaughter poultry satisfying the conditions laid down in this Directive.

Poultry intended for restocking supplies of game shall be conveyed without delay to the point of destination without coming into contact with other poultry except poultry intended for restocking supplies of game satisfying the conditions laid down in this Directive.

6. Crates, cages and vehicles shall be designed so as to:

- (a) preclude the loss of excrement and minimise the loss of feathers during transit;
- (b) allow visual inspection of the poultry;
- (c) allow cleansing and disinfection.

7. The vehicles and, if they are not disposable, the containers, crates and cages shall, before loading and unloading, be cleansed and disinfected in accordance with the instructions of the competent authority of the Member State concerned.

Article 19

Poultry as referred to in Article 18(5) may not be transported through areas infected with avian influenza or Newcastle disease, unless by trunk road or rail.

Article 20

In trade between Member States, poultry and hatching eggs shall, during transportation to the place of destination, be accompanied by a veterinary certificate which:

- (a) conforms with the appropriate model laid down in Annex IV, completed in accordance with Commission Regulation (EC) No 599/2004 of 30 March 2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin ⁽¹⁾;
- (b) is signed by an official veterinarian;
- (c) is drawn up on the date of loading in the official language or languages of the Member State of dispatch and in the official language or languages of the Member State of destination;
- (d) is valid for five days;
- (e) consists of a single sheet;
- (f) is normally made out for a single consignee;
- (g) bears a stamp and a signature of a different colour from that of the certificate.

Article 21

The Member States of destination may, in compliance with the general provisions of the Treaty, grant one or more Member States of dispatch general authorisations or authorisations limited to specific cases permitting entry into their territory of poultry and hatching eggs without the certificate provided for in Article 20.

CHAPTER III

RULES FOR IMPORTS FROM THIRD COUNTRIES

Article 22

Poultry and hatching eggs imported into the Community shall satisfy the conditions laid down in Articles 23 to 26.

Article 23

1. Poultry and hatching eggs shall have originated in a third country or part of a third country included on a list drawn up by the Commission in accordance with the procedure referred to in Article 33(2). That list may be supplemented or amended in accordance with the procedure referred to in Article 33(3).

2. In deciding whether a third country or part thereof may be included on the list referred to in paragraph 1, particular account shall be taken of:

- (a) the state of health of the poultry, other domestic animals and wildlife in the third country, particular attention being paid to exotic animal diseases, and the health situation in the surrounding area, where either is liable to endanger public and animal health in the Member States;
- (b) the regularity and rapidity of the supply of information by the third country relating to the existence of contagious animal diseases in its territory, in particular the diseases on the list of the World Organisation for Animal Health (OIE);
- (c) the country's rules on animal-disease prevention and control;
- (d) the structure of the veterinary services in the country and their powers;
- (e) the organisation and implementation of measures to prevent and control contagious animal diseases;
- (f) the guarantees which the third country can give with regard to compliance with this Directive;
- (g) compliance with Community rules on hormones and residues.

3. The list referred to in paragraph 1 and any amendments thereto shall be published in the *Official Journal of the European Union*.

Article 24

1. Poultry and hatching eggs shall come from third countries:

- (a) in which avian influenza and Newcastle disease, as defined in Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza ⁽²⁾ and Directive 92/66/EEC respectively, are legally notifiable diseases;
- (b) free from avian influenza and Newcastle disease,

or

which, although they are not free from these diseases, apply measures to control them which are at least equivalent to those laid down in Directives 2005/94/EC and 92/66/EEC respectively.

2. The Commission may, in accordance with the procedure referred to in Article 33(2), decide under which conditions paragraph 1 of this Article is to apply only to a part of the territory of third countries.

⁽¹⁾ OJ L 94, 31.3.2004, p. 44.

⁽²⁾ OJ L 10, 14.1.2006, p. 16.

Article 25

1. Poultry and hatching eggs may be imported from the territory of a third country or part of the territory of a third country included on the list drawn up in accordance with Article 23(1) only if they come from flocks which:

- (a) prior to consignment have been held without interruption in the territory or part of the territory concerned of such country for a period to be determined in accordance with the procedure referred to in Article 33(2);
- (b) satisfy the animal health conditions adopted in accordance with the procedure referred to in Article 33(2) for imports of poultry and hatching eggs from the country in question. The conditions may differ according to the species or category of poultry.

2. The animal health conditions shall be determined on the basis of the rules laid down in Chapter II and its corresponding Annexes. In accordance with the procedure referred to in Article 33(2), derogations may be granted on a case-by-case basis if the third country concerned offers similar animal health guarantees which are at least equivalent.

Article 26

1. Poultry and hatching eggs shall be accompanied by a certificate drawn up and signed by an official veterinarian of the exporting third country.

The certificate shall:

- (a) be issued on the day of loading for consignment to the Member State of destination;
- (b) be drawn up in the official language or languages of the Member State of destination;
- (c) accompany the consignment in the original;
- (d) attest to the fact that the poultry or hatching eggs satisfy the requirements of this Directive and those adopted pursuant to this Directive with regard to importation from third countries;
- (e) be valid for five days;
- (f) consist of a single sheet;
- (g) be made out for a single consignee;
- (h) bear a stamp and a signature of a different colour from that of the certificate.

2. The certificate referred to in paragraph 1 shall comply with a model drawn up in accordance with the procedure referred to in Article 33(2).

Article 27

On-the-spot inspections shall be carried out by veterinary experts of the Member States and the Commission to ensure that all the provisions of this Directive are effectively applied.

The Member States' experts responsible for those inspections shall be designated by the Commission on proposals from the Member States.

The inspections shall be carried out on behalf of the Community, and the latter shall bear the costs thereof.

The frequency of the inspections and the inspection procedure shall be determined in accordance with the procedure referred to in Article 33(2).

Article 28

1. The Commission may, in accordance with the procedure referred to in Article 33(3), decide that imports from a third country or part of a third country are to be confined to particular species, to hatching eggs, to breeding or productive poultry, to slaughter poultry or to poultry intended for special purposes.

2. The Commission may, in accordance with the procedure referred to in Article 33(2), determine that the imported poultry, hatching eggs or poultry hatched from imported eggs is to be kept quarantined or isolated for a period which may not exceed two months.

Article 29

Notwithstanding Articles 22, 24, 25 and 26, the Commission may, in accordance with the procedure referred to in Article 33(2), decide to permit on a case-by-case basis the importation of poultry and hatching eggs from third countries where such imports do not conform to the provisions of Articles 22, 24, 25 and 26. Detailed rules for such importation shall be drawn up at the same time in accordance with the same procedure. Such rules shall offer animal health guarantees at least equivalent to the animal health guarantees offered by Chapter II, involving compulsory quarantine and testing for avian influenza, Newcastle disease and any other relevant disease.

Article 30

On arrival in the Member State of destination, slaughter poultry shall be taken directly to a slaughterhouse for slaughter as soon as possible.

Without prejudice to any special conditions which may be adopted in accordance with the procedure referred to in Article 33(3), the competent authority of the Member State of destination may, on animal-health grounds, designate the slaughterhouse to which the poultry must be conveyed.

CHAPTER IV

COMMON PROVISIONS

Article 31

For the purposes of intra-Community trade, the safeguard measures provided for in Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾ shall apply to poultry and hatching eggs.

Article 32

The veterinary control rules provided for by Directive 90/425/EEC shall apply to intra-Community trade in poultry and hatching eggs.

Article 33

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health set up pursuant to Article 58 of 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 ⁽²⁾.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at 15 days.

Article 34

Amendments to Annexes I to V, particularly in order to adapt them to changes in diagnostic methods and to variations in the economic importance of particular diseases, shall be decided in accordance with the procedure referred to in Article 33(2).

Article 35

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 36

Directive 90/539/EEC, as amended by the acts listed in Annex VI, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VI, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII.

Article 37

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2010.

Article 38

This Directive is addressed to the Member States.

Done at Brussels, 30 November 2009.

For the Council
The President
S. O. LITTORIN

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 31, 1.2.2002, p. 1.

ANNEX I

The national reference laboratories for avian diseases designated in accordance with Article 4 shall be responsible in each Member State for coordinating the diagnostic methods provided for in this Directive. To this end:

- (a) they may supply approved laboratories with the reagents needed for diagnostic testing;
 - (b) they shall monitor the quality of reagents used by the laboratories approved for the purpose of carrying out the diagnostic tests provided for in this Directive;
 - (c) they shall organise periodic comparative tests.
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ANNEX II

APPROVAL OF ESTABLISHMENTS

CHAPTER I

GENERAL RULES

1. In order to be approved by the competent authority for the purposes of intra-Community trade, establishments must:
 - (a) satisfy the conditions as regards facilities and operation set out in Chapter II;
 - (b) apply and adhere to a disease surveillance programme approved by the competent central veterinary authority, taking into account the requirements of Chapter III;
 - (c) provide every facility for the carrying out of the operations listed in point (d);
 - (d) be subject to the supervision of the competent veterinary authority within the context of an organised form of animal health monitoring. Such monitoring shall include in particular:
 - at least one inspection visit per year by the official veterinarian, supplemented by checks to verify the application of hygiene measures and the operation of the establishment in accordance with the conditions in Chapter II,
 - the recording by the farmer of all the information necessary for the continuous monitoring of the health status of the establishment by the competent veterinary authority,
 - (e) contain only poultry.
2. The competent authority shall give each establishment which complies with the conditions laid down in point 1 a distinguishing number, which may be the same as that given pursuant to Regulation (EC) No 1234/2007.

CHAPTER II

FACILITIES AND OPERATION

- A. Pedigree breeding, breeding and rearing establishments
 1. Facilities
 - (a) The setting and layout of the facilities must be compatible with the type of production pursued, ensuring that the introduction of disease can be prevented or, if an outbreak occurs, that it can be controlled. If an establishment houses several species of poultry, there must be a clear separation between them.
 - (b) The facilities must provide good conditions of hygiene and allow health monitoring to be carried out.
 - (c) The equipment must be compatible with the type of production pursued, and allow cleansing and disinfection of the facilities and of vehicles for transporting poultry and eggs at the most suitable spot.
 2. Rearing
 - (a) Rearing techniques must be based as far as possible on the 'protected rearing' principle and on the 'all-in/all-out' principle. Cleansing, disinfection and depopulation must be carried out between batches.
 - (b) Pedigree-breeding, breeding and rearing establishments must house only poultry:
 - from the establishment itself, and/or,

- from other pedigree-breeding, breeding or rearing establishments in the Community approved in accordance with Article 6(a)(i), and/or,
 - imported from third countries in accordance with this Directive,
- (c) Hygiene rules must be drawn up by the management of the establishment; personnel must wear appropriate working clothing and visitors protective clothing.
- (d) Buildings, pens and equipment must be kept in good repair.
- (e) Eggs must be collected several times a day, and must be clean and be disinfected as soon as possible.
- (f) The farmer must notify the authorised veterinarian of any variation in production performance or any other sign suggesting the presence of a contagious poultry disease. As soon as disease is suspected, the authorised veterinarian must send the samples needed for making or confirming the diagnosis to an approved laboratory.
- (g) A flock history, register or data medium must be kept for each flock for at least two years after the disposal of the flock and must show:
- arrivals and departures,
 - production performance,
 - morbidity and mortality with causes,
 - any laboratory tests and the results thereof,
 - the place of origin of the poultry,
 - the destination of eggs,
- (h) Where a contagious poultry disease occurs, the results of laboratory tests must be communicated immediately to the authorised veterinarian.

B. Hatcheries

1. Facilities

- (a) A hatchery must be physically and operationally separate from rearing facilities. The layout must be such as to allow the various functional units listed below to be kept separate:
- egg storage and grading,
 - disinfection,
 - pre-incubation,
 - hatching,
 - preparation and packaging of goods for dispatch,
- (b) Buildings must be protected against birds coming from outside and rodents; floors and walls must be of hard-wearing, impervious and washable materials; natural or artificial lighting and air flow and temperature systems must be of an appropriate type; provision must be made for the hygienic evacuation of waste (eggs and chicks).
- (c) Equipment must have smooth and waterproof surfaces.

2. Operation

- (a) Operation must be based on a one-way circuit for eggs, mobile equipment and personnel.
- (b) Hatching eggs must be:
 - from Community pedigree breeding or breeding establishments approved in accordance with Article 6(a)(i),
 - imported from third countries in accordance with this Directive,
- (c) Hygiene rules must be drawn up by the management of the establishment; personnel must wear appropriate working clothing and visitors protective clothing.
- (d) Buildings and equipment must be kept in good repair.
- (e) The following must be disinfected:
 - eggs, between the time of their arrival and the incubation process,
 - the incubators, regularly,
 - hatching equipment, after the hatching of each batch,
- (f) A programme of microbiological quality control must be used to assess the health status of the hatchery.
- (g) The farmer must notify the authorised veterinarian of any variation in production performance or any other sign suggesting the presence of a contagious poultry disease. As soon as contagious disease is suspected, the authorised veterinarian must send the samples needed for making or confirming the diagnosis to an approved laboratory and inform the competent veterinary authority, which shall decide on appropriate measures to be taken.
- (h) A flock history, register or data medium for the hatchery must be kept for at least two years showing, if possible by flock:
 - the origin of the eggs and their arrival date,
 - hatching yields,
 - any abnormalities,
 - any laboratory tests and the results thereof,
 - details of any vaccination programmes,
 - the number and the destination of incubated eggs which have not hatched,
 - the destination of day-old chicks,
- (i) Where a contagious poultry disease occurs, the results of laboratory tests must be communicated immediately to the authorised veterinarian.

CHAPTER III

DISEASE SURVEILLANCE PROGRAMME

Without prejudice to health measures and to Articles 16 and 17, disease surveillance programmes must, as a minimum, comprise surveillance of the infections and species listed below.

A. *Salmonella pullorum*, *Salmonella gallinarum* and *Salmonella arizonae* infections

1. Species concerned

- (a) *Salmonella pullorum et gallinarum*: fowls, turkeys, guinea fowls, quails, pheasants, partridges and ducks.
- (b) *Salmonella arizonae*: turkeys.

2. Disease surveillance programme

- (a) Serological and/or bacteriological tests must be used to determine whether an infection is present.
- (b) Samples for testing must be taken, as appropriate, from blood, second-grade chicks, down or dust taken from hatchers, swabs taken from the walls of the hatchery, litter or water from a drinker.
- (c) When blood samples are taken from a flock for serological testing for *Salmonella pullorum* or *Salmonella arizonae*, prevalence of infection in the country concerned and its past incidence in the establishment must be allowed for in determining the number of samples to be taken.

Flocks must be inspected during each laying period at the best time for detecting the disease.

B. *Mycoplasma gallisepticum* and *Mycoplasma meleagridis* infections

1. Species concerned

- (a) *Mycoplasma gallisepticum*: fowls and turkeys.
- (b) *Mycoplasma meleagridis*: turkeys.

2. Disease surveillance programme

- (a) Presence of infection must be tested by serological and/or bacteriological testing and/or by the presence of air sacculitis lesions in day-old chicks and turkey poults.
- (b) Samples for testing must be taken, as appropriate, from blood, day-old chicks and turkey poults, sperm, or swabs taken from the trachea, the cloaca or air sacs.
- (c) Tests for detecting *Mycoplasma gallisepticum* or *Mycoplasma meleagridis* must be performed on a representative sample in order to allow continuous surveillance of the infection during rearing and laying, i.e. just before the start of laying and every three months thereafter.

C. Results and measures to be taken

If there are no reactors, the test is deemed negative. Otherwise, the flock is suspect and the measures specified in Chapter IV must be applied to it.

- D. In the case of holdings which consist of two or more separate production units, the competent veterinary authority may derogate from these measures as regards healthy production units on a holding which is infected provided that the authorised veterinarian has confirmed that the structure and size of these production units and the operations carried out there are such that the production units provide completely separate facilities for housing, keeping and feeding, so that the disease in question cannot spread from one production unit to another.

CHAPTER IV

CRITERIA FOR SUSPENDING OR WITHDRAWING APPROVAL OF AN ESTABLISHMENT

1. Approval granted to an establishment must be suspended:

- (a) when the conditions laid down in Chapter II are no longer met;

- (b) until an investigation appropriate to the disease has been completed, if:
 - avian influenza or Newcastle disease are suspected at the establishment,
 - the establishment has received poultry or hatching eggs from an establishment with suspected or actual infection by avian influenza or Newcastle disease,
 - contact liable to transmit the infection has occurred between the establishment and the site of an outbreak of avian influenza or Newcastle disease,
 - (c) until such time as new tests are performed, if the results of surveillance carried out in accordance with the conditions laid down in Chapters II and III for infection by *Salmonella pullorum*, *Salmonella gallinarum*, *Salmonella arizonae*, *Mycoplasma gallisepticum* or *Mycoplasma meleagridis* give cause to suspect infection;
 - (d) until completion of the appropriate measures required by the official veterinarian, if the establishment is found not to conform with the requirements of Chapter I, point 1(a), (b) and (c).
2. Approval must be withdrawn:
- (a) if avian influenza or Newcastle disease occurs at the establishment;
 - (b) if a second test of an appropriate type confirms the presence of infection by *Salmonella pullorum*, *Salmonella gallinarum*, *Salmonella arizonae*, *Mycoplasma gallisepticum* or *Mycoplasma meleagridis*;
 - (c) if, after a second notice served by the official veterinarian, action to bring the establishment into line with the requirements of Chapter I, point 1(a), (b) and (c), has not been taken.
3. Conditions for restoring approval if:
- (a) approval has been withdrawn because of an occurrence of avian influenza or Newcastle disease, it may be restored 21 days after cleansing and disinfection if sanitary slaughter has been carried out;
 - (b) approval has been withdrawn because of infection caused by:
 - *Salmonella pullorum et gallinarum*, or *Salmonella arizonae*, it may be restored after negative results have been recorded in two tests performed with an interval of at least 21 days on the establishment and after disinfection following sanitary slaughter of the infected flock,
 - *Mycoplasma gallisepticum* or *Mycoplasma meleagridis*, it may be restored after negative results have been recorded in two tests performed on the entire flock with an interval of at least 60 days,
-

*ANNEX III***POULTRY VACCINATION CONDITIONS**

1. Vaccines used for vaccinating poultry or flocks producing hatching eggs must have a marketing authorisation issued by the competent authority of the Member State in which the vaccine is used.
 2. The criteria for using vaccines against Newcastle disease in the context of routine-vaccination programmes may be determined by the Commission.
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ANNEX IV

VETERINARY CERTIFICATES FOR INTRA-COMMUNITY TRADE

(Models 1 to 6)

MODEL 1

EUROPEAN COMMUNITY				Intra-trade certificate				
Part I: Details of consignment presented	I.1. Consignor Name			I.2. Certificate reference number		I.2.a. Local reference number:		
	Address Postal code			I.3. Central Competent Authority				
				I.4. Local Competent Authority				
	I.5. Consignee Name			/				
	Address Postal code							
	I.8. Country of origin		ISO code	I.9. Region of origin		Code	I.10. Country of destination	
							I.11. Region of destination	
	I.12. Place of origin				I.13. Place of destination			
	Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>	
					Approved body <input type="checkbox"/>			
	Name		Approval number		Name		Approval number	
	Address				Address			
	Postal code				Postal code			
I.14. Place of loading				I.15. Date and time of departure				
Postal code								
I.16. Means of transport				I.17. Transporter				
Aeroplane <input type="checkbox"/>		Ship <input type="checkbox"/>		Name		Approval number		
		Railway wagon <input type="checkbox"/>		Address				
Road vehicle <input type="checkbox"/>		Other <input type="checkbox"/>		Postal code		Member State		
Identification:								
I.18. Animal species/product				I.19. Commodity code (CN code)				
				04.07				
				I.20. Number/quantity				
I.21.				I.22. Number of packages				
I.23. Identification of container/seal number				I.24.				
I.25. Animals certified as/products certified for								
Breeding <input type="checkbox"/>		Approved body <input type="checkbox"/>		Other <input type="checkbox"/>				
I.26. Transit through third country <input type="checkbox"/>				I.27. Transit through Member States <input type="checkbox"/>				
Third country		ISO code		Member State		ISO code		
Exit point		Code		Member State		ISO code		
Entry point		BIP unit No:		Member State		ISO code		
I.28. Export <input type="checkbox"/>				I.29.				
Third country		ISO code		/				
Exit point		Code						
I.30.								
I.31. Identification of the animals								
Species (Scientific name)		Category	Identification	Age	Number of packages		Quantity	

EUROPEAN COMMUNITY

Hatching eggs

		II.a. Certificate reference number	II.b. Local reference number
Part II: Certification	II.1 Animal health attestation		
	I, the undersigned official veterinarian, certify that the hatching eggs described above:		
	(a) comply with		
	⁽¹⁾ either [the provisions of Articles 6, 8 and 18 of Council Directive 2009/158/EC]		
	⁽¹⁾ ⁽²⁾ or [the provisions of Articles 6 (a) (i), (ii) and (b), 8 and 18 of Council Directive 2009/158/EC];		
	⁽³⁾ (b) comply with the provisions of Article 15(1)(a) of Council Directive 2009/158/EC.		
	⁽⁴⁾ (c) comply with the provisions of Commission Decision(s)/...../EC concerning additional guarantees with regard to (indicate disease(s)) and in accordance with Article 16 or Article 17 of Council Directive 2009/158/EC.		
	(d) come from poultry which:		
	⁽¹⁾ either [have not been vaccinated against Newcastle disease;]		
	⁽¹⁾ or [have been vaccinated against Newcastle disease using: (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s)) On (date) at the age of weeks].		
II.2 Public health attestation			
I, the undersigned official veterinarian, certify that the hatching eggs described above:			
⁽⁵⁾ (a) come from a flock which has been tested for <i>Salmonella</i> serotypes with public health significance in accordance with Regulation (EC) No 2160/2003 of the European Parliament and of the Council.			
Date of last sampling of the flock from which the testing result is known:			
Result of all testing in the flock:			
⁽¹⁾ ⁽⁶⁾ either [positive;]			
⁽¹⁾ ⁽⁶⁾ or [negative]			
⁽⁵⁾ (b) and, neither <i>Salmonella</i> Enteritidis nor <i>Salmonella</i> Typhimurium were detected with the control programme referred to in point II.2(a).			
II.3 Additional health information			
⁽¹⁾ ⁽⁷⁾ II.3.1. The consignment consists of live poultry/day-old chicks/hatching eggs originating from holdings where no vaccination against avian influenza has been carried out.			
⁽¹⁾ II.3.2. This consignment complies with the animal health conditions laid down in Commission Decision 2006/415/EC.			
⁽¹⁾ II.3.3. This consignment complies with the animal health conditions laid down in Commission Decision 2006/563/EC.			

Notes**Part I:**

- **Box reference I.16:** Registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship).
- **Box reference I.31:** Category: select one of the following: pure line/grandparents/parents/laying pullets/fattening/others.
Identification: indicate the identification details of parent flock and brand name.
Age: provide the date of collection.

Part II:

- (¹) Keep as appropriate.
- (²) Only applicable if II.3.2. or II.3.3. are complied with.
- (³) To certify in case of dispatch to a Member State, which has an EC-approved non-vaccinating status for Newcastle disease currently: Finland and Sweden otherwise delete reference.
- (⁴) Complete if appropriate.
- (⁵) The certification under points II.2 only applies if the poultry belongs to the species *Gallus gallus*.
- (⁶) If any of the results were positive for *Salmonella* Infantis, *Salmonella* Virchow or *Salmonella* Hadar during the life of the flock, indicate as positive.
- (⁷) Only applicable for Member States which carry out vaccination against avian influenza according to EC approved vaccination plan.
 - The colour of the stamp and signature must be different from that of the other particulars in the certificate.

Official veterinarian

Name (in Capital):

Qualification and title

Local Veterinary Unit:

No of the related LVU:

Date:

Signature:

Stamp

MODEL 2

EUROPEAN COMMUNITY

Intra-trade certificate

Part I: Details of consignment presented	I.1. Consignor Name		I.2. Certificate reference number		I.2.a. Local reference number:	
	Address		I.3. Central Competent Authority			
	Postal code		I.4. Local Competent Authority			
	I.5. Consignee Name		I.6. No(s) of related original certificates		No(s) of accompanying documents	
	Address		I.7.			
	Postal code					
	I.8. Country of origin		ISO code	I.9. Region of origin		Code
	I.10. Country of destination		ISO code	I.11. Region of destination		Code
	I.12. Place of origin			I.13. Place of destination		
	Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		olding <input type="checkbox"/>	
	Name		Approval number		Establishment <input type="checkbox"/>	
	Address				Approved body <input type="checkbox"/>	
	Postal code				Approval number	
	I.14. Place of loading			I.15. Date and time of departure		
Postal code						
I.16. Means of transport			I.17. Transporter			
Aeroplane <input type="checkbox"/>		Ship <input type="checkbox"/>	Railway wagon <input type="checkbox"/>		Approval number	
Road vehicle <input type="checkbox"/>		Other <input type="checkbox"/>		Name		
Identification:			Address		Approval number	
			Postal code		Member State	
I.18. Animal species/product				I.19. Commodity code (CN code)		
				I.20. Number/quantity		
I.21.				I.22. Number of packages		
I.23. Identification of container/seal number				I.24.		
I.25. Animals certified as/products certified for						
Breeding <input type="checkbox"/>		Approved body <input type="checkbox"/>		Other <input type="checkbox"/>		
I.26. Transit through third country <input type="checkbox"/>			I.27. Transit through Member States <input type="checkbox"/>			
Third country		ISO code	Member State		ISO code	
Exit point		Code	Member State		ISO code	
Entry point		BIP unit No:	Member State		ISO code	
I.28. Export <input type="checkbox"/>			I.29.			
Third country		ISO code				
Exit point		Code				
I.30.						
I.31. Identification of the animals						
Species (Scientific name)		Category	Age	Number of packages	Quantity	

EUROPEAN COMMUNITY

Day-old chicks

	II.a. Certificate reference number	II.b. Local reference number
Part II: Certification	<p>II.1. Animal health attestation</p> <p>I, the undersigned official veterinarian, certify that the day-old chicks described above:</p> <p>(a) comply with:</p> <p>(¹) either (i) [the provisions of Articles 6, 9 and 18 of Council Directive 2009/158/EC]</p> <p>(¹) (²) (³) or [the provisions of Articles 6 (a) (i), (ii) and (b), 9 and 18 of Council Directive 2009/158/EC];</p> <p>(¹) or (ii) [if derived from hatching eggs imported according to the requirements of Model HEP of Regulation (EC) No 798/2008, with the provision of Article 6(a) and Article 9 (b) and (c) of Council Directive 2009/158/EC]</p> <p>(¹) (²) (³) or [if derived from hatching eggs imported according to the requirements of Model HEP of Regulation (EC) No 798/2008, with the provision of Article 6(a) (i), (ii) and Article 9 (b) and (c) of Council Directive 2009/158/EC]</p> <p>(⁴) (b) comply with Article 15(1)(b) of Council Directive 2009/158/EC.</p> <p>(⁵) (c) comply with the provisions of Commission Decision(s)/...../EC concerning additional guarantees with regard to (indicate disease(s)) and in accordance with Article 16 or Article 17 of Council Directive 2009/158/EC.</p> <p>(¹) (d) either [have not been vaccinated against Newcastle disease;] (¹) or [have been vaccinated against Newcastle disease using: (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s)) on (date)].</p> <p>(e) come from poultry which: (¹) either [have not been vaccinated against Newcastle disease;] (¹) or [have been vaccinated against Newcastle disease using: (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s)) on (date)].</p> <p>(¹) (f) for introduction into flocks of breeding poultry or flocks of productive poultry come from flocks which have been tested with negative results according to the rules laid down in Commission Decision 2003/644/EC.</p> <p>II.2. Public health attestation</p> <p>I, the undersigned official veterinarian, certify that the day-old chicks described above:</p> <p>(⁶) (a) come from a flock which has been tested for <i>Salmonella</i> serotypes with public health significance in accordance with Regulation (EC) No 2160/2003 of the European Parliament and of the Council.</p> <p>Date of last sampling of the flock from which the testing result is known:</p> <p>Result of all testing in the flock: (¹) (⁷) either [positive;] (¹) (⁷) or [negative]</p> <p>(⁶) (b) and, if intended for breeding, neither <i>Salmonella</i> Enteritidis nor <i>Salmonella</i> Typhimurium were detected within the control programme referred to in point II.2(a).</p>	

II.3. Additional health information

- (¹) (⁶) II.3.1. The consignment consists of live poultry/day-old chicks/hatching eggs originating from holdings where no vaccination against avian influenza has been carried out.
- (¹) II.3.2. This consignment complies with the animal health conditions laid down in Commission Decision 2006/415/EC.

Notes**Part I:**

- **Box reference I.6:** No(s) of accompanying animal health certificates.
- **Box reference I.16:** Registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship).
- **Box reference I.19:** Use the appropriate HS codes: 01.05.01.06.39.
- **Box reference I.31:** Category: select one of the following: pure line/grandparents/parents/laying pullets/fattening/others.
Age: provide date hatched.
Number of packages: provide the number of crates or cages.

Part II:

- (¹) Keep as appropriate.
- (²) Only applicable if II.3.2. is complied with.
- (³) In those cases where day-old chicks come from eggs imported from a third country the period of isolation on the holding of destination has to be respected as foreseen in Part II of Annex VIII to Regulation (EC) No 798/2008. The competent authority of the final destination of the day-old chicks has to be informed through the TRACES system about this requirement.
- (⁴) To certify in case of dispatch to a Member State, which has an EC-approved-non-vaccinating status for Newcastle diseases currently: Finland and Sweden otherwise delete reference.
- (⁵) Complete if appropriate.
- (⁶) The guarantees given under points II.2 only apply if the day-old chicks belong to the species *Gallus gallus* and,
- They apply from 1 February 2008, if the day-old chicks are intended solely for production of eggs, other than hatching eggs.
 - They apply from 1 January 2009, if the day-old chicks are intended solely for meat production.
- (⁷) If any of the results were positive for the serotypes below during the life of the flock, indicate as positive.
Flocks of breeding poultry: *Salmonella* Hadar, *Salmonella* Virchow and *Salmonella* Infantis.
Flocks of productive poultry: *Salmonella* Enteritidis and *Salmonella* Typhimurium.
- (⁸) Only applicable for Member States which carry out vaccination against avian influenza according to EC approved vaccination plan.
- The colour of the stamp and signature must be different from that of the other particulars in the certificate.

Official veterinarian

Name (in Capital):

Qualification and title

Local Veterinary Unit:

N° of the related LVU:

Date:

Signature:

Stamp

MODEL 3

EUROPEAN COMMUNITY

Intra-trade certificate

Part I: Details of consignment presented	I.1. Consignor Name		I.2. Certificate reference number		I.2.a. Local reference number:					
	Address Postal code		I.3. Central Competent Authority							
			I.4. Local Competent Authority							
	I.5. Consignee Name		/							
	Address Postal code									
	I.8. Country of origin	ISO code	I.9. Region of origin	Code	I.10. Country of destination	ISO code	I.11. Region of destination	Code		
	I.12. Place of origin				I.13. Place of destination					
	Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Hold <input type="checkbox"/>		Establishment <input type="checkbox"/>		Approved body <input type="checkbox"/>	
	Name		Approval number		Name		Approval number			
	Address				Address					
	Postal code				Postal code					
	I.14. Place of loading				I.15. Date and time of departure					
	Postal code									
	I.16. Means of transport				I.17. Transporter					
Aeroplane <input type="checkbox"/>		Ship <input type="checkbox"/>		Railway wagon <input type="checkbox"/>		Name		Approval number		
Road vehicle <input type="checkbox"/>		Other <input type="checkbox"/>		Identification:		Address				
						Postal code		Member State		
I.18. Animal species/product				I.19. Commodity code (CN code)						
				I.20. Number/quantity						
I.21.				I.22. Number of packages						
I.23. Identification of container/seal number				I.24.						
I.25. Animals certified as/products certified for										
Breeding <input type="checkbox"/>		Approved body <input type="checkbox"/>		Other <input type="checkbox"/>						
I.26. Transit through third country <input type="checkbox"/>				I.27. Transit through Member States <input type="checkbox"/>						
Third country		ISO code		Member State		ISO code				
Exit point		Code		Member State		ISO code				
Entry point		BIP unit No:		Member State		ISO code				
I.28. Export <input type="checkbox"/>				I.29.						
Third country		ISO code								
Exit point		Code								
I.30.										
I.31. Identification of the animals										
Species (Scientific name)		Category		Identification		Number of packages		Quantity		

EUROPEAN COMMUNITY

Breeding and productive poultry

		II.a. Certificate reference number	II.b. Local reference number
Part II: Certification	II.1. Animal health attestation		
	I, the undersigned official veterinarian, certify that the poultry described above:		
	(a) comply with the provisions of Articles 6, 10 and 18 of Council Directive 2009/158/EC		
	(*) (b) comply with Article 15(1)(c) of Council Directive 2009/158/EC.		
	(*) (c) comply with the provisions of Commission Decision(s)/...../EC concerning additional guarantees with regard to (indicate disease(s)) and in accordance with Article 16 or Article 17 of Council Directive 2009/158/EC.		
	(*) (d) either [have not been vaccinated against Newcastle disease;]		
	(*) or [have been vaccinated against Newcastle disease using:		
 (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))		
	on (date) at the age of weeks].		
	(*) (e) the breeding poultry has been tested with negative results according to the rules laid down in Commission Decision 2003/644/EC.		
(*) (f) the laying hens (productive poultry reared with the view to producing eggs for consumption) have been tested with negative results according to the rules laid down in Commission Decision 2004/235/EC.			
II.2. Public health attestation			
I, the undersigned official veterinarian, certify that the poultry described above:			
(*) (a) come from a flock which has been tested for <i>Salmonella</i> serotypes with public health significance in accordance with Regulation (EC) No 2160/2003 of the European Parliament and of the Council.			
Date of last sampling of the flock from which the testing result is known:			
Result of all testing in the flock:			
(*) (*) either [positive;]			
(*) (*) or [negative]			
(*) (b) and, if breeding poultry, neither <i>Salmonella</i> Enteritidis nor <i>Salmonella</i> Typhimurium were detected within the control programme referred to in point II.2(a).			
II.3. Additional health information			
(*) (*) II.3.1. The consignment consists of live poultry/day-old chicks/hatching eggs originating from holdings where no vaccination against avian influenza has been carried out.			

Notes**Part I:**

- **Box reference I.16:** Registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship).
- **Box reference I.19:** Use the appropriate HS codes: 01.05. 01.06.39.
- **Box reference I.31:** Category: select one of the following: pure line/grandparents/parents/laying pullets/fattening/others.
Identification: indicate the identification details of flock of origin and brand name.

Part II:

- (¹) To certify in case of dispatch to a Member State, which has an EC-approved non-vaccinating status for Newcastle diseases currently: Finland and Sweden otherwise delete reference.
- (²) Complete if appropriate.
- (³) Keep as appropriate.
- (⁴) The guarantees given under points II.2 apply only if the poultry belongs to the species *Gallus gallus* and,
- They apply from 1 February 2008, if the poultry is intended solely for the production of eggs, other than hatching eggs.
 - They apply from 1 January 2009, if the poultry is reared solely for meat production.
- (⁵) If any of the results were positive for the serotypes below during the life of the flock, indicate as positive.
- Flocks of breeding poultry: *Salmonella* Hadar, *Salmonella* Virchow and *Salmonella* Infantis.
- Flocks of productive poultry: *Salmonella* Enteritidis and *Salmonella* Typhimurium.
- (⁶) Only applicable for Member States which carry out vaccination against avian influenza according to EC approved vaccination plan.
- The colour of the stamp and signature must be different from that of the other particulars in the certificate,

Official veterinarian

Name (in Capital):

Qualification and title

Local Veterinary Unit:

No of the related LVU:

Date:

Signature:

Stamp

MODEL 4

EUROPEAN COMMUNITY				Intra-trade certificate						
Part I: Details of consignment presented	I.1. Consignor Name		I.2. Certificate reference number		I.2.a. Local reference number:					
	Address		I.3. Central Competent Authority							
	Postal code		I.4. Local Competent Authority							
	I.5. Consignee Name		I.6.							
	Address		I.7.							
	Postal code									
	I.8. Country of origin	ISO code	I.9. Region of origin	Code	I.10. Country of destination	ISO code	I.11. Region of destination	Code		
	I.12. Place of origin				I.13. Place of destination					
	Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Approved body <input type="checkbox"/>	
	Name		Approval number		Name		Approval number			
	Address				Address					
	Postal code				Postal code					
	I.14. Place of loading				I.15. Date and time of departure					
	Postal code									
I.16. Means of transport				I.17. Transporter						
Aeroplane <input type="checkbox"/>		Ship <input type="checkbox"/>		Railway wagon <input type="checkbox"/>		Name		Approval number		
Road vehicle <input type="checkbox"/>		Other <input type="checkbox"/>		Identification:		Address				
				Postal code		Member State				
I.18. Animal species/product				I.19. Commodity code (CN code)						
				I.20. Number/quantity						
I.21.				I.22. Number of packages						
I.23. Identification of container/seal number				I.24.						
I.25. Animals certified as/products certified for										
Breeding <input type="checkbox"/>		Game restocking <input type="checkbox"/>		Slaughter <input type="checkbox"/>		Pets <input type="checkbox"/>		Approved bo <input type="checkbox"/>		
								Other <input type="checkbox"/>		
I.26. Transit through third country <input type="checkbox"/>				I.27. Transit through Member States <input type="checkbox"/>						
Third country		ISO code		Member State		ISO code				
Exit point		Code		Member State		ISO code				
Entry point		BIP unit No:		Member State		ISO code				
I.28. Export <input type="checkbox"/>				I.29.						
Third country		ISO code								
Exit point		Code								
I.30.										
I.31. Identification of the animals										
Species (Scientific name)		Category	Identification	Age	Number of packages		Quantity			

EUROPEAN COMMUNITY

Poultry, day-old chicks and hatching eggs in lots of under 20 (except for ratites and hatching eggs thereof)

II.a. Certificate reference number	II.b. Local reference number
------------------------------------	------------------------------

Part II: Certification

II.1. Animal health attestation

I, the undersigned official veterinarian, certify that:

(a) (1) either [the poultry, day-old chicks or hatching eggs described above comply with the provisions of Article 14 of Council Directive 2009/158/EC.]

(1) (2) or [the poultry, day-old chicks or hatching eggs described above comply with the provisions of Article 14(1) and (2) (a) to (d) of Council Directive 2009/158/EC.]

(3) (b) the poultry, day-old chicks or hatching eggs described above comply with Article 15(1) of Council Directive 2009/158/EC.

(1) (c) either (i) [the poultry;]

(1) or (ii) [day-old chicks;]

(1) or (iii) [hatching eggs;]

(4) comply with the provisions of Commission Decision(s)/...../EC concerning additional guarantees with regard to (indicate disease(s)) and in accordance with Article 16 or 17 of Council Directive 2009/158/EC.

(d) the poultry:

(1) either [have not been vaccinated against Newcastle disease;]

(1) or [have been vaccinated against Newcastle disease using:

..... (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))

on (date) at the age of weeks].

(e) the day-old chicks:

(1) either [have not been vaccinated against Newcastle disease;]

(1) or [have been vaccinated against Newcastle disease using:

..... (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))

on (date)].

(f) the poultry form which the day-old chicks come:

(1) either [have not been vaccinated against Newcastle disease;]

(1) or [have been vaccinated against Newcastle disease using:

..... (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))

on (date) at the age of weeks].

(g) the poultry from which the hatching eggs come:

(1) either [have not been vaccinated against Newcastle disease;]

(1) or [have been vaccinated against Newcastle disease using:

..... (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))

on (date) at the age of weeks].

II.2. Public health attestation

I, the undersigned official veterinarian, certify that:

- (⁵) (a) the poultry, the day-old chicks or the hatching eggs come from a flock which has been tested for *Salmonella* serotypes with public health significance in accordance with Regulation (EC) No 2160/2003 of the European Parliament and of the Council.

Date of last sampling of the flock from which the testing result is known:

Result of all testing in the flock:

(¹) (⁶) *either* [positive;]

(¹) (⁶) *or* [negative]

- (⁵) (b) and, if breeding poultry, day-old chicks or hatching eggs intended for breeding, neither *Salmonella* Enteritidis nor *Salmonella* Typhimurium were detected within the control programme referred to in point II.2(a).

II.3. Additional health information

- (¹) (⁷) II.3.1. The consignment consists of live poultry/day-old chicks/hatching eggs originating from holdings where no vaccination against avian influenza has been carried out.
- (¹) II.3.2. This consignment complies with the animal health conditions laid down in Commission Decision 2006/415/EC.
- (¹) II.3.3. This consignment complies with the animal health conditions laid down in Commission Decision 2006/563/EC.

Notes**Part I:**

- **Box reference I.16:** Registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship).
- **Box reference I.19:** Use the appropriate HS codes: 01.05, 01.06.39, 04.07.
- **Box reference I.31:** Category: select one of the following: pure line/grandparents/parents/laying pullets/fattening/others.
Identification: indicate the identification details of flocks of origin.
Age: provide the date of collection (in case of eggs) or the approximate age (in case of poultry)

Part II:

- (¹) Keep as appropriate.
- (²) Only applicable if II.3.2. or II.3.3. is complied with.
- (³) To certify in case of dispatch to a Member State, which has an EC-approved-non-vaccinating status for Newcastle diseases currently: Finland and Sweden otherwise delete reference.
- (⁴) Complete if appropriate.
- (⁵) The guarantees given under points II.2 apply only if the poultry, day-old chicks or hatching eggs belong to the species *Gallus gallus* and,
— They apply from 1 February 2008, if the poultry or day-old chicks are intended solely for production of eggs, other than hatching eggs.
— They apply from 1 January 2009, if the poultry or day-old chicks are reared solely for meat production.
- (⁶) If any of the results were positive for the serotypes below during the life of the flock, indicate as positive.
— Flocks of breeding poultry: *Salmonella* Hadar, *Salmonella* Virchow and *Salmonella* Infantis.
— Flocks of productive poultry: *Salmonella* Enteritidis and *Salmonella* Typhimurium.
- (⁷) Only applicable for Member States which carry out vaccination against avian influenza according to EC approved vaccination plan.
— The colour of the stamp and signature must be different from that of the other particulars in the certificate,

Official veterinarian

Name (in Capital):

Qualification and title

Local Veterinary Unit:

No of the related LVU:

Date:

Signature:

Stamp

MODEL 5

EUROPEAN COMMUNITY

Intra-trade certificate

Part I: Details of consignment presented	I.1. Consignor Name		I.2. Certificate reference number		I.2.a. Local reference number:						
	Address Postal code		I.3. Central Competent Authority								
			I.4. Local Competent Authority								
	I.5. Consignee Name		I.6.								
	Address Postal code						I.7.				
	I.8. Country of origin	ISO code	I.9. Region of origin	Code	I.10. Country of destination	ISO code					I.11. Region of destination
	I.12. Place of origin				I.13. Place of destination						
	Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Approved body <input type="checkbox"/>		
	Name		Approval number		Name		Approval number				
	Address				Address						
	Postal code				Postal code						
	I.14. Place of loading				I.15. Date and time of departure						
	Postal code										
I.16. Means of transport				I.17. Transporter							
Aeroplane <input type="checkbox"/>		Ship <input type="checkbox"/>		Railway wagon <input type="checkbox"/>		Name		Approval number			
Road vehicle <input type="checkbox"/>		Other <input type="checkbox"/>		Identification:		Address					
						Postal code		Member State			
I.18. Animal species/product				I.19. Commodity code (CN code)							
				I.20. Number/quantity							
I.21.				I.22. Number of packages							
I.23. Identification of container/seal number				I.24.							
I.25. Animals certified as/products certified for											
Slaughter <input type="checkbox"/>											
I.26. Transit through third country <input type="checkbox"/>				I.27. Transit through Member States <input type="checkbox"/>							
Third country		ISO code		Member State		ISO code					
Exit point		Code		Member State		ISO code					
Entry point		BIP unit No:		Member State		ISO code					
I.28. Export <input type="checkbox"/>				I.29.							
Third country		ISO code									
Exit point		Code									
I.30.											
I.31. Identification of the animals											
Species (Scientific name)		Category		Identification		Age		Number of packages		Quantity	

EUROPEAN COMMUNITY

Slaughter poultry

		II.a. Certificate reference number	II.b. Local reference number
Part II: Certification	II.1. Animal health attestation		
	I, the undersigned official veterinarian, certify that the poultry described above:		
	(a) ⁽¹⁾ either [comply with the provisions of Articles 11 and 18 of Council Directive 2009/158/EC]		
	⁽¹⁾ ⁽²⁾ or [comply with the provisions of Articles 11 (a), (b), (c) and 18 of Council Directive 2009/158/EC.]		
	⁽³⁾ (b) comply with Article 15(1)(d) of Council Directive 2009/158/EC.		
	⁽⁴⁾ (c) comply with the provisions of Commission Decision(s)/...../EC concerning additional guarantees with regard to (indicate disease(s)) and in accordance with Article 16 or 17 of Council Directive 2009/158/EC.		
	(d) ⁽¹⁾ either [have not been vaccinated against Newcastle disease;]		
	⁽¹⁾ or [have been vaccinated against Newcastle disease using: (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s)) on (date) at the age of weeks].		
	II.2. Public health attestation		
	I, the undersigned official veterinarian, certify that the poultry described above:		
⁽⁵⁾ are tested for <i>Salmonella</i> serotypes with public health significance in accordance with Regulation (EC) No 2160/2003 of the European Parliament and of the Council.			
Date of last sampling of the flock from which the testing result is known:			
Result of all testing in the flock:			
⁽¹⁾ ⁽⁶⁾ either [positive;]			
⁽¹⁾ ⁽⁶⁾ or [negative]			
II.3. Additional health information			
⁽¹⁾ ⁽⁷⁾ II.3.1. The consignment consists of live poultry/day-old chicks/hatching eggs originating from holdings where no vaccination against avian influenza has been carried out.			
⁽¹⁾ II.3.2. This consignment complies with the animal health conditions laid down in Commission Decision 2006/415/EC.			
Notes			
Part I:			
— Box reference I.16: Registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship).			
— Box reference I.19: Use the appropriate HS codes: 01.05, 01.06.39.			
— Box reference I.31: Category: select one of the following: pure line/grandparents/parents/laying pullets/fattening/others. Identification: indicate the identification details of parent flock and brand name. Age: provide the approximate age of the poultry.			

Part II:

- (¹) Keep as appropriate.
- (²) Only applicable if II.3.2. or II.3.3. is complied with.
- (³) To certify in case of dispatch to a Member State, which has an EC-approved non-vaccinating status for Newcastle diseases currently: Finland and Sweden otherwise delete reference.
- (⁴) Complete if appropriate.
- (⁵) The guarantees given under points II.2 apply only if the slaughter poultry belong to the species *Gallus gallus* and,
- They apply from 1 February 2008, if the poultry was kept solely for production of eggs, other than hatching eggs.
 - They apply from 1 January 2009, if the poultry is reared solely for meat production.
- (⁶) If any of the results were positive for the serotypes below during the life of the flock, indicate as positive.
- Flocks of breeding poultry: *Salmonella* Enteritidis, *Salmonella* Typhimurium, *Salmonella* Hadar, *Salmonella* Virchow and *Salmonella* Infantis.
 - Flocks of productive poultry: *Salmonella* Enteritidis and *Salmonella* Typhimurium.
- (⁷) Only applicable for Member States which carry out vaccination against avian influenza according to EC approved vaccination plan.
- The colour of the stamp and signature must be different from that of the other particulars in the certificate.

Official veterinarian

Name (in Capital):

Qualification and title

Local Veterinary Unit:

No of the related LVU:

Date:

Signature:

Stamp

MODEL 6

EUROPEAN COMMUNITY

Intra-trade certificate

Part I: Details of consignment presented	I.1. Consignor Name		I.2. Certificate reference number		I.2.a. Local reference number:					
	Address		I.3. Central Competent Authority							
	Postal code		I.4. Local Competent Authority							
	I.5. Consignee Name		/							
	Address									
	Postal code		/							
	I.8. Country of origin						ISO code	I.9. Region of origin	Code	I.10. Country of destination
	I.12. Place of origin				I.13. Place of destination					
	Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Holding <input type="checkbox"/>		Establishment <input type="checkbox"/>		Approved body <input type="checkbox"/>	
	Name		Approval number		Name		Approval number			
	Address				Address					
	Postal code				Postal code					
	I.14. Place of loading				I.15. Date and time of departure					
	Postal code									
I.16. Means of transport				I.17. Transporter						
Aeroplane <input type="checkbox"/>		Ship <input type="checkbox"/>		Railway wagon <input type="checkbox"/>		Name		Approval number		
Road vehicle <input type="checkbox"/>		Other <input type="checkbox"/>		Identification:		Address				
						Postal code		Member State		
I.18. Animal species/product				I.19. Commodity code (CN code)						
				I.20. Number/quantity						
I.21.				I.22. Number of packages						
I.23. Identification of container/seal number				I.24.						
I.25. Animals certified as/products certified for										
Game restocking <input type="checkbox"/>										
I.26. Transit through third country <input type="checkbox"/>				I.27. Transit through Member States <input type="checkbox"/>						
Third country		ISO code		Member State		ISO code				
Exit point		Code		Member State		ISO code				
Entry point		BIP unit No:		Member State		ISO code				
I.28. Export <input type="checkbox"/>				I.29.						
Third country		ISO code								
Exit point		Code								
I.30.										
I.31. Identification of the animals										
Species (Scientific name)		Category	Identification	Age	Number of packages	Quantity				

EUROPEAN COMMUNITY

Poultry for restocking game supplies

		II.a. Certificate reference number	II.b. Local reference number								
Part II: Certification	<p>II.1. Animal health attestation</p> <p>I, the undersigned official veterinarian, certify that poultry described above:</p> <p>(a) comply with the provisions of Articles 12 and 18 of Council Directive 2009/158/EC</p> <p>(¹) (b) comply with Article 15(1)(c) of Council Directive 2009/158/EC</p> <p>(²) (c) comply with the provisions of Commission Decision(s)/...../EC concerning additional guarantees with regard to (indicate disease(s)) and in accordance with Article 16 or 17 of Council Directive 2009/158/EC.</p> <p>(³) (d) either [have not been vaccinated against Newcastle disease;] (³) or [have been vaccinated against Newcastle disease using: (name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s)) on (date) at the age of weeks].</p> <p>II.2. Additional health information</p> <p>(³) II.2.1. The consignment consists of live poultry/day-old chicks/hatching eggs originating from holdings where no vaccination against avian influenza has been carried out.</p> <p>(³) II.2.2. This consignment complies with the animal health conditions laid down in Commission Decision 2006/605/EC.</p> <p>Notes</p> <p>Part I:</p> <p>— Box reference I.16: Registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship).</p> <p>— Box reference I.19: Use the appropriate HS codes: 01.05. 01.06.39.</p> <p>— Box reference I.31: Category: select one of the following: pure line/grandparents/parents/laying pullets/fattening/others. Identification: indicate the identification details of flocks of origin. Age: provide the approximate age of the poultry.</p> <p>Part II:</p> <p>(¹) To certify in case of dispatch to a Member State, which has an EC-approved non-vaccinating status for Newcastle diseases currently: Finland and Sweden otherwise delete reference.</p> <p>(²) Complete if appropriate.</p> <p>(³) Keep as appropriate.</p> <p>— The colour of the stamp and signature must be different from that of the other particulars in the certificate.</p>										
	<p>Official veterinarian</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Name (in Capital):</td> <td style="width: 50%;">Qualification and title</td> </tr> <tr> <td>Local Veterinary Unit:</td> <td>No of the related LVU:</td> </tr> <tr> <td>Date:</td> <td>Signature:</td> </tr> <tr> <td>Stamp</td> <td></td> </tr> </table>			Name (in Capital):	Qualification and title	Local Veterinary Unit:	No of the related LVU:	Date:	Signature:	Stamp	
Name (in Capital):	Qualification and title										
Local Veterinary Unit:	No of the related LVU:										
Date:	Signature:										
Stamp											

ANNEX V

COMPULSORILY NOTIFIABLE DISEASES

- Avian influenza,
- Newcastle disease,

—

ANNEX VI

PART A

Repealed Directive with list of its successive amendments (referred to in Article 36)

Council Directive 90/539/EEC (OJ L 303, 31.10.1990, p. 6).	
Council Directive 91/494/EEC (OJ L 268, 24.9.1991, p. 35).	only Article 19(2)
Council Directive 91/496/EEC (OJ L 268, 24.9.1991, p. 56).	only as regards the reference to Directive 90/539/EEC in Article 26(2)
Council Directive 92/65/EEC (OJ L 268, 14.9.1992, p. 54).	only Article 7(B), second subparagraph
Commission Decision 92/369/EEC (OJ L 195, 14.7.1992, p. 25).	
Council Directive 93/120/EC (OJ L 340, 31.12.1993, p. 35).	
1994 Act of Accession, Annex I, Points V.E.I.2.A.4 (OJ C 241, 29.8.1994, p. 132).	
Council Directive 1999/90/EC (OJ L 300, 23.11.1999, p. 19).	
Commission Decision 2000/505/EC (OJ L 201, 9.8.2000, p. 8).	only Article 1 and Annex
Commission Decision 2001/867/EC (OJ L 323, 7.12.2001, p. 29).	
Council Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).	only Annex III, point 13
2003 Act of Accession, Annex II, Point 6.B.I.17 (OJ L 236, 23.9.2003, p. 381).	
Council Directive 2006/104/EC (OJ L 363, 20.12.2006, p. 352).	only Annex, point I.3
Commission Decision 2006/911/EC (OJ L 346, 9.12.2006, p. 41).	only Annex, point 4
Commission Decision 2007/594/EC (OJ L 227, 31.8.2007, p. 33).	
Commission Decision 2007/729/EC (OJ L 294, 13.11.2007, p. 26).	only Annex, point 2
Council Directive 2008/73/EC (OJ L 219, 14.8.2008, p. 40).	only Article 11

PART B

List of time-limits for transposition into national law (referred to in Article 36)

Directive	Time-limit for transposition
90/539/EEC	1 May 1992
91/494/EEC	1 May 1992
91/496/EEC	1 July 1992
92/65/EEC	31 December 1993
93/120/EC	1 January 1995
1999/90/EC	30 June 2000
2006/104/EC	1 January 2007
2008/73/EC	1 January 2010

ANNEX VII

CORRELATION TABLE

Directive 90/539/EEC	This Directive
Article 1	Article 1
Article 2, first paragraph	Article 2, first paragraph
Article 2, second paragraph, points (1) to (14)	Article 2, second paragraph, points (1) to (14)
Article 2, second paragraph, point (16)	Article 2, second paragraph, point (15)
Article 2, second paragraph, point (17)	Article 2, second paragraph, point (16)
Article 3(1)	Article 3(1), first subparagraph
Article 3(2)	Article 3(1), second subparagraph
Article 3(3), first and second indents	Article 3(2)(a) and (b)
Article 4	Article 4
Article 5(a), first subparagraph	Article 5(a), first subparagraph
Article 5(a), second subparagraph, first, second and third indents	Article 5(a), second subparagraph, (i), (ii) and (iii)
Article 5(b), (c) and (d)	Article 5(b), (c) and (d)
Article 6(1)(a), (b) and (c)	Article 6(a)(i), (ii) and (iii)
Article 6(2)	Article 6(b)
Article 6a	Article 7
Article 7, first paragraph, point (1), first indent	Article 8(1)(a)(i)
Article 7, first paragraph, point (1), second indent	Article 8(1)(a)(ii)
Article 7, first paragraph, point (1), second indent, first subindent	Article 8(1)(a)(iii), first indent
Article 7, first paragraph, point (1), second indent, second subindent	Article 8(1)(a)(iii), second indent
Article 7, first paragraph, point (2)	Article 8(1)(b)
Article 7, first paragraph, point (3)	Article 8(1)(c)
Article 7, second paragraph	Article 8(2)
Article 8	Article 9
Article 9	Article 10
Article 9a	—
Article 9b	—
Article 10	Article 11
Article 10a	Article 12
Article 10b	Article 13
Article 11(1)	Article 14(1)
Article 11(2), first to fifth indents	Article 14(2), first subparagraph, points (a) to (e)
Article 11(2), sixth indent	Article 14(2), second subparagraph
Article 11(3)	Article 14(3)
Article 12(1)(a), first, second and third indents	Article 15(1)(a)(i), (ii) and (iii)
Article 12(1)(b), first and second indents	Article 15(1)(b)(i) and (ii)
Article 12(1)(c), first, second and third indents	Article 15(1)(c)(i), (ii) and (iii)

Directive 90/539/EEC	This Directive
Article 12(1)(d), first and second indents	Article 15(1)(d)(i) and (ii)
Article 12(2), first, second and third subparagraphs	Article 15(2), first, second and third subparagraphs
Article 12(2), fourth subparagraph, first, second and third indents	Article 15(2), fourth subparagraph, points (a), (b) and (c)
Article 12(2), fifth subparagraph	—
Article 12(3)(i) and (ii)	Article 15(3)(a) and (b)
Article 13(1), first to seventh indents	Article 16(1)(a) to (g)
Article 13(2), first subparagraph	Article 16(2)
Article 13(2), second subparagraph	—
Article 13(3)	Article 16(3)
Article 13(4)	—
Article 14(1), first to fifth indents	Article 17(1)(a) to (e)
Article 14(2)	Article 17(2)
Article 14(3)	Article 17(3)
Article 14(4)	—
Article 15(1), first subparagraph, first and second indents	Article 18(1)(a) and (b)
Article 15(1), second subparagraph, point (a)	Article 18(2)(a)
Article 15(1), second subparagraph, point (b), first to fourth indents	Article 18(2)(b)(i) to (iv)
Article 15(2)	Article 18(3)
Article 15(3), first and second indents	Article 18(4)(a) and (b)
Article 15(4)(a)	Article 18(5), first subparagraph
Article 15(4)(b)	Article 18(5), second subparagraph
Article 15(4)(c)	Article 18(5), third subparagraph
Article 15(5), first, second and third indents	Article 18(6)(a), (b) and (c)
Article 15(6)	Article 18(7)
Article 16	Article 19
Article 17, first to seventh indents	Article 20(a) to (g)
Article 18	Article 21
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Article 21	Article 23
Article 22(1)	Article 24(1)
Article 22(2)	—
Article 22(3)	Article 24(2)
Article 23	Article 25
Article 24	Article 26
Article 25	Article 27
Article 26	Article 28
Article 27a	Article 29
Article 28	Article 30
Article 29(1)	Article 31
Article 30(1)	Article 32
Article 30(2)	— (*)
Article 31	—

Directive 90/539/EEC	This Directive
Article 32(1)	Article 33(1)
Article 32(2)	Article 33(2)
Article 32(3)	—
Article 33(1)	—
Article 33(2)	Article 33(3)
Article 34	Article 34
Article 36	—
—	Article 35
—	Article 36
—	Article 37
Article 37	Article 38
Annex I, point 2	Annex I
Annex II, Chapters I, II and III	Annex II, Chapters I, II and III
Annex II, Chapter IV, points 1 and 2	Annex II, Chapter IV, points 1 and 2
Annex II, Chapter IV, point 3(a)	Annex II, Chapter IV, point 3(a)
Annex II, Chapter IV, point 3(b)(i) and (ii)	Annex II, Chapter IV, point 3(b), first and second indents
Annexes III, IV and V	Annexes III, IV and V
—	Annex VI
—	Annex VII

(*) Amending Directive 90/425/EEC.

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