



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 May 2009**

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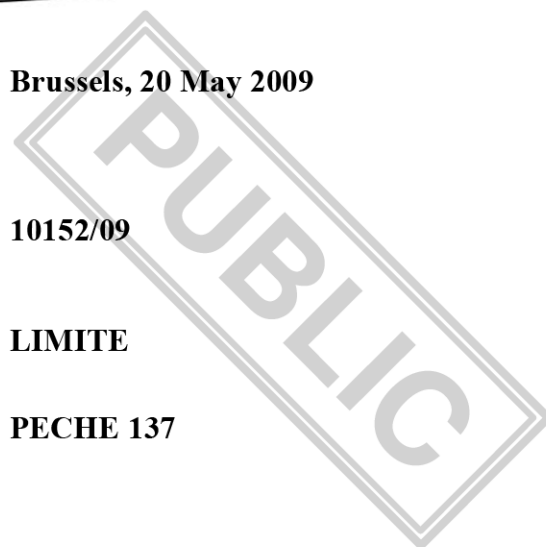
**Interinstitutional File:  
2008/0216 (CNS)**

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**10152/09**

**LIMITE**

**PECHE 137**



**OUTCOME OF PROCEEDINGS**

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from: Working Party on Internal and External Fisheries Policy  
on: 22 and 29 January, 5 and 12 February, 5 and 12 March, 2, 7, 16 and 21 April 2009  
No. Cion prop.: 15694/08 PECHE 312 - COM(2008) 721 final  
Subject: Proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

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Following discussions in the Working Party on Internal Fisheries Policy on 22 and 29 January, 5 and 12 February, 5 and 12 March, 2, 7, 16 and 21 April 2009 and taking into account written comments received so far<sup>1</sup>, delegations will please find attached a "bible" presenting the detailed views of delegations and the Commission in *footnotes in italics and bold* to the above Commission proposal.

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<sup>1</sup> Docs. 7337/09 PECHE 53 + ADD 1 - ADD 23.

All delegations entered a scrutiny reservation on the whole Proposal for a Council Regulation.

DK, UK, MT, FR: entered a parliamentary scrutiny reservation.

Several delegations made general comments. These are summarised below. Specific comments on specific articles are in the footnotes to the "bible".<sup>1</sup>

## **I. Member States' general comments**

Delegations agreed broadly with the principles underlying the proposal but they made some clarifications and expressed a number of concerns.

- *Definitions and consistency in terminology*

Several delegations referred to the need to clarify some definitions and add others. In the same way lack of clarity and consistency of certain terms that were used throughout the regulation was also observed (ES, FR: for instance, the term "vessel"). FR: insisted that the definition of Marine Protected Areas be improved given that fishing activities are not necessarily forbidden in these areas. IT: explained that the definition of 'lot' is not compatible with the Italian practice of selling cases of mixed species.

- *Scope*

EL: the proposal does not cover the entirety of the control provisions currently in force. SE: The proposal does not establish priorities between sea inspection, control at land or of the markets. Unclear scope regarding aquaculture and inland waters. EL, DK, FR, NL: the scope of this regulation should be limited to control aspects; technical conservation measures and management measures should be excluded. UK: propose removing issues on marketing, producer organisations and real time closures from the proposed regulation. Real-time closures belong in the technical measures regulation. DE: This regulation must not apply to freshwater aquaculture and inland fisheries. DK: the reduction of overcapacity does not belong in this regulation. ES: observe overlaps and conflicts between this proposal and current EC legislation. COM: once the CFP reform has been completed it will be possible to remove management aspects from the control regulation.

- *Timing / Calendar*

DK, ES, UK: the control revision would be better dealt with in the context of the CFP reform. UK: can understand that the control revision is done now but, in that case, the regulation must be flexible enough to integrate changes that may be decided in the CFP reform. ES, FR, SE: It will not be possible to apply new obligations included in this regulation from 2010; at least one more year to adapt to the new obligations would be needed.

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<sup>1</sup> For further details on MS positions, please refer to the written comments mentioned in the first paragraph.

- *Division of competences*

DE, FI, IT, LT, PT, RO: It is necessary to review the division of tasks and responsibilities between the Commission and Member States in order to find the right balance. NL: supervision by the Commission needs to be reinforced, subject to adequate safeguards (for instance as regards the role of Community inspectors). ES: the current balance of responsibilities between the Commission and MS must be maintained. SE: the proposal is too detailed in some respects; some issues would be better dealt with at national level. FR: the standardisation of inspection procedures and reinforced powers of inspectors are significant steps forward. However for the sake of legal security the inspectors working outside their national territory must have common standard qualifications.. Observers must not have any inspecting role.

- *Simplification / Administrative cooperation*

Delegations acknowledged the Commission's efforts towards simplification, for instance by merging many different regulations into one. However, they considered that the proposal was still too complex in many respects, creating administrative burdens both for national administrations and the fishing sector. EL: References to numerous implementing regulations and to different technological systems make the proposal difficult to understand. COM: is ready to make further efforts in this respect. FR: Supports administrative cooperation between MS (Arts. 103-109) but has concerns about the confidentiality of the data, how it will be used and who will have access to it.

- *Cost-effectiveness / Proportionality*

Delegations stressed that some of the intended provisions are disproportionate in relation to the objectives pursued and will unnecessarily increase costs. FR: expressed concern about the negative socio-economic impact that such provisions would have. ES, SE: suggested that more emphasis be put on the main aspects of the control by using risk-analysis while simplifying the rules on other aspects. DE, FR: cost/benefit ratio must also be maintained as regards the introduction of modern technology. EE: general principle should be cost-effective control. FI: control costs must not exceed 10% of the landed catch value. COM: In the medium term the use of new technologies and cross checks combined with the reduction in sea inspections will bring a significant reduction in costs at Community level, but this will not apply evenly to all Member States (no reductions will be possible for MS which now spend little on control).

- *Possible derogations for small vessels*

IT, PT, LV, SI: For reasons of cost-effectiveness small coastal vessels cannot be subject to the same obligations as the industrial fleet. PT: in particular opposes extension of VMS and electronic reporting requirements to all vessels above 10m. FR: the requirements for new technology on vessels between 10-15 m should be subject to cost/efficiency evaluation; exemptions should be decided by MS. IT: For small coastal vessels, sampling plans would provide quality data and would be more cost-effective. EL: there is lack of consistency between the exclusion of vessels under 10m length and the rules set for the control of recreational fisheries. COM: will be flexible on the issue of the small coastal fleet.

- *Geographical specificities*

DE, EE, EL, FI, PL, RO, SE, IT, SI : geographical specificities of the different Member States must be taken into account before adopting general rules which would be impossible to apply in some cases. For instance, in some MS, substantial parts of the catch are not sold at auctions. IT: Some of the provisions are tailored to Northern fisheries but they are inapplicable to Mediterranean fisheries; the Italian fleet could therefore be in permanent technical breach. COM: will look into these aspects.

- *Recreational fisheries*

DE, FR, IT, LT: Recreational fisheries need to be regulated in some way. FR, PT: However, the procedure needs to be simplified and catches must not be counted against national quotas. DE: the rules proposed are excessive; impact assessment is needed in order to establish proportionate measures. FL, SE: the regulation of recreational fisheries is disproportionate,

- *Sanctions*

Delegations asked that the differences between national legal systems be taken into account when it comes to the harmonisation of sanctions. DE: the penalty points system conflicts with the objective of harmonisation. DE, NL: the link with criminal-law matters (third pillar) needs to be clearly established. DE: The Council Working Party on Substantive Criminal Law should be consulted. NL: welcomes the possibility to suspend licenses, but has doubts on the penalty point system and objects to double penalties in this context. NL, PT: maximum and minimum sanctions are out of step with national legal systems. FR: supports system of administrative sanctions and penalty points system, but opposes minimum sanctions as well as the automatic nature of the penalty points and the length for the suspension of licenses, which should be decided on a case-by-case basis. The value of "damage to the environment" should not be used to establish the level of sanctions. The notion of serious infringement is too strict and must be revised. Supports with reserves the provisions on closure of fisheries and sanctions to MS which fail to manage their quotas appropriately, but oppose corrective measures implying deduction against national quotas (collective punishment which would affect those who have behaved responsibly). SE: opposes minimum sanctions and prefers guidelines. The effects of a penalty points system may be disproportionate.

- *Financing*

ES, FR, LT, PT: the abolition of Community financing in certain situations is disproportionate. LV, LT, EE: More Community financial support will be needed to help MS meet the new requirements. EE: pursuant to Art.15 of Reg. 861/2006, the rates of co-financing decided by COM might be increased.

- *Revised role of the Fisheries Control Agency*

DK : Reserve. NL: Welcomes the enhanced role for the Fisheries Control Agency, but safeguards are needed, particularly on inspections. FR: Against the assignment of inspecting missions to the Agency. Keep the separation of powers between inspectors from MS and those from the Commission or the Control Agency. UK, SE: Ensure that the Agency does its current functions well before considering extending its mandate. PT: against the assignment of inspection tasks to MS by the Agency.

- *Examples of technical problems*

In their general remarks, some Delegations referred to a number of technical problems. FR, PT: Opposes general obligations of prior authorisation and control at designated ports; these provisions should be restricted to certain fisheries or fleets on the basis of risk analysis. PT: As regards real -time closures, impact assessments are required before these can be established. BE: has misgivings with the obligation to make landing declarations every 2 hours, and with the 5% tolerance margin in the logbook data.

ES, PT: reserve on discard provisions in relation to mixed fisheries (PT: impact assessment is needed). EE: there are many requirements in the proposal, e.g., submission of landing data not later than 2 hours, which are very difficult or impossible to implement in the case of the pelagic mixed fishery. ES: concern about the closure of fisheries of species that are caught as by-catches. The provisions on discard reduction and real-time closures are too theoretical, they do not take into account the varied fisheries, fleets and fishing areas.

FR: Against the reinforcement of reporting obligations concerning fishing activities, landing and transshipment as well as marketing and traceability. Propose harmonized tolerance margin of 10% for species subject to TACs, keeping the current 50 kg threshold. MS must have discretion on how to handle information transmitted by private persons. Oppose the possibility to extend urgency measures up to 18 months (current provisions should be maintained).

FR: proposes the introduction by MS of a National Audit System that could be inserted after art. 87.

**Proposal for a**  
**COUNCIL REGULATION**  
**establishing a Community control system for ensuring compliance with the rules of the**  
**Common Fisheries Policy**

HAS ADOPTED THIS REGULATION:

**TITLE I**  
**GENERAL PROVISIONS**

*Article 1<sup>3</sup>*  
*Subject matter*

This Regulation establishes a Community system for control, monitoring, surveillance, inspection, and enforcement (hereinafter to be referred to as "Community control system") of the rules of the Common Fisheries Policy.

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<sup>3</sup> ***ES:*** need for consistency with Basic Reg. (Art. 23 refers to "control", "inspection" and "enforcement"). In the Spanish version prefers term "observancia" to "aplicación". ***FR:*** there is no conceptual difference between the terms control, monitoring, surveillance, inspection and enforcement. The objective of the regulation needs to be clarified. ***NL:*** add the objective of the Reg. ***COM:*** the goal is to ensure compliance with CFP rules; the terms are consistent with the terminology used in RFMOs.

*Article 2<sup>4</sup>*  
*Scope*

This Regulation shall apply to all activities 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 State, nationals of Member States, which relate to

- (a) the conservation, management and exploitation of living aquatic resources,
- (b) aquaculture,
- (c) processing, transport and marketing of fishery and aquaculture products.

*Article 3<sup>5</sup>*  
*Relationship with international and national provisions*

1. This Regulation shall apply without prejudice to the special provisions contained in fisheries agreements concluded between the Community and third countries or applicable in the framework of Regional Fisheries Management Organisations (RFMOs) or similar arrangements 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

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<sup>4</sup> ***FR, EE, NL, PL, LV, DE, SE:*** clarify that inland waters are excluded. ***LT:*** need to make distinction between "marine aquaculture" and "inland water aquaculture" since control of the latter should be linked to specific requirements. ***EE, FR, CZ, PL, LV, DE, DK:*** in 2 b) specify that it refers only to "marine" aquaculture. Freshwater aquaculture should be excluded from the text. ***DE:*** freshwater aquaculture and inland fisheries do not come within the scope of Reg. 2371/2002. This Control Reg. only relates to the areas covered by the Basic Reg. ***SE, FI:*** clarify which parts of this Reg. are to apply to aquaculture. ***SE:*** the rules concerning control of fishing activities are not in all cases suitable to apply to aquaculture. However it is important to separate aquaculture products from fishery products. This is covered by Art 2c). Therefore, Art. 2b) can be removed. Alternatively, modify Art. 2b) to say "aquaculture, in so far as it is specifically stated". ***ES:*** align this article with Regs. 1005 and 1006/2008. ***FR:*** the geographical scope should take into account the specificities of overseas territories. ***COM:*** the rules of the CFP apply to nationals from overseas territories. ***CZ:*** recreational fisheries need to be excluded. ***NL:*** refer to "activities in the context of the CFP". ***ES:*** replace "all activities" by "all fishing activities covered by the CFP". ***IT:*** reservation on how this Reg. applies to EU citizens. Clarify responsibilities of flag state and coastal state. ***PL:*** does this Reg. take into account the control tasks in connection with structural assistance for fishers? (e.g. documenting the scrapping of vessels). ***UK:*** as in current legislation reference to structural measures needs to be made.

<sup>5</sup> ***EE, PL:*** inquire how this article would apply to lakes they share with Russia (COM takes note). ***EE:*** fisheries agreement between Estonia and Russian Federation does not apply to marketing of fishery products. Is marketing control set by this Reg. applied to marketing of fishery products of lake Peipsi (inland water fishery)?

and are in conformity with the Common Fisheries Policy. At the request of the Commission, Member States shall notify those control measures.

*Article 4<sup>6</sup>*  
*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)<sup>7</sup> *"Fishing activity"* means searching for fish, shooting, setting, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring and caging of fish and fishery products;
- (2)<sup>8</sup> *"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 fishery and aquaculture products;
- (3)<sup>9</sup> *"Activities covered by the Common Fisheries Policy"* means conservation, management and exploitation of living aquatic resources, aquaculture and processing, transport and marketing of fishery and aquaculture products;

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<sup>6</sup> ***CZ, FR, ES, LT, SE, UK, FI, EE, NL, LV, EL: Reserve, definitions missing. UK: expand substantially the current list of definitions with a clear cross reference to existing definitions as detailed in other legislation. UK, FI, SE, EL, DK: define "recreational fisheries". FR: define "fisheries", "transshipment", "transfer", "stockage", "fattening". LT: define "electronic fishing logbook" and "vessel logbook" since the meaning of "logbook" varies in different Community rules. Include also a definition of "electronic means". LV, CZ: define "aquaculture" to make clear that it refers only to sea aquaculture and not to freshwater aquaculture. EE: define "Community inspector" and "Commission inspector". SE: define vessel detection system (Art 11), towed gear (Art. 14), static gear (Art. 14), area (Art. 21), fishing opportunities (Art. 23), FAO code (Art. 35), nets (Art. 37), real-time transmission (Art.39), safety zone (Art.39), observers (Art. 42 and 63), fishery protection vessel (Art.44), vessel (Art. 47 and 76) and fishing vessel (Art. 39), philanthropic purposes, (Art. 47) common marketing standards (Art. 49), identification number (Art. 50), specific tagging and/or labelling system (Art.50), registered buyers (Art. 52), authorised bodies or persons (Art.52), FAO alpha code (Art. 55), territory (Art 73). Also, would like to know whether "a body designated by the Commission" (Art. 61, p.3 and 62 p.3) is the CFCA. If so, this should be stated explicitly. NL: define "landing" (Art. 21). EL: define "arrangements" (Art. 3), monitoring, surveillance, caging, fishery products. ES, FR: revisit definitions when the whole proposal has been examined.***

<sup>7</sup> ***SE: is the definition the same as in Reg. 1005/2008, Art. 2, p.8? ES, IT, PT: Replace "searching for fish" with "fishing". Include landing and fattening among fishing activities. DE: delete from the definition "searching for fish" and "processing", since they are not really fishing activities. DK: fishing activity should also include the landing.***

<sup>8</sup> ***IT: clarify the competences of fisheries. NL: (2) could be merged with (3).***

<sup>9</sup> ***ES: in Spanish, replace "protección" by "conservación".***



- (4)<sup>10</sup> "Control" means monitoring, surveillance, inspection and enforcement;
- (5)<sup>11</sup> "Inspection" means any on the spot check carried out by inspectors of compliance with the applicable provisions of the Common Fisheries Policy which is noted in an inspection report;
- (6)<sup>12</sup> "Official" means a person authorised by a national authority, the Commission or the Community Fisheries Control Agency to carry out an inspection;
- (7)<sup>13</sup> "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;
- (8)<sup>14</sup> "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 fishing activities in Community waters in general and/or specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;

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<sup>10</sup> **ES:** use the terms in Art. 23 of Reg. 2371/2002 to define "control". **FR, IT:** Define each of the terms. **IT:** defining control as "monitoring, surveillance, inspection and enforcement" seems unnecessary since already in Art. 1. **NL:** this definition does not correspond to the wording of Art. 1 of this Reg., where control and enforcement are used side by side. Moreover, in NL the term "control" cannot encompass "enforcement".

<sup>11</sup> **NL:** "monitoring", "surveillance" and "enforcement" must be defined as well as "inspection".

<sup>12</sup> **FR:** officials must have public authority. The definition of "official" refers only to the notion of "inspection", which is more restrictive than "control". **IT:** under the Italian system, only criminal investigation police officers are authorized to carry out inspections **PT:** the term "official" has a broader meaning in PT national legislation. **PT, EL:** replace "official" with "inspector" in all versions. **ES:** specify whether inspectors, observers and inspection assistants are included in the definition of "official". **FI:** Community inspectors should be public employees of the national authorities, the Commission or the Control Agency.

<sup>13</sup> **ES:** the use of a fishing capacity should be accompanied by an allocation of fishing opportunities, which is not the case in all fisheries. Prefers to link this definition to the possibility of carrying on the activity using a specific fishing gear. The definition should also state that it is integral to the vessel and not transferable. The Spanish term "amarre" should be replaced by "armamento" in this definition.

<sup>14</sup> **BE, EL, ES, IT, LV, NL, SI:** specify the meaning in relation to fishing licenses in point (7). **BE, LV, PL:** clarify link with special fishing permits. Having 3 different documents is not adequate. **EL:** reserve. COM should clearly specify what kinds of permit a vessel needs a) within the MS' territory; b) in fishing areas under the competence of a RFMO; c) on high seas and d) in a fishery subject to a multiannual plan. **ES:** fishing authorisations should not be restricted to Community waters. They are in fact covered by Reg. 1006/2008.

- (9)<sup>15</sup> *"Automatic Identification System"*, means an autonomous and continuous maritime safety and vessel traffic broadcast system which provides a means for ships to electronically exchange with other nearby ships and authorities ashore ship data including identification, position, course and speed;
- (10)<sup>16</sup> *"Marine Protected Area"*, means any area which has been reserved by law, an internationally agreed measure or any other effective measure to protect part or all of the enclosed environment;
- (11)<sup>17</sup> *"Fisheries Monitoring Centre"* means an operational centre established by a flag Member State and having the technical capacity to monitor from a distance fishing vessels, to collect, store, validate and cross-check the data received via different communication systems and to make the information available, as appropriate, to the flag State inspection services or coastal State;
- (12)<sup>18</sup> *"Transshipment"* means the unloading of all or any fisheries or aquaculture products on board a vessel to another vessel;

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<sup>15</sup> **PL**: include abbreviation "AIS" to make it easier for operators. **SE**: define AIS as "ship-to-ship and ship-to-shore identification and monitoring system complying with the 1974 SOLAS Convention, Reg. V/19.2.4.5 and its related performance standards".

<sup>16</sup> **DE, DK, EE, ES, FR, IT, PL, PT, SE, SI**: Definition is too vague, it must refer only to Marine Protected Areas (MPAs) where fisheries are restricted. **FR**: in MPAs certain fishing activity is allowed. If the COM 's intention is to refer to the case where fisheries are forbidden, replace concept of MPA by "Integral Marine Reserve" or " Area Closed to Fishing". **SE**: the Reg. should only contain rules of how to control areas where no fishing is allowed, for example real-time closures and other permanently or temporary closed areas for fishing. Such areas should then be defined. **NL**: the status of MPA must have been granted by an official authority. Unclear that "any other effective measure" must come from the government. **DK**: what is meant by "any other effective measure"? **ES**: the creation of these areas must accord with either international or Community provisions. They must in either case be effective. Replace "reserved by law" with "reserved by a regulatory measure", since a MPA can be created by provisions that do not belong to the category of "law". **DE**: amend definition in DE version as follows: "...klar definiertes Gebiet, in dem alle oder bestimmte Arten und/oder Lebensräume gegen negative Auswirkungen geschützt werden".

<sup>17</sup> **ES, PT**: align with Art. 17 of Reg. 1077/2008. **NL**: in NL cross-checks are carried out elsewhere.

<sup>18</sup> **ES, PT**: align with Regs. 1005/2008 and 1006/2008. Define fishing vessel as in Basic Reg. or IUU Reg. **EE**: define fishing vessel as in IUU Reg. Otherwise, the prohibition of transshipment does not cover the transshipment to the transport or support ships. **ES**: tugboat and vessels with shipboard tanks that are involved in the transfer of catches of bluefin tuna included? Also, notes that if the vessel belonged to a third country and took part in the transfer from a Community vessel in non-Community waters they would not be covered by this Reg. **NL**: Does it cover the transfer of nets? **PL**: the meaning of "vessel" is unclear and excessively broad. Replace by "fishing vessel".

- (13)<sup>19</sup> *"Risk"* means the likelihood of an event that may occur and would constitute a violation of the rules of the Common Fisheries Policy;
- (14)<sup>20</sup> *"Risk management"* means the systematic identification of risks and the implementation of all measures necessary for limiting the realisation 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;
- (15)<sup>21</sup> *"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;
- (16)<sup>22</sup> *"Lot"* means a quantity of fishery products of a given species which has been subjected to the same treatment and may have come from the same fishing grounds and the same vessel or the same aquaculture activities;
- (17)<sup>23</sup> *"Processing"* means the process by which the presentation was prepared. It includes cleaning, filleting, icing, packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other manner;

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<sup>19</sup> ***NL:*** No need for a definition of risk since it is a widely used term found in many legal texts. ***DK:*** define risk not only as likelihood but also consequences. ***ES:*** replace "violation" ("*infracción*"), which prejudices the outcome with "may constitute an infringement" ("*vulneración*").

<sup>20</sup> ***EL:*** definition not clear and raises questions as to its implementation. ***FR:*** this definition is not consistent with the notion of risk which implies a hierarchy between situations and data.

<sup>21</sup> ***ES:*** align definition (15) with (18). ***SE:*** clarify whether this definition includes fishermen.

<sup>22</sup> ***FR:*** definition unclear. Harmonise with other Regs. in the health monitoring sector. ***ES:*** have same definition as in Reg. 1005/2008. ***IT, PT:*** clarify. ***IT:*** specify minimum amount that constitutes a lot. ***EE:*** add "caught at the same trip".

<sup>23</sup> ***FR:*** definition too wide. ***FI, FR:*** need to align with definitions in existing regulations. ***FR:*** in particular with Reg. 852/2004, taking into account Art. 53.1 of this proposal. ***NL:*** This definition does not tally with the one used in Market Reg. ***PT:*** keep same definition as in Art. 2 (1) (m) of Reg. 852/2004. Also, include the definition of "processed" fishery products given in p. 7.4 of Annex I of Reg. 853/2004. In line with this Reg., the definition should not include freezing. ***DK:*** Need to distinguish between presentation and state of processing. ***ES:*** keeping whole or gutted fish on ice is not processing. ***EL:*** icing and packing should be deleted since they concern the conservation of a product. Also delete "preparing fish for market in any other manner" as it does not directly refer to processing operations.

- (18)<sup>24</sup> "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 terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets;
- (19) "Agency" means the Community Fisheries Control Agency referred to in Council Regulation (EC) No 768/2005 of 26 April 2005;
- (20)<sup>25</sup> "Integrated maritime surveillance network" means a network of surveillance, monitoring, identification and tracking systems operated for the purposes of maritime security and safety, protection of the marine environment, fisheries control, border control, trade facilitation and general law enforcement;
- (21) "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 State;
- (22) "Vessel Detection System data" means data derived from remotely sensed images and collected by Fisheries Monitoring Centres that provide an overview of the presence of vessels in a given sea area;
- (23) "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 EC Treaty and providing for specific management measures for particular fish stocks for several years;
- (24)<sup>26</sup> "Coastal state" means the State in the waters under the sovereignty or jurisdiction or in the ports of which an activity takes place.

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<sup>24</sup> **ES:** Restrict the scope. Mentioning factory canteens is unnecessary here. **NL:** No need to refer to all kind of shops separately. "Supermarket distribution centres" and "wholesale outlets" come under the term "shops". **EL:** redraft to refer only to the sale to the final consumer. Not agree with including catering operations, restaurants, etc under its purview. **PT:** not refer to "institutional" since illegal fish seized and still in good condition can, in certain circumstances, be donated to private social support/charitable organizations instead of being destroyed.

<sup>25</sup> **DK, ES, IT, NL, PL, PT:** Unclear. **PT:** delete, since this is neither an established concept nor a specific concept under CFP. **ES:** this exceeds the remit of the CFP.

<sup>26</sup> **IT:** More precision needed. **MT:** Align with definition in Technical Measures proposal.

<sup>27</sup> **COM:** agree to revisit definitions at the end of the examination. Definitions of "official" and "risk management" are in accordance with the IUU Reg. MPA definition is from the World Conservation Union. "Lot" is defined as in Reg. 2409/1996. Definition of "retail" is from Reg. 1678/2008 and in accordance with European Agency on Food Safety. COM will provide the source of all the definitions (see ND 44/09).

## TITLE II GENERAL PRINCIPLES

### Article 5<sup>28</sup> General principles

- 1.<sup>29</sup> 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 subject to their sovereignty or jurisdiction, in particular fishing, transshipments, transfer of fish to cages or aquaculture installations including fattening installations, landing, import, transport, marketing and storage of fishery products.
- 2.<sup>30</sup> 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.

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<sup>28</sup> **COM:** principles in this Art. are not new, they come from Basic Reg. Control responsibilities outside EU waters are in compliance with the Law of the Sea. The proportionality principle applies across the board; aid can only be suspended for deliberate offences which seriously undermine the CFP. **IT:** has doubts about the application of this Reg. as drafted, which seems to be confusing IUU fishing with infringements of Community rules. **ES:** obligations under this article go beyond the remit of the fisheries control. AIS data has other purposes than fisheries control, therefore coordination between different administrations will be needed. **FR:** ensure link with Reg. 1005/2008 concerning control beyond Community waters. If COM is to be given effective sanctioning powers, the procedure and applicable criteria must be clearly established.

<sup>29</sup> **CZ:** clarify aquaculture. **FI:** consider whether the rules for control of aquaculture are appropriate. This need comes from other waters, for example, monitoring the on-growing of tuna. In FI it is mainly rainbow trout which are reared in the sea. The rearing of rainbow trout does not need to be subject to the same control obligations as for example the rearing of quota species such as tuna. **PT:** controls should include transformation of fishery products. **DK, ES:** why refer to imports here? (IUU Reg. should be enough). **IT:** control Reg. should only refer to the CFP. **NL:** which are the obligations of MS in relation to 3rd countries?

<sup>30</sup> **DK, FR, IE:** unclear about obligations outside EU waters. **PL:** what is intended by 'control access' and 'control activities'? **ES:** overlap with IUU Reg. **NL:** Art. 2 (2) of current Control Reg is a better alternative. **FR:** notes that flag states still have some responsibilities outside EC waters but not all of them. **IT:** concern on responsibility of EU nationals working on foreign vessels.

- 3.<sup>31</sup> Member States shall adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring inspection, monitoring, surveillance 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.<sup>32</sup> Each Member State shall ensure that control, inspection, monitoring, surveillance and enforcement is carried out on a non-discriminatory basis as regards the sectors, vessels or persons chosen for inspection, and on the basis of risk management.
- 5.<sup>33</sup> 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 and verification of information on fishing activities and for reporting to, and cooperating with the Commission, other Member States and third countries.
- 6.<sup>34</sup> The payment of contributions from the European Fisheries Fund pursuant to Council Regulation (EC) No 1198/2006 and of Community financial contributions to measures referred to in Article 8, paragraph a, of Council 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 on conservation, control, inspection and enforcement under 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 inspection, monitoring, surveillance and enforcement regime to this effect.

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<sup>31</sup> **ES:** in Spanish version, replace "todos los medios" ("all means") with "the adequate means" at the end of the paragraph. **FR:** COM must also have 'adequate means', not only MS (proportionality principle). **IT:** under the Italian system, funding is allocated by parliament and not by the administrative authorities.

<sup>32</sup> **ES:** clarify.

<sup>33</sup> **FI:** at the moment fisheries controls in FI are carried out by police, customs, fisheries authorities and border guards. Would like more information from COM as to how this single coordinating authority should be implemented. **PT:** since relations with third countries in the field of fisheries come within Community competence, it should be COM that submits reports to third countries.

<sup>34</sup> **PL:** this point needs link with Art. 95. Suggests "in accordance with the procedure laid down in Art. 95". **IT:** clarify. **ES, EL:** not link the payment of EFF funds to fulfilment of control obligations. **ES, FR:** wording in points 6 and 7 leads to legal uncertainty since neither the procedures and the forms of application concerned, nor the scope, are defined. **FR:** important reserve on points 6 and 7. Reference to sanctions would be better placed in Title XI, Chapter I with art. 95. **PT:** payments should only be interrupted or suspended in the situations laid down in Arts. 88 and 89 of Reg. 1198/2006, i.e., where serious shortcomings are detected in the operational programme's management and control system. **DE:** the gravity of the offence must be taken into account before withholding payments. **FI, FR:** this provision leaves COM too much scope for interpretation.

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<sup>35</sup>

#### *Article 6<sup>36</sup>* *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.
2. For Community fishing vessels the flag Member State shall issue and manage the fishing licences. It shall ensure that the information contained in the fishing licence are accurate and consistent with those 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 and which has had its fishing authorisation suspended in accordance with Article 45 paragraph 1 d) 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 (1) (d) of Regulation (EC) No 1005/2008.

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<sup>35</sup> ***FR:*** "access conditions to waters and resources" do not belong in a Control regulation. ***Revise title.***

<sup>36</sup> ***ES:*** in the Spanish version (point 1) replace "válida" by "en vigor". As regards paras. 3 and 4, there are provisions for Community vessels in Reg. 1006/2008 which these paragraphs should refer to. ***ES, DK, PT:*** in paras. 3 and 4 reference should be to Art. 45 (4) of Reg. 1005/2008, not 45 1 d). ***COM:*** will double check. ***SE:*** access to water is not primarily a control issue, so would like clarification from COM on why these rules are needed in this Reg. ***FR:*** provisions on fishing rights do not belong in this regulation. ***SE:*** discuss if para. 1 and para. 2 should be deleted. ***EL:*** this definition does not correspond with the one in Reg. 1281/2005, according to which a fishing licence includes fishing capacity and the minimum information required for the Community fishing fleet register.

*Article 7<sup>37</sup>*  
*Fishing authorisation*

- 1.<sup>38</sup> A Community fishing vessel operating in Community waters shall only be authorised to carry out fishing activities insofar as it holds a valid fishing authorisation issued by the competent authorities of its flag Member State. A Community fishing vessel operating in Community waters shall be authorised to carry out specific fishing activities only insofar as they are indicated in its valid fishing authorisation when the fisheries or fishing zones are subject to:
- a) a fishing effort regime;
  - b) a multiannual plan;
  - c) a marine protected area;
  - d) a scheme of progressive reduction of discards;
  - e) experimental fishing;

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<sup>37</sup> **COM:** the aim is harmonisation. Authorisations will replace special fishing permits. **NL:** opposed to a system of fishing authorizations alongside fishing licences, since this would result in a great deal of extra administrative costs, with limited added value. **BE, NL:** does not agree with the creation of a complete new document. **SE:** access to water is not primarily a control issue, so would like clarification from COM on why these rules are needed in this Reg. Discuss if this Art. should be deleted. **FR:** provisions on fishing rights do not belong in this regulation. **IT:** this Art. is not consistent with the simplification principle. Also, authorisation should relate to specific fisheries. **IE:** fishing authorisation should only be required additionally to the fishing licence in certain situations, e.g. recovery plan. **PL:** can MS use their national authorisation schemes? **COM:** yes, these are to be maintained. **PT, FR, IE:** excessive administrative burden. **ES:** since this is an ambiguous article, a new article is necessary. **COM:** license authorisation requirements concern all vessels, linked to the penalty point system. But COM intends to apply electronic management as in the Baltic, thus reducing costs.

<sup>38</sup> **DK, FR, PL:** first sentence makes no sense, delete. **ES:** in the Spanish version replace "válida" by "en vigor". **DK:** what is the link between "fishing authorisation" in the first sentence and second sentence? Is it two different authorisations? Does the obligation to have a fishing authorisation apply irrespectively of the size of the vessel? **ES, IT:** check wording: the subject is Community vessels operating in Community waters but f) mentions areas not under the responsibility of an RFMO. **COM:** f) is to avoid legal gap in waters not covered by RFMOs. **ES, FR:** Some of the cases mentioned in a) to g) are repetitive. There is no need for a different individual authorisation for each of these cases if not mutually exclusive. For example, a multiannual plan may entail a fishing effort regime. **ES:** define "scheme of progressive reduction of discards" in d). **FR:** term "fisheries" needs to be defined in relation to paras. a) to g). Notes that according to 1) it is possible to fish in MPAs. **EL:** add a new subpara. referring to TAC status. In f) draw up a list of bottom gear.



- f) fishing activities with bottom gears in areas not under the responsibility of a Regional Fisheries Management Organisation;
- g) other cases laid down in Community legislation.

- 2.<sup>39</sup> Where a Member State has a specific national fishing authorisation scheme, it shall send the Commission at its request a summary of the information contained in the authorisation applications and the related overall figures on fishing effort.
- 3.<sup>40</sup> 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 vessels authorized to engage in a fishing activity in a given fishery.
4. A fishing authorisation shall not be issued if the 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 automatically become null 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.<sup>41</sup> The format and the procedure for the issue of fishing licences and fishing authorisations shall be adopted in accordance with the procedure referred to in Article 111.

*Article 8<sup>42</sup>*  
*Marking of the fishing gear*

1. The master of a vessel shall respect conditions and restrictions relating to the marking and identification of vessels and their gear.
2. Detailed rules for the marking and identification of vessels and their gear shall be determined in accordance with the procedure referred to in Article 111.

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<sup>39</sup> ***DK BE:*** why is this information needed? the paragraph could be deleted. Alternatively, information of fishing effort for the authorisations could be given after the end of a management period. ***ES:*** clarify "overall figures on fishing effort". ***DK, IT:*** delete the term "applications".

<sup>40</sup> ***ES:*** clarify what COM is requesting and how and when the information is to be sent.

<sup>41</sup> ***ES, IT, NL, PL:*** the issuing of licenses must not be subject to Comitology. ***ES:*** replace "the procedure for the issue" by "content of". ***EL:*** "the format and procedure for the issue of fishing licences and fishing authorisations" does not fall within the scope of a Control Reg.

<sup>42</sup> ***IT:*** type of vessel is not defined. Exclude vessels of less than 15 metres in length. ***FR:*** inconsistent use of terms. Should say "Community fishing vessels" as in other articles. ***FR, ES:*** provisions on the marking of gear already exist in Reg. 356/2005. ***COM:*** this Reg. will remain in force.

*Article 9*  
*Vessel Monitoring System*

- 1.<sup>43</sup> Member States shall operate a satellite-based Vessel Monitoring System for effective monitoring of fishing activities of the fishing vessels flying their flag regardless where they are and of fishing activities in their waters. Member States shall ensure the regular monitoring of the accuracy of this data and shall act promptly whenever data are found to be inaccurate.
- 2.<sup>44</sup> A fishing vessel exceeding 10 meters length overall 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 vessels exceeding 10 meters length and up to 15 meters length overall this paragraph shall apply as from 1 January 2012.

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<sup>43</sup> ***EL:*** clarify 'regular monitoring of the accuracy of the data'. ***PT:*** what can be done if data is "inaccurate"?

<sup>44</sup> ***COM:*** extension of VMS to 10-15m vessels. Exemptions possible if vessels operate only within 12 miles or trips last less than 24 h. Note that under current rules only 11% of the fleet is covered and also that 40% of Baltic Sea cod is caught by this kind of vessel. Extended scope will reduce the need for inspections at sea thus offsetting installation costs. ***BE, DK, FR, NL:*** support VMS extension to 10-15m vessels. ***UK:*** very difficult to support this proposal unless the derogations provided for in Art 9.6 remain in place. Would like COM to provide information demonstrating the benefits of using VMS on vessels 10-15 m. ***PL:*** replace the requirement for vessels of 10-15 m to use VMS by the use of AIS-B system. ***PT, IT, ES, IE, FI:*** VMS should only be required for vessels of 15 m or more. ***PT:*** smaller vessels are structurally unsuitable for fitting VMS equipment, which needs to be used in a sheltered area and to have a reliable electricity supply. ***ES:*** disproportionate given the brevity and eminently coastal nature of the fishing trips undertaken by this fleet segment. ***FI:*** small catches in FI by vessels of 10-15 m and the inadequate weather protection of many of these vessels. ***EL:*** does not support extension to vessels of 10-15 m equipped with fixed gear. Such vessels should be fitted with a VMS only if they fish under a multiannual plan and have a fishing authorisation within the meaning of Art 7. ***PT, ES, IT:*** this does not preclude compulsory VMS in some fisheries or for some category of vessel, in specific and justified cases, based on a risk assessment. ***PT, ES, DK, BG, IT, PL, EL, IE, UK, FI:*** unnecessary measure in terms of cost/benefit analysis. ***FR:*** Cost/analysis evaluation is needed. ***SE:*** Vessels should not be obliged to have both VMS and AIS on board. For vessels above 15 m VMS is the best alternative. The first sentence should be altered to "A fishing vessel exceeding 15 m length overall...." The last sentence shall be removed. ***COM:*** on cost / benefit issue, if some MS already apply this measure, others can do it as well. ***FR:*** derogations to be decided by MS, not in Management Committee.

- 3.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> Member States shall make detailed and aggregated data available to end-users as referred to in Article 2 (i) of Council Regulation (EC) No 199/2008,<sup>48</sup> in order to support scientific analysis under the conditions laid down in Article 18 of that Regulation.
- 6.<sup>49</sup> Community vessels up to 15 meters length overall may be exempted from the requirement to be fitted with a Vessel Monitoring System if they:

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<sup>45</sup> ***DK:*** the modalities of the second sentence will be of great importance. It will not be appropriate to send all data to everybody- that will create capacity problems for the single FMC. ***PT:*** clarify the situations in which VMS data are to be supplied, as "likely" is too broad, in particular, in the case of MS with adjoining fishing areas. ***ES:*** the eventuality of "is likely to land" or "in the waters of which the fishing vessels is likely to continue its fishing activities" is already covered by the requirement to transmit data to the coastal MS.

<sup>46</sup> ***DK:*** superfluous. ***EL:*** this para. concerns areas managed by a RFMO. What is meant by high seas in this case?

<sup>47</sup> ***PT:*** why is reference to Data Collection needed? ***ES:*** this requirement already exists under Reg. 199/2008 and does not need to be repeated here. ***EL:*** not agree with transmitting detailed and aggregated data to end-users as under Reg. 199/08, since there is no connection with control of CFP rules.

<sup>48</sup> OJ L 60, 5.3.2008, p. 1.

<sup>49</sup> ***PL:*** exemptions are very difficult to control. ***SE:*** these exemptions would be difficult to apply and the procedure for administering this with approval from the COM would be extensive. All vessels of 10-15m should have some kind of surveillance, which could be VMS or AIS. This para. 6 should read: "A fishing vessel exceeding 10 m length overall up to 15 m length overall shall have installed on board a VMS or an AIS. Each MS shall decide on which system the vessel shall use.". ***FR:*** who decides on exemptions, under which conditions? Are third country vessels subject to the same size limits? to whom should they communicate, to coastal state? Harmonise terms. ***COM:*** 3rd country vessels will have to comply, this is why they are included here; meanwhile Reg. 2344/2003 will remain in force. ***DE:*** extend the length restriction to vessels to at least 18 m. ***NL:*** no exemptions should be admitted, since they make the rules less clear and more difficult to enforce Do exemptions refer to territorial waters or to 12 miles? ***COM:*** 12 miles. ***ES:*** delete this para. in view of comments on para. 2; ***UK:*** UK fleet would have few possibilities of exemption given characteristic of the UK coast and local fisheries. ***SI:*** supports the exemptions, but it should be MS that decide on the granting of those exemptions. This gives MS the possibility to decide if it does not want to exempt certain categories of vessels.

- a) operate exclusively within the territorial seas of the flag Member State or
  - b) never spend more than 24 hours at sea taken from the time of departure to the return to port.
- 7.<sup>50</sup> Third country fishing vessels operating in Community waters shall have installed on board a fully functioning device which allows automatically localising and identifying that vessel by Vessel Monitoring System by transmitting position data at regular intervals in the same way as masters of Community fishing vessels.
- 8.<sup>51</sup> Member States shall establish and operate Fisheries Monitoring Centres, which shall monitor fishing activities and fishing effort. The Fisheries Monitoring Centres of a particular Member State shall monitor the fishing vessels flying its flag, regardless of 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.
- 9.<sup>52</sup> Each flag Member State shall appoint the competent authorities responsible for the Fisheries Monitoring Centres and shall take the appropriate measures to ensure that its Fisheries Monitoring Centres 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 Centres.
10. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

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<sup>50</sup> ***ES, PL:*** include non-fishing auxiliary vessels. ***PL:*** spell out that this concerns fishing activity as defined in Art. 4. ***DK, FR:*** whom must 3rd country vessels report to? ***DK:*** after "regular intervals" should be included "to the coastal MS".

<sup>51</sup> ***EL:*** monitoring of fishing effort should be an obligation where limits to fishing effort are in force.

<sup>52</sup> ***PT:*** why is it necessary to say that MS may operate joint monitoring centres? What about the cost of transmission? ***DK:*** point 9 superfluous, repetition of point 3.

Article 10<sup>53</sup>  
Automatic Identification System

- 1.<sup>54</sup> A fishing vessel exceeding 15 meters 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 in its up-to-date version.

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<sup>53</sup> **COM:** since for reasons of maritime safety AIS is mandatory for vessels of more than 15 m it is important that MS use it for cross-checking purposes. **FR, ES, DK, IE:** no objections to extending maritime safety to fishing vessels, but strongly oppose last sentence in para. 2, it does not belong in a fisheries Reg. **DK, FI, DE:** it should be optional for MS to use AIS data. **LT:** AIS is not suitable for control purposes due to its short off-coast coverage range, therefore the requirement to install this system is not justified. **DK, PL, SI, UK, RO, FI:** doubts on cost effectiveness and value added of using AIS for control purposes. **UK:** the 1 or 2 hourly reports required under the detailed VMS rules should be sufficient. If AIS is to be considered, then it should be considered only as an alternative to, and not in addition to VMS. **BG:** cannot accept double system for vessels fishing up to 12 miles from the coast. **EL, FR, PT, IE, FI, IT, UK:** AIS is covered by Directive 2002/59 and comes under shipping safety rather than fisheries policy. **FR:** therefore the use and the control of the accuracy of AIS cannot be imposed. **EL:** questions the expediency and efficacy of AIS & VDS systems, the difficulty of installing them, particularly on board small vessels and of ensuring confidentiality of data they generate. **IT:** no account has been taken of the VMS established within the Community in compliance with Directive 2002/59 or of the use of systems for exchanging AIS data already obtained by individual MS (the SafeSeaNet network, the STIRES project and other regional AIS schemes). No provision has been made for dovetailing or integrating of AIS schemes with fishing vessel monitoring systems in order to achieve maximum synergy between them for the sake of efficiency, effectiveness and economy in surveillance generally. Make provision for a single monitoring system for fishing vessels. In particular, when fishing vessels are within the VDL (VHF data link) area of MS's AIS station, that monitoring system could be based entirely on AIS data only. The AIS data sharing system established within the EU enable a MS to receive AIS data obtained by other MS. Such information is obtained very frequently (at least every ten seconds within a country's own VDL area or every six minutes within another MS's VDL area) and at no cost. When fishing vessels are outside Community VDL areas, details of them could continue to be obtained by means of VMS, as introduced by the EU under the long-range identification and tracking (LRIT) system. **PL:** introduce abbreviation AIS. **COM:** VMS and AIS are complementary even if some data overlaps. AIS gives continue real-time position while VMS only every 2 hrs. Unlike VMS, AIS has no transmission costs and very low maintenance costs. JRC finds that cross checks of VMS and AIS data have been effective. Fishing vessels will have to use 'AIS A' transmission anyway. **ES:** obligations under this article go beyond the remit of fisheries control. AIS data has other purposes than fisheries control, therefore coordination between different administrations ill be needed. **SI:** have here same derogation for Community vessels as in Art. 9.6.

<sup>54</sup> **FI, SE:** delete. This Reg. should not impose an obligation on vessels to have both VMS and AIS equipment.

- 2.<sup>55</sup> Member States shall use the Automatic Identification System data for the purpose of cross-checking with other available data in accordance with Articles 102 and 103. 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. Member States shall ensure the regular monitoring of the accuracy of those data and shall act promptly whenever data are found to be inaccurate.

*Article 11<sup>56</sup>  
Vessel Detection System*

1. Member States 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.

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<sup>55</sup> ***FI:** amend to state that MS may use AIS data, in so far as such information is available. **SE:** proposes for this paragraph the following reading: "MS may use the data from the AIS for those vessels which are under the obligation of the 1974 SOLAS Convention in this regard, for the purpose of crosschecking with other available data in accordance with art. 102 and 103".*

<sup>56</sup> ***COM:** the use of VDS is already in EC legislation on condition of cost effectiveness. Recent JRC study shows VDS is a cost effective tool to assist aerial surveillance. Cost can also be reduced by 25% by using results of images instead of images themselves. **FR:** experience on Patagonian toothfish shows VDS is expensive. **FR, IT:** VDS can be effective only in areas with few vessels. Doubts on effectiveness in crowded areas. Do not oppose VDS but its use must not be systematic (include words "as appropriate"). **FI:** Baltic pilot project on comparative analysis of satellite images and information from VMS contributed no added value and proved that the system is not effective there. The requirement which came into force on 1 January 2009 for the technical capacity to use a remote sensing system takes better account of conditions in Finnish and Baltic waters. **DK:** Baltic study showed better results in port areas; **IT:** cannot agree to combine use of all three systems (VMS, AIS and VDS). **IT, DK, PL, PT, IE BE:** this will be costly and little benefit for control would result from it. **SE, DK, FR, IT, SI, UK, MT, RO, PT, UK, BE, DE:** problems with the mandatory nature, make it optional. **FR, SI, SE:** use formula "where appropriate". **UK:** the mandatory use does not respect the risk-based approach to control. **BG, MT:** strong reserve. **LT:** unhappy about the low quality and high cost of remotely sensed images. The system could only be used for specific control programmes as a means of collective fishing control. **IE:** unclear what the requirements for a VDS will be and how such a system will operate. **EL:** same comment as in previous Article. **COM:** will provide data on cost benefit in management committee. Argument that VDS does not work in high density areas is outdated. Now 90-95% targets can be identified. VDS and AIS are good complements to VMS. **NL:** the surface area of the Dutch zone is so small that all vessels are visible enough using VMS and radar and the VDS would have no added value. Therefore it should not be applied at MS level. An alternative would be to set up such a system at European level so that it could be used if the situation in para. 2 arises.*

- 2.<sup>57</sup> The Commission may require a Member State to use a Vessel Detection System for a given fishery and at a given time.

*Article 12<sup>58</sup>*

*Transmission of data for surveillance operations*

Data from the Vessel Monitoring System, Automatic Identification System and Vessel Detection System collected in the framework of this Regulation may be transmitted to Commission agencies and other public 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.

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<sup>57</sup> ***FI:*** delete paragraph. ***PL:*** given the high cost of using satellite remote sensing methods, use of VDS should be confined to distant waters, where there is not much traffic and it would be extremely expensive to send inspection vessels. The Baltic, however, should be exempted. ***BE:*** suggests adding a sentence "when it is clearly proven that there is a cost benefit in relation to the traditional control means". Use text as in Art. 4 of Reg. 1966/2006.

<sup>58</sup> ***COM:*** new provision. Data sharing will bring big control benefits for MS at no extra cost. Security passwords required to avoid misuse. ***NL:*** what is the COM's purpose here? wonders whether this Reg. is the right place for dealing with this. ***ES:*** transmission of data for surveillance operations must be limited and specifically regulated in compliance with data protection regulations. ***SI:*** the protection of personal data should be taken into account. Which data from the AIS, VMS and VDS systems can be transmitted to COM agencies and other public authorities of the MS? ***FR:*** reference to "general law enforcement" is too vague. Will data other than VDS, VMS and AIS be added? ***COM:*** yes; ***FR:*** What are "Commission agencies"? ***COM:*** Community agencies; ***FR:*** What are "public authorities engaged in surveillance operations"? ***COM:*** concept kept broad deliberately, but "public authorities" is the key element.

*Article 13<sup>59</sup>*  
*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, 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 shall 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**  
**MONITORING OF FISHERIES<sup>60</sup>**

**Chapter I**  
**Monitoring Of The Use Of Fishing Opportunities<sup>61</sup>**

**SECTION 1**  
**GENERAL PROVISIONS**

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<sup>59</sup> **COM:** no obligations, but gives MS the opportunity to use other methods, such DNA analysis for traceability e.g. to prove false labelling or illegal shark finning. **UK:** supports, but the use of new technologies can be used as a replacement for existing measures and not in addition to, for example perhaps the development of CCVTV. **PT, ES, NL, SE, UK:** question the usefulness of this Article. It holds a reference to a right according to Art. 37 in the Treaty which does not need to be duplicated in this Reg. **UK:** the only obligation let down here is to carry out pilot projects on traceability tools before 1 June 2013. **EL:** if this Art. entails further obligations for MS to implement new technologies, this should be spelt out in detail to assess their feasibility and expediency. **ES, SI, FI, IT:** replace 'shall' by 'may' (**COM:** can accept it). **PT:** this Reg. is not the appropriate one for this type of provisions. **SE, UK:** clarify that pilot projects in second sentence of para. 1 can be carried out by MS on their own or in cooperation with the Commission (**COM:** confirms). **ES:** delete "such as genetic analysis". **LV:** move "genetic analysis" to a more appropriate place in the Reg., like Art. 48 or 50 governing the market. **PT, LV:** pilot projects and their funding are covered by Reg. 861/2006.

<sup>60</sup> **FR:** provisions on electronic transmission need to be linked to Reg. 1966/2006 and COM Reg. 1077/2008. This concerns Arts. 15,17,19,21 & 54.

<sup>61</sup> **FR:** title of Chapter I not consistent with content of Arts. 14-28.



Article 14<sup>62</sup>  
Logbook

- 1.<sup>63</sup> Without prejudice to specific rules, the masters of Community fishing vessels exceeding 10 meters length overall shall keep a logbook of their operations, indicating specifically all quantities greater than 15 kg of live-weight equivalent of each species caught and kept on board, the date and the relevant geographical area, expressed by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation, of these catches and the type of gear used. The quantities of each species discarded at sea shall also be recorded in the logbook. The accuracy of the data recorded in the logbook shall be the responsibility of the master.

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<sup>62</sup> **COM:** extension of the obligation to keep a logbook to vessels over 10m, and to 15 kg of each species, instead of 50 kg. Daily electronic reporting of logbook to FMC will enable to check the use of effort daily. Margin of tolerance reduced from 20% to 5%. Para. 4 provides legal base for conversion factors and para. 5 includes provisions for 3rd countries. **SE:** this Art. is too detailed. The contents of the logbook should be placed in a Commission Reg. through comitology (currently in COM Reg. 2807/1983). **LV, ES:** it would be preferable to amend Reg. 2807/1983 to include these provisions or to repeal this Reg. if decide to incorporate them into this proposal. If not repealed, need incorporate it into the recitals. **COM:** will use para. 6 to update 1983 logbook Reg. and to tweak ERS implementing Reg. **DK:** there should be a general obligation of registration of each fishing operation (haul by haul). This is particularly necessary in the case of discards. **ES:** the requirements are excessive and involve a heavy verification burden, which should be confined solely to fisheries where there is a clear need. **IT:** this Art. is hard to be put in practise in Italy in view of the many species (and the small quantities of each) caught on average. **LT:** need to clarify what kind of logbook is meant (i.e, whether it refers to a fishing logbook or to a vessel logbook) since different requirements apply to different kinds of logbooks.

<sup>63</sup> **EE:** why vessels <=10M excluded? Proposes to include also vessels below 10 m to prevent illegal fishing coming into the market. **DK:** why vessels =10M excluded? They are included in the existing control regulation. **PT, FI, EL, BE, ES, DK, PL, FR, IE, IT, RO, UK:** reserve on the 15 kg threshold. **BE, ES, DK, PL, IE, IT:** keep 50 kg in logbook. **UK:** a least 50 kg though preferably 100 kg. To record smaller quantities is unnecessary, since they will be in the landing declaration. **NL:** a lowering of the logbook obligation to 15 kg is a step in the right direction but why not report all catches? **FR, PT:** requirement to record discards problematic and hard to enforce. **UK:** the accurate recording of discards is impossible to enforce. **ES:** is it only the species discarded that has to be recorded or the quantity as well? **FI:** report also other discarded by-catches which are not fish (such as whales, seals, turtles and birds). **FR, FI, PT:** will discards be deducted from quotas? **COM:** registering discards is optional in 1983 Reg. which causes problems for scientists, therefore COM proposes it should be mandatory, but can add the words "for scientific purposes". **PT:** will discards be taken into account for effort assessment? **SE:** add after first sentence of this para.: "The logbook shall be updated and transmitted to the competent authorities of the flag MS after every fishing operation". The third sentence shall read "The quantities of each species discarded at sea shall also be recorded in the logbook in relation to every fishing operation". **ES:** indicate the cases in which the statistical rectangle needs to be mentioned. **PL:** add information on methods for checking the data recorded. **EL:** considering the specific characteristics of fishing in the Mediterranean, the keeping of logbooks should only apply to the species named in Reg. 1967/2006. Proposes wording for a new Para. 1a. **DK:** position and the time for setting and taking on board the gears should also be registered.

- 2.<sup>64</sup> In fisheries subject to a regime of fishing effort masters of Community fishing vessels shall record and account in their logbooks for the time spent in an area as follows:
- a)<sup>65</sup> With regard to towed gear:
    - i) entry into, and exit from port;
    - 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 of entry into a port located in that area.
  - b)<sup>66</sup> With regard to static gear:
    - i) entry into, and exit from port;
    - 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 of entry into a port located in that area.

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<sup>64</sup> ***ES:*** these requirements are excessive and justified only in exceptional cases. ***FI:*** para. 2 second sentence, is this a Community or a national regime? ***COM:*** will specify it is for Community effort programmes. Para. 2 reflects Art 19c of Control Reg. ***SE:*** if longlines are not included in the definitions of towed gear and static gear, it should be clarified what rules shall apply to this gear in this regard. There are other gears now excluded from the regime of fishing effort that may be included in the future. Therefore, also hooks, jigs and purse seines should be defined in these categories. Alternatively, the categories should be drawn up differently.

<sup>65</sup> ***PL:*** in para. a) iii), replace the vague term "at the time of" by "before entry into port", and add "the logbook shall be filled in on each occasion before the vessel is inspected at sea".

<sup>66</sup> ***IE:*** in relation to static gear, have here the control provisions related to the use of gillnets and the MPAs as currently in points 9 and 15 of Annex III of Reg. 43/2009. ***PL:*** in b) v) replace the vague term "at the time of" by "before entry into port", and add "the logbook shall be filled in on each occasion before the vessel is inspected at sea". ***EL:*** in iv) clarify what the "time of the completion" shall be in cases when such a gear has been used more than once within a single day? ***DE:*** entries for static gear should be confined to a few items of information. Is the information on setting, re-setting and time of completion absolutely essential?

- 3.<sup>67</sup> The permitted margin of tolerance in estimates recorded in the logbook of the quantities in kilograms of fish retained on board shall be 5 %.
- 4.<sup>68</sup> To convert stored or processed fish weight into live fish weight the masters of Community fishing vessels shall apply the conversion factor established in accordance with the procedure referred to in Article 111.
- 5.<sup>69</sup> 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.
- 6.<sup>70</sup> Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

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<sup>67</sup> ***BE, DE, DK, EE, ES, FI, FR, IE, IT, PL, PT, LT, MT, NL, SE, RO, LV, UK:*** reserve on margin of tolerance, 5% too low. This creates problems where the quantities are small. ***DK, FI:*** there is a specific problem with fish contained on board in bulk which must be solved. ***PL:*** what is the basis for this new margin? ***EE, FI:*** in the pelagic mixed fishery (sprat and herring) a margin of 5% is not possible to implement. ***NL, UK, EE, LT, PL:*** Prefer 10%. ***FR:*** 10% for species subject to TAC. ***UK:*** carried out a research in UK which demonstrated that fishermen would in most circumstances be able to comply with a 10% tolerance. This should apply across the board, also for recovery stocks. ***NL:*** alternatively, the margin should decrease as the reported weigh rises. ***EL, MT, PT, ES:*** keep 20%. ***BE, DE:*** prefer a gradual approach (***BE:*** e.g. 20% from 50-500 kg and 10% over 500 kg). ***DE, UK:*** moreover, a bottom limit (e.g. 100 kg per species) should be introduced. ***SE:*** proposes the following wording: "the permitted margin of tolerance in estimates recorded in the logbook of quantities in kilograms of fish retained on board exceeding 300 kg shall be 10%". ***COM:*** notes most MS agree on need to reduce tolerance margin, and takes note of BE, DE idea of a gradual approach.

<sup>68</sup> ***ES, PT:*** conversion factors should have a scientific basis. ***ES:*** specificities of certain fisheries should be taken into account rather than simply performing an arithmetical calculation of the average of the values applied in the MS. The switch from national to Community conversion factors may result in changes in relative stability. ***PL:*** different conversion factors should be used depending on the fishing area, and not, as at present, depending on a vessel's flag. ***IT, PL, PT:*** reserve on conversion factors being set by Comitology. ***COM:*** legal basis is needed for conversion factors for fresh fish that need to be established by the Management Committee.

<sup>69</sup> ***ES, FR:*** requirements for EC vessels and 3rd country vessels unclear throughout chapter 1. Clarify. ***COM:*** para. 5 reproduces Art. 19c of current Control Reg.

<sup>70</sup> ***IT:*** reservation regarding leaving detailed rules to be adopted under the Art. 111 procedure.

Article 15<sup>71</sup>  
*Electronic recording and transmission of logbook data*

- 1.<sup>72</sup> The master of a Community fishing vessel exceeding 10 meters length overall shall record by electronic means fisheries logbook information and shall send it by electronic means to the competent authority of the flag Member State at least once a day
- 2.<sup>73</sup> Paragraph 1 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from 1 January 2012. Community vessels up to 15 meters length overall may be exempted 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 taken from the time of departure to the return to port.

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<sup>71</sup> **COM:** can finance 65% of costs via e-logbook. The only change is the length of vessels to which e-logbook should apply. **UK:** fully supports extension to vessels 10-15m. Not have any exemptions in para 2. **DK:** should also apply to vessels at 10m. **PT, ES, FI, IT, RO, SI, EL, BG, IE:** cannot agree with extension of requirement to 10-15 m vessels. Problems to install this sensitive equipment in such small vessels. Concerns about additional costs. **FR:** as on Art. 9 (cost/analysis evaluation needed). **PT:** smaller vessels are structurally unsuitable for fitting information technology equipment which needs to be used in a sheltered area. Electronic recording and transmission of a logbook also requires the master to have the requisite skills. **ES:** under Reg. 1966/2006 such a measure does not apply to vessels of less than 15 metres and this step cannot be taken without more experience in the application of the system. **LV:** Add that ERS applies to vessels longer than 24m from 1.1.10. **FI:** small catches in FI by vessels of 10-15 m and inadequate weather protection of many of these vessels. **BG:** a feasibility evaluation shall take place. **EL:** should only apply to vessels of 10-15 m which are fitted with fixed gear, fish under a multiannual plan and have a fishing authorisation within the meaning of Art. 7. **COM:** notes most MS have problems with proposed extension to 10m, but the majority of these vessels can have the equipment installed.

<sup>72</sup> **PL:** include transmission to the relevant sea fisheries inspectors as well. **DK:** according to Reg. 1077/2008, reports shall be sent more often than once a day.

<sup>73</sup> **DE, IE, NL:** explain exemptions, why are they needed? **NL, PL:** no exemptions should be admitted, since they make the rules less clear and more difficult to enforce. **DE, FR, NL, PL:** clarify procedure. Who decides? **FR:** MS should decide, comitology would be unpractical. **DK:** against micromanagement for exemptions. **SI:** could live with the exemptions in para. 2 provided that it is MS who decide. **ES:** there are no exemptions for vessels exceeding 15 metres, unlike under the present rules. **SE:** proposes an alternative wording for last sentence: "Community vessels up to 15 m of length overall may be exempted by the competent authority of the flag MS from para. 1 if necessary equipment to send logbook information by electronic means cannot be fitted on the vessel". **COM:** exemptions should normally be granted by comitology.

*Article 16<sup>74</sup>*  
*Vessels exempted from logbook requirements*

1. Each Member State shall monitor, on the basis of sampling, the activities of fishing vessels which are exempt from the requirements specified in Article 14 in order to ensure compliance by these vessels with the rules of the Common Fisheries Policy.
2. To that end, 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 111 and transmit it every year before 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 regions.

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<sup>74</sup> ***COM: para. 1 reflects existing rules, para. 2 sets up a common methodology for all MS. ES, EL, PL: in addition to a sampling plan, provision should be made for the possibility of obtaining the information from equally reliable sources, such as sales notes. EE, FR: clarify what a sampling plan is. ES: clarify to which vessels the possibility of gathering data by sampling refers. FR: what does "region" mean in para. 2? EE: there should be reference to Art. 14 point 1, not to the whole of Art. 14. NL, SI: their national legislation requires having a logbook in vessels of less than 10m so they assume they would not need a sampling plan. SI: would appreciate a wording that allows MS not to exempt vessels. FI: why does the plan have to be submitted before the end of January? COM: the aim is to ensure registering catches by <10 m vessels which can be significant. One way to meet the objective would be to apply the logbook to all vessels. The idea is to apply the sampling method in the Data Collection Reg. but COM is open to other suggestions.***

<sup>75</sup> **COM:** existing rules. The only changes concern paras. 2 and 3: in vessels equipped with an electronic logbook, communication is made automatically to flag state and port state authorities. Para. 4 allows for certain derogations. **NL:** retain Art. 7 of current Control Reg. **DK, ES, FR, SE, IE, EL, PT, UK:** disproportionate to apply these measures to all vessels. Concern on costs and administrative burden. **IE:** should apply to sensitive stocks only. **ES:** until now this has only been required for certain fisheries subject to multiannual plans. **BE:** only apply to landings in another MS or when specific measures are foreseen in multiannual plans. **DK:** apply only to vessels at 10 m and above fishing for stocks included in multiannual plans, vessels that land outside the flag state and vessels participating in transshipments. At the same time, it should only apply to vessels with an obligation to use electronic logbook. **UK:** apply only to over 10 m vessels at sea for more than 24 h and not landing into a designated port, unless the vessel has large quantities of stocks subject to a multiannual plan on board. **LT:** this requirement should not apply to vessels <12m. **FI:** apply to vessels above 20 m. **PT:** not apply to small vessels. While this obligation is acceptable for larger vessels with VMS equipment, there is no need for it, given the electronic logbook data and monitoring of fishing trips carried out. **EL:** apply to species subject to quota. **FR:** limit application to cases where there is added value for control. Exemptions must take into account size of vessels and sensitivity of the fisheries. **LV, SI, IT:** align exemptions with Art. 15, i.e. less than 24 h trips and territorial sea. **DE, MT, LV:** apply only to vessels above 10 m. (**LV** equal to or more than 10 m). **EE, ES, PL, DK, FI, LT, LV, RO, SE, SI, EL, DE, PT, UK:** notification before 4 h is too long a period for small-scale fishing. **PL, LV, SI, EE:** 2 h would be enough. **PL, SI, RO, DE, DK:** or even 1 h. **FR:** deadlines needed may be long or short depending on the case. **SE:** what is the added value of this provision? specific provisions concerning prior notification are already in multiannual plans and there is a general provision in the current Control Reg. demanding notification of landings in another MS than the flag MS. Too detailed, some of these rules should be placed in a Commission Reg. Proposes the following wording for para. 1: "without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels or their representative shall notify the competent authorities of the MS whose port or landing facilities they wish to use according to rules established in accordance with the procedure referred to in Art. 111". The text in the current Control Reg., Art 7, about landings in another MS, could also be added.

- 1.<sup>76</sup> Without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels or their representatives shall notify the competent authorities of the Member State whose port or landing facilities they wish to use at least 4 hours before the estimated time of arrival at the port, unless the competent authorities have given permission for an earlier entry, of the following information:
- a) vessel identification;
  - b) name of the designated port of destination and the purposes of the call, such as landing, transshipment, access to services;
  - c) fishing authorisation or, where appropriate, authorisation to support fishing operations or to tranship fishery products;
  - d) dates of the fishing trip and the areas in which the catches were taken;
  - e) estimated date and time of arrival at port;
  - f) the quantities of each species retained on board, including zero catches returns;
  - g) the quantities for each species to be landed or transhipped.
- 2.<sup>77</sup> A master of a Community fishing vessel, or his representative, who records logbook information by electronic means according to Article 15 shall transmit the prior notification referred to in paragraph 1 by electronic means to the competent authority of the flag Member State. The logbook information referred to in Article 14 and the prior notification referred to in paragraph 1 of this Article may be sent in one transmission if this transmission contains the required information regarding each of them.

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<sup>76</sup> ***IT, DK:** reduce the amount of information to be provided. **DK:** especially c) and d) seem superfluous. **ES:** fishing authorisations under c) are not necessary at present and, on g) the quantities are sometimes unknown until arrival at port. Concerns on double notification. **COM:** IUU Reg. already specifies the procedure when there are no catches. This does not imply double notification. **UK, IE:** is b) only for designated ports? **BE:** in f), what is meant by "zero catch return"? **ES:** on f) notify only catches exceeding 50 kilos. **PT:** f) is an unjustified requirement and introduces a new obligation of reporting any entry into port **EE:** as concerns a) what data does this cover (length, colour, material?). **SE, FI:** the required information in c), d) and f) is superfluous. Under the proposal in Art. 14 to transmit data after each fishing operation, d) and f) is already in the possession of the authorities. Concerning c), this is always in the possession of the authorities. **SE, FR:** the point b) should only be applicable for the purpose of landing and transshipment. **FR:** some of the information required, such as fishing authorisation, date of the fishing trip, etc. is costly and does not have any added value. **FR, ES:** reporting zero catches contributes nothing.*

<sup>77</sup> ***ES:** in the case of vessels exceeding 24 m, notification of the port state is contrary to Reg. 1966/2006 and Commission Reg. 1077/2008, which provide that all communications must be electronic and sent to the flag state and that flag states must communicate with one another. Much of the data to be included in prior electronic notifications has already been transmitted to the flag state by the vessel in its daily communications about catches on board.*

3. When a Community fishing vessel intends to enter a port in a Member State other than the flag Member State and has transmitted the prior notification referred to in paragraph 1 by electronic means, the competent authorities of the flag Member State shall immediately upon receipt forward the prior notification referred to in paragraph 1 by electronic means to the competent authorities of the coastal Member State.
- 4.<sup>78</sup> The Commission, in accordance with the procedure referred to in Article 111, 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 fishery products, the distance between the fishing grounds, landing places and ports where the vessels in question are registered.

*Article 18<sup>79</sup>*  
*Transshipment*

Transshipments at sea shall be prohibited in Community waters. They shall be allowed only subject to an authorisation in ports of Member States designated for this purpose, and under the conditions laid down in this Regulation.

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<sup>78</sup> ***ES, UK, IT, RO:*** exemptions should not be left to comitology. ***RO:*** exemptions by comitology can create problems as regards equal treatment with third country vessels. ***COM:*** demands for derogations will be dealt with by comitology. The aim is to ensure equal treatment for EC and third country vessels. Art. 6 in IUU Reg. sets requirements for third country vessels.

<sup>79</sup> ***COM:*** prohibition of transshipments in EC waters in order to bring EC law in line with RFMOs in the fight against IUU. Consistent with provisions in IUU Reg. ***UK:*** supports. ***NL:*** a general prohibition is too restrictive and disproportionate and would make klondyking impossible. However further conditions could be imposed for control purposes on transshipments at sea. Add a second paragraph exempting klondyking from this prohibition, with klondyking defined as "the transshipment of fresh fish for the purpose of the further processing of the fish on board the receiving vessel". This second paragraph could also include the requirements to be met by klondyking. ***UK, NL:*** NEAFC rules are more flexible. ***DK:*** need for a proper definition of transshipment. ***FR:*** notes that the proposed definition of transshipment does not cover the "chalut the boeuf" (i.e. from the sea towards the vessel, not from one vessel to another) so asks for the current rules to be kept. ***ES:*** fish transfers should be possible at other places than ports. ***FI:*** supports principle, but use same definition of port as in IUU Reg., which states that MS shall designate ports or places close to the shore where transshipment is permitted. ***MT:*** apply only to vessels larger than 10m. ***LT:*** the tightening of the current rules on transshipment is not appropriate. Currently only the transshipment of cod is prohibited in the Baltic Sea. In order to tranship other species (sprat, herring), it is sufficient to have an authorisation from the state in whose waters the vessel is located. ***DE, PT:*** in certain cases, for example, when the fishing has been very good, transshipment of fresh fish is often unavoidable and is common practice. ***SE, IT:*** the transshipment ban should not apply to joint operations. ***NL, ES:*** assume that pair trawling is excluded, as is the case in Art. 11 of Reg. 2847/1993. ***NL:*** authorisations in port refer to the actual port or can it be a few miles outside? ***COM:*** certain RFMOs have total prohibitions, NEAFC only in the high seas, with a limited possibility of transshipment. There is need to distinguish between pure transshipments and joint operations. On NL question, we would need a definition of "port". FAO definitions are too broad.



*Article 19<sup>80</sup>*  
*Transshipment declaration*

- 1.<sup>81</sup> The masters, or their representatives, of both the transshipping and the receiving vessel shall submit a transshipment declaration, as soon as possible and not later than 24 hours after transshipment,
- (a) to their flag Member State 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.
- 2.<sup>82</sup> The transshipment declaration shall be submitted if possible by electronic means. If the submission is by electronic means, the transshipment declaration shall be submitted only to the flag Member State even where the transshipment shall take place in a port of another Member State. The flag Member State shall forward immediately upon receipt the transshipment declarations to the port Member State concerned.
- 3.<sup>83</sup> The transshipment declaration shall indicate the quantity of fishery products by species that has been transhipped, the date and place of each catch, the names of the vessels involved and the ports of transshipment and destination. Masters of both the vessels involved shall be held responsible for the accuracy of such declarations.
- 4.<sup>84</sup> The Commission, in accordance with the procedure referred to in Article 111, 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, landing places and ports where the vessels in question are registered.

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<sup>80</sup> **COM:** corresponds to Art. 83 of implementing Reg. on the electronic logbook and the declaration of transshipment. **UK:** supports.

<sup>81</sup> **BE:** why 24 hrs? **EL, ES, FI:** 24 h is too short. **ES:** prefers current 48 hr deadline. Also 1b) is unnecessary for vessels subject to electronic procedures, since they always communicate to the flag state who forwards the information.

<sup>82</sup> **ES:** specify that electronic submission will only be compulsory when the electronic logbook Reg. enters into force. **COM:** says this is already the case. **UK:** "if possible" too vague, as regards electronic transmission; masters could just say it was not possible. **PT:** clarify. Is each master to submit the declaration to his vessel's flag state? Are there two declarations, with only one of them being passed on to the port state?

<sup>83</sup> **PT, SE:** if "masters of both vessels shall be held responsible" how can this be applied to the one who has not made the declaration. Has each master to send his declaration? **PT:** responsibility for each declaration should lie with the master producing it. **COM:** Both captains are responsible, one for the quantities transferred from his vessel, the other for the quantities his vessel receives. It will be necessary to specify whether joint operations are included in the definition of transshipment. **SE, PT:** that the master only is responsible for his own declaration should be made explicit.

<sup>84</sup> **PL:** if the system is to be effective, there should not be exemptions. **ES:** any exception should be approved by the Council. **COM:** possible derogations will have to be established by comitology.

5. Transhipment procedures and forms shall be determined in accordance with the procedure referred to in Article 111.

Article 20<sup>85</sup>

*Authorisation to land and to tranship*

- 1.<sup>86</sup> Community fishing vessels shall be granted authorisation to land or tranship only if the information referred to in Article 17 is complete.

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<sup>85</sup> **COM:** *authorisation to land given by the MS concerned if conditions in Art. 17 are complied with. The unique landing number (ULN) guarantees the identity of the vessels and the traceability of the product. If the landing is interrupted, permission to recommence must be required. **DK:** automatic authorisation still exists? **COM:** yes, if ULN is registered then the process can continue automatically. **IE:** leave to national control authorities to decide in which circumstances landings or tranship would not occur without prior authorisation. **DK:** automatic registering and release of landings should be allowed to avoid unnecessary administrative burdens. **SE:** make clear that the Art. only comprises vessels which shall pre-notify their arrival according to Art. 17. **LV:** include same derogations as in Art. 15. **PT:** seeks coherence between the requirements under Art. 17 which are referred to here and those under Art. 19.3. **NL:** wonders about the usefulness of ULN but supports the rest of the Art. **BE:** against mandatory authorisation to land (see point of view in Art. 17). Exemptions for coastal fisheries are needed. **EE, ES, FI, MT, PT, UK, EL, DE, IT, LT:** these provisions should not apply to all vessels. This would entail an excessively heavy administrative and economic burden. **ES:** confine it to those fisheries for which it is specifically regulated. **FI:** limit to vessels over 20 metres. **LT:** do not apply to vessels <12m. **UK:** apply only to vessels over 10 m not landing into designated ports. **MT:** do not apply to vessels <10 m unless subject to recovery plan requirements. **DE:** make an exception for daytime coastal fishing of non-quota species. (e.g. for fisheries where quota species account for less than 5% of the catch) **PT:** not apply to small vessels. The measure could be acceptable for some fisheries or fleets but based on a risk assessment. Allowance for situations in which MS achieve the same result by other means should be made. In PT case, it is compulsory for fresh fish to be sold at auction centres, which are all operated by a single, wholly state-owned body, with computerized recording of all landings and sales, which would provide a substitute for many of the proposed requirements. **EL, EE:** for small and medium size vessels going out several times a day it would be difficult to implement. **FR:** same problems as in Art. 17: the request for authorisations must not be systematic. **IT:** apply derogations for vessels less than 15 m which conduct fishing operations for no more than 24 hrs or entirely within territorial waters. **FR, ES, SI:** derogations must be the same as in Art. 17. **ES, PT:** apply these provisions only in relation to sensitive species. **COM:** the goal is to simplify control, make it more transparent and help MS to prepare for the landings; will look into possible derogations.*

<sup>86</sup> **SE:** *proposes following wording: "Where a Community fishing vessel is under the obligation of pre-notification according to Art. 17, the vessel shall be granted authorisation to land or to tranship only if the information required is complete". **FI:** start paragraph as follows: "Community fishing vessels which are required to give prior notification in accordance with Art. 17 shall be granted authorisation to land or tranship only if..".*

- 2.<sup>87</sup> Landing shall not commence until it has been authorised by the competent authorities of the Member State concerned.
- 3.<sup>88</sup> Authorisation to commence landing or transshipment operations in port shall be subject to a check of the completeness of the submitted information as prescribed in paragraph 1 and, where appropriate, to the completion of an inspection.
- 4.<sup>89</sup> When giving the authorisation to land, the competent authorities shall assign a unique landing number (ULN) to the landing and inform the master of the vessel thereof. If the landing is interrupted, permission shall be required before the landing recommences.

*Article 21<sup>90</sup>*  
*Landing declaration*

- 1.<sup>91</sup> The master shall be responsible for the accuracy of the landing declaration which shall indicate, as a minimum, the quantities landed of each species stipulated in Article 14 and the area where and the date when they were caught.

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<sup>87</sup> ***EE, SE:*** the word "transshipment" should be included together with landing.

<sup>88</sup> ***PL:*** what happens if the results are negative? Is landing to be prohibited and is the vessel to go back to sea with its cargo?

<sup>89</sup> ***EE, PL:*** what is meant by "landing interruption"? ***IE:*** this requirement is an administrative burden and its value is limited. ***PL:*** add at the end of the first sentence "The master shall immediately enter the number in the logbook and on the landing declaration". Clarify "interruption of landing". ***NL:*** questions the added value of the "unique landing number". If advance notification has been made by electronic means, it is clear which specific landing is at issue. ***DK:*** the word "unique" before "landing number" has to be removed. It will not be possible to administer, if the landing number must be unique.

<sup>90</sup> ***COM:*** already existing rules, both for paper transmissions and those in electronic format. Obligation for vessels above 10m is new, with the same exemptions as for the logbook, since logbook and landing declaration go hand in hand. Details to be established via comitology. ***FI:*** same reservations as on Arts. 9 and 15. The obligation should not be extended to vessels between 10 and 15 metres in length. ***UK:*** supports extension to vessels 10-15m. Does not support any exemptions. ***RQ:*** electronic communication for vessels 10-15 m is not possible in Romania. ***IT, PT:*** apply only to vessels of more than 15 m. ***LV:*** add that ERS applies to vessels longer than 24m from 1.1.10. ***ES:*** under Reg. 1966/2006 such measures do not apply to vessels of less than 15 metres and this step cannot be taken without more experience in the application of the system. ***EL:*** only apply to vessels of 10-15 m fitted with fixed gear if they fish under a multiannual plan and have a fishing authorisation within the meaning of Art 7. ***DK:*** delete this article. Sufficient information is contained in the logbook, sales notes and the transport document. ***SI:*** in its physical form, the Mediterranean type of logbook is such that the landing declaration is on the same sheet of paper as the logbook. Can it be presumed that the form of the logbook will remain unchanged for the Mediterranean MS?

<sup>91</sup> ***DK:*** the "area" should refer to the quota management area supplemented with the economic zone. Reference to "quantities landed" is new. ***ES, FR:*** landing declaration must indicate the presentation of the product so the relevant conversion factors can be applied. ***ES:*** indicate also the state of conservation. ***SE:*** the date when the catch is caught should not be required. The area should be defined in such a way that it corresponds to the quota areas as defined in the TAC Reg. ***PL:*** add "and the ULN". ***EL:*** landing declaration should only concern species enumerated in the EL proposal for Art 14.

- 2.<sup>92</sup> Without prejudice to specific provisions contained in multiannual plans, the master or his representative of a Community fishing vessel exceeding 10 meters length overall shall transmit landing declaration data by electronic means to the competent authorities of the flag Member State within 2 hours after completion of the landing.
- 3.<sup>93</sup> 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.
- 4.<sup>94</sup> Paragraph 2 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from 1 January 2012. Community vessels up to 15 meters length overall may be exempted from the application of paragraph 2 if they:
- a) operate exclusively within the territorial seas of the flag Member State, or
  - b) never spend more than 24 hours at sea taken from the time of departure to the return to port.

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<sup>92</sup> ***BE, DE, DK, EE, EL, ES, FR, IT, MT, NL, PL, PT, UK, IE, FI, SE: 2 hrs is too short. BE: 30% of first sales arrive per transport (container) from foreign ports. 2 h is not realistic in these cases. EE: impossible in the context of mixed fishery of herring and sprat. BG, IE, SI, EE, FR: it should be 24 hrs. ES, FI, UK: would like 48 hrs. BG: 48 hrs for unquoted species. SE: clarify "completion" of landing. In order to have a time limit less than 24 hrs, landing must include weighing of fish. In such an event, 12 hrs is appropriate. DE: modify the last line to read "within two hrs of agreement on the unloading report" since this takes often more than 2 hrs. UK: seek coherence with Art. 14, consider possible exemptions. LV: this para. suggests that vessels under 10m are exempted. Do they have 24 hrs or are they covered by sampling plans provisions in Art. 22? COM: covered by sampling plans. FR: unless we know the time when landing was finished, it is impossible to count the 2 hrs deadline. COM: for electronic declarations 2 hrs should be enough, it is about pushing a button. The 2 hrs are to be counted from the moment when the landing is completed. UK, PL, NL, FR: in this case 2 hrs can be acceptable, but a definition of landing is needed. FR: define weighing also.***

<sup>93</sup> ***ES: this obligation is already sated in Reg. 1966/2004 and does not need to be repeated here.***

<sup>94</sup> ***ES: clarify whether the exemption relates to the electronic landing declaration or to the 2 hrs deadline. State in any event that declarations on paper support remain valid until the requirement to complete them electronically applies. SE: questions the exemptions with the same reasoning as in Art. 15. PL, NL: no exemptions should be allowed since they make the rules less clear and more difficult to enforce.***

- 5.<sup>95</sup> For vessels exempted from the requirement set out in paragraph 2, the master, or his representative, shall record upon landing and submit as soon as possible and not later than 24 hours after landing, a landing declaration to the competent authorities of the Member State where the landing has taken place.
- 6.<sup>96</sup> Landing declaration procedures and forms shall be determined in accordance with the procedure referred to in Article 111.

*Article 22<sup>97</sup>*

*Vessels exempted from landing declaration requirements*

1. Each Member States shall monitor, on the basis of sampling, the activities of fishing vessels which are exempt from the landing declaration requirements specified in Article 21(1) and (2) in order to ensure compliance by these vessels with the rules of the Common Fisheries Policy.
2. To this end, 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 111, and transmit it every year before 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 regions.

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<sup>95</sup> ***ES, PT:*** keep 48 hrs as is currently the case. ***SE:*** in order to repair the inconsistency between Reg. 1098/2007 and Reg. 2847/1993 concerning vessels 8-10 m, which are under the obligation to keep a logbook but not under an obligation to submit landing declarations, add: "For vessels exempted from the requirements set out in para. 2 or for vessels otherwise under the obligation of keeping a logbook, the master". ***BG:*** replace the current text by: "for vessels exempted from the requirement set out in para. 2, the master, or his representative, shall record upon landing, a landing declaration to the competent authorities of the MS where the landing has taken place, as submit as soon as possible, but not later than i) 24 hrs for quoted species and ii) 48 hrs for non-quoted species."

<sup>96</sup> ***ES:*** the computerised procedures are already defined in Reg. 1077/2008.

<sup>97</sup> ***COM:*** existing rules. MS establish sampling plans to control the activities of vessels not subject to landing declaration requirements. Agreed by comitology, as for the logbook. ***LT:*** cannot evaluate this article without knowing the Commission's methodology for collecting samples (currently no sampling plans are applied in Lithuania). ***DK:*** para. 2 very costly as drafted; allow MS to do it in a cost effective manner. Prefer "vessels not covered" to "vessels exempted". ***SI:*** do not want to exempt any vessels here, use the same wording as in Art. 16, to allow stricter measures if MS think it is necessary. ***ES, EL:*** it should be possible to use sales note as an alternative to sampling plans. ***COM:*** will look into the possibility to use sales notes and will consider drafting suggestions. MS have the possibility to take stricter measures for vessels <10m.

## SECTION 2

### RECORDING AND EXCHANGE OF DATA BY MEMBER STATES

#### *Article 23<sup>98</sup>*

#### *Recording of catches and fishing effort*

1. Each Member State shall record all relevant data on fishing opportunities as referred to in this Chapter, expressed both in terms of catches and fishing effort, and shall keep the originals of that data for a period of three years or longer in accordance with national rules.
2. Before the 15th of each month, each Member State shall notify the Commission or the body designated by it, by computer transmission of all updated data referred to in paragraph 1 recorded during the preceding month.
3. All catches of a stock or a group of stocks subject to quota made by Community fishing vessels shall be charged against the quota applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.

#### *Article 24<sup>99</sup>*

#### *Exchange of data*

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<sup>98</sup> **COM:** existing obligation and simplification of current legislation. Just a change in para. 2: reference is made to the Commission or a body designated by it (normally the Control Agency). **IT, ES, PL, SI:** the Article refers to species subject to quota and the text should clearly reflect this. **EL:** fishing effort data should only concern stocks subject to fishing effort management systems. **ES:** for species not subject to quotas, transmission is not monthly but quarterly. However, year end should be 31 March of the following year. The present time limits should continue to apply for the other reports. In para 1. reference should be made to landed quantities, not to catches. **PL:** make clear that this refers to quantities kept on board the vessels, not discards. **LV:** suggests "20th" of each month instead of "15th". **SI:** in para. 1, does the obligation for MS to keep the originals of data for a period if three years or longer refer to faxes too? Would it be enough if fishermen kept the originals of logbooks for three years or longer? In para. 2, proposes the following text: "At the request of the Commission, each MS shall notify the Commission or the body designated by it, of all updated data referred to in paragraph 1". **DK:** in para. 1, add "utilised" before "fishing opportunities". In para. 2, add "aggregate" before "updated data". **COM:** philosophy of current rules remains, clarifications will be made as appropriate.

<sup>99</sup> **COM:** corresponds to Art. 16 of current Control Reg. Enables MS to know the activities of their vessels in waters beyond their jurisdictions. **SE:** since for vessels that report electronically, Reg. 1077/2008 is already in place, this Article should only be applied to vessels not covered by it. **ES:** Reg. 1077/2008 covers the conditions and formats for the provision of these data. **MT:** verify that data protection legislation applies in this context. **COM:** can specify in a general clause that the data will not go beyond the control authorities.

- 1.<sup>100</sup> Without prejudice to Article 23, the Member States of landing shall provide, at the request of another Member State, by electronic means, data on landings, sales, transshipments or transport of fishery products carried out in its ports or waters under its sovereignty or jurisdiction by fishing vessels flying the flag of the requesting Member State.
- 2.<sup>101</sup> This information shall at least consist of the name and the external identification mark of the vessel in question, the quantities of fish by stock or group of stocks landed, sold or transhipped by that vessel as well as the date and place of landing, sale, transhipment or transport. This information shall be transmitted within four working days following the date of the request by the Member State unless otherwise agreed between the Member States concerned.
- 3.<sup>102</sup> The Member State where the landing, sale, transhipment or transport has taken place shall transmit to the Commission, at its request, by electronic means, this information at the same time as it is communicated to the flag Member State of the vessel.

*Article 25<sup>103</sup>*  
*Data on the exhaustion of fishing opportunities*

1. 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

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<sup>100</sup> ***ES, SE, FR:*** the exchange of data on transport is a new obligation. It should be left out. ***SE:*** this would better correspond to the requirements in Reg. 1077/2008. ***COM:*** transport documents are specified in Art. 58 of this proposal. ***FI:*** if the Art. covers only transport within the EC it is OK, but if the fish goes to 3rd Countries, what info should MS provide?. ***LV:*** does it refer to "sales" in general or only to "first sales"? ***COM:*** "first sales". ***BE:*** confusing, electronic logbook data is centralized by the flag state, so the flag state would not need to receive this communication again. ***PL:*** instead of acting at the request of the flag state, the port state should do this automatically. ***PT:*** the new obligation to provide data on fishery products goes too far and is too complex. ***COM:*** the objective of this provision is to help flag states monitor the activities of their vessels.

<sup>101</sup> ***DK:*** according to ERS Reg. the data exchange for landings, transshipments and sale is assumed to happen automatically and without delay, so when electronic reporting is used, the four day deadline is superfluous. ***FR, PT, ES:*** the period should be longer than 4 days. ***PT, ES:*** at least in some cases. ***COM:*** will look into it. ***PL:*** add "and the ULN" in the first sentence. ***COM:*** reference to it could be made. ***LV:*** replace "sales" by "first sales".

<sup>102</sup> ***DK:*** delete this paragraph since COM, according to Art. 103 is granted real-time access to databases. ***LV:*** replace "sales" by "first sales". ***ES:*** this is a new obligation for which no provision is made in Reg. 1077/2008. ***FR:*** transmission of data on transport implies electronic recording, which is not compulsory.

<sup>103</sup> ***COM:*** Existing rule, but simplification: 2 Arts. merged. If the communication is made electronically, the flag state centralises the information; if derogation to electronic communication, the flag state and the port state must cooperate. ***ES:*** questions the need for this article, since COM already has all relevant information (Art. 23). ***ES:*** COM can access it through FIDES. ***ES:*** requirement in para. 2 should only apply to specific fisheries. ***EL:*** fishing effort data should only concern stocks subject to fishing effort management systems.

- b) 80 % of the maximum fishing effort level for a fishing area and applicable to all or part of the fishing vessels flying its flag is deemed to have been reached.
2. 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 23.

### SECTION 3 CLOSURE OF FISHERIES

#### *Article 26<sup>104</sup>*

#### *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 fishing effort level for a fishing area and applicable to all or part of the fishing vessels flying its flag shall be deemed to have been reached.
- 2.<sup>105</sup> As from the date referred to in paragraph 1, the Member State concerned shall prohibit fishing for that stock or group of stocks by vessels flying its flag as well as the retention on board, the transshipments and the landing of fish taken after that date and shall decide on a date up to when transshipments and landings or final declarations of catches are permitted.

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<sup>104</sup> **COM:** corresponds to Art. 21 of current Control Reg., only new element is para. 3, which simplifies the procedure by giving MS the power to decide while keeping the legal safeguards. **UK:** supports, since this will discourage MS to overfish. **EL:** in para. 1, data should only concern stocks subject to fishing effort management systems.

<sup>105</sup> **PT:** the date of closure of a fishery should not be confused with the landing date for fish caught before that date. In the case of fisheries in distant fishing grounds, setting a date for retention on board of species caught before the fishery was closed may undermine the viability of a vessel's operation. **ES:** a fishery may have been closed but fish may still be retained on board, transhipped or landed. When a fishery is closed, Spanish law requires vessels to make a declaration of the catches they are carrying on board. These catches can be landed if they have been correctly declared. **PL:** simplification and transparency are welcome, but what happens if other MS fish in the particular MS waters? **COM:** recalls that para. 2 is not a global closure but only to vessels of the MS concerned.



- 3.<sup>106</sup> The decision referred to in paragraph 2 shall be made public by the Member State concerned and immediately communicated to the Commission and other Member States. It shall be published in the Official Journal of the European Union (C series). 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, landings, cagings or transshipments of the relevant fish by vessels flying the flag of the Member State concerned take place in their waters and on their territory.
4. The Commission shall keep available to Member States by electronic means the notifications received pursuant to this Article.

*Article 27<sup>107</sup>*

*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 23(2), it may set the date on which 80% of the fishing opportunities of that Member State are deemed to be exhausted and it may set the estimated date on which the fishing opportunities shall be deemed to be exhausted.
2. On the basis of the information under Article 26 or on its own initiative, where the Commission finds that fishing opportunities available to the Community or a Member State are deemed to be exhausted, it 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.

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<sup>106</sup> ***PL:*** the obligation to communicate to all MS is excessive. When does the ban enter into force? When MS take the decision or when this is published in the OJ? ***DK:*** Publication should be not only in the OJ but also in COM's website. ***IE:*** communication on the website would be enough ***FR:*** Urgent publication in the OJ is necessary but for efficiency reasons the decisions should also be made public by other means. ***DK, SE, ES:*** the decision should be sent to COM only. Would like COM to inform other MS, which corresponds to current procedure (Art. 21.2 of current Control Reg.). ***ES:*** among the activities banned in second part of para. 3, transfers should be included.

<sup>107</sup> ***FR:*** this article could be better placed in Title XI, Chapter II, with Art. 96. ***UK:*** supports. ***ES, EL, PT:*** this Article. must be applied only in limited, very justified cases. ***ES, EL, IT, PT, FR, SE:*** need information from COM to MS concerned and for a contradictory procedure to allow MS to comment within a reasonable time. ***ES:*** MS must have at least 5 working days to reply. ***EL:*** COM decision must be founded on concrete evidence (material, calculations, etc) which should be communicated to the MS concerned in due time. ***COM:*** recalls that as a previous step COM notifies intention of closure. A 5 day deadline could have serious consequences in certain fisheries.

*Article 28<sup>108</sup>*  
*Corrective measures*

1. When the Commission has halted 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, the following paragraphs shall apply.
- 2.<sup>109</sup> 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 111. These measures may involve making deductions from the fishing opportunities of any Member State which has overfished, the quantities so deducted to be allocated appropriately to the Member States whose fishing activities were halted before their fishing opportunities were exhausted.
- 3.<sup>110</sup> These deductions and the consequent allocations shall be made taking into account as a matter of priority the species and zones 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.<sup>111</sup> 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 111.

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<sup>108</sup> **COM:** *compensation to MS affected by the overfishing of others. Similar to existing rules. UK: supports article. FR: agrees on principle but details to be discussed. It could be the case that COM closed fisheries even if no MS had exceeded their quotas. ES: an Art. 28a should be added to establish the procedures for using remaining quotas that will not be fished by the MS and can be used under certain conditions by other MS, as well as for transferring quotas of a MS from one year to the next.*

<sup>109</sup> **ES, EL, DE:** *in the second sentence, replace "may" by "shall". COM: "may" is the appropriate word: deductions will be made whenever possible but not systematically since biological parameters have to be taken into account.*

<sup>110</sup> **ES:** *drafting must be consistent with Art. 23.4 of Basic Reg. ES, EL: delete "or years" at the end of the paragraph. Compensation must take place in the year in which the prejudice occurred or else, in the following year in conformity with Reg. 847/1996. COM: For practical reasons (quota availability) it is not always possible to do this in only one year. PT: overfishing of a stock must be set off against fishing opportunities for the same stock and not other stocks, which may affect fleets not responsible for the overfishing.*

<sup>111</sup> **PL:** *too rigid, delete para. 4, or at least replace "shall" by "may". PT: it should be kept within the Council competence.*

# Chapter II<sup>112</sup>

## Monitoring Of Fleet Management

### SECTION 1

#### FISHING CAPACITY<sup>113</sup>

#### Article 29<sup>114</sup>

##### 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 Council Regulation (EC) No 2371/2002, and
  - b) Council Regulation (EC) No 639/2004, of 30 March 2004<sup>115</sup>, and
  - c) Commission Regulation (EC) No 1438/2003 of 12 August 2003, and<sup>116</sup>
  - d) Commission Regulation (EC) No 2104/2004 of 9 December 2004<sup>117</sup>.
2. Detailed rules for the application of this Article may be adopted in accordance with the procedure referred to in Article 111, and in particular regarding
  - a) registration of fishing vessels;
  - b) verification of the power of fishing vessels;
  - c) verification of the tonnage of fishing vessels;
  - d) verification of the type, number and characteristics of the fishing gear.

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<sup>112</sup> **SI:** concerned about the administrative burden and costs. Inquiries about the eligibility for co-financing from the second financial instrument.

<sup>113</sup> **UK:** supports chapter, important to agree on detailed rules at EU level. **DK:** reserve on whole chapter, doubts about possibility of implementation.

<sup>114</sup> **COM:** new important tool. This Article sets the general framework which allows MS to control fishing capacity. **UK, IE:** agree on need for Community solution. **ES:** Reserve. In Spain, competences to apply these measures are distributed between different ministries. **ES, FR, IE, DE, SI:** concern about administrative burden. **SI:** inquires about eligibility for financing. **COM:** this burden is necessary to ensure fairness of the system. Possibility of financing on the use of technologies and training. **NL:** in Art. 29.2 b, "power of fishing vessels" means "engine power"? **COM:** Yes. **PT:** reserve on Comitology (para. 2). It should be adopted under procedure laid down in Arts. 5 and 7 of Decision 1999/468. **COM:** legal basis necessary for specific control in certain areas (e.g. BACOMA gears in the Baltic).

<sup>115</sup> OJ L 102, 7.4.2004, p. 9.

<sup>116</sup> OJ L 204, 13.8.2003, p. 21.

<sup>117</sup> OJ L 365, 10.12.2004, p. 19.

3. Member States shall inform the Commission as part of the report referred to in Article 110 of the check methods used, together with the names and addresses of the bodies responsible for carrying out the verification referred to in paragraph 2.

## SECTION 2: ENGINE POWER<sup>118</sup>

### Article 30<sup>119</sup>

#### Monitoring of engine power

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<sup>118</sup> **ES:** proposes to delete Arts. 30-32 as drafted and replace them by the following art. 30: 1) Only fishing vessels whose engine power does not exceed the power indicated in the engine certificate will be allowed to operate; 2) It will be forbidden to manipulate engines to increase their power above the maximum power indicated in the engine certificate; 3) It will be forbidden to use new or replaced engines which have not been officially certified by the MS concerned; 4) MS will be able to delegate the certification of engine power to classifications societies, manufacturer or other operators having the necessary expertise for the technical examination of the engine power; 5) When there is indication that the actual power of a given fishing vessel is greater than the power indicated in the fishing license, the MS in question will carry out a physical check.

<sup>119</sup> **DE, DK, FR, ES, LV, IT, IE, SI:** reserve on administrative burden and concerns about costs involved. **DE, BG, LV:** exclude certain types of vessels. **FR, CY, PL, PT, DK, EE, SE:** reserve on how to control. **FI:** what happens with vessels which are not in the Community registry? **DE:** define "engine certificate". **PT:** who certifies the engine power? **EE:** add definition of "power stated in the engine certificate", "maximum power according to the engine certificate" and "certified engine power". **SE, FI:** make explicit that only vessels above 10 m that are subject to a regime of fishing effort are covered by these rules. The purpose of these Arts. should be to oblige MS to control that vessels do not exceed their engine power. The current wording expresses, however, that MS shall ensure that the engine power is not exceeded, which is impossible, since the engines can very easily be manipulated. In para. 4 change the word "ensure" should be replaced by "control" or "check". **DK:** ensure that the engine power is not exceeded" is impossible. **NL:** welcomes further rules in order to monitor compliance with engine power, but wonders whether they offer adequate guarantees against manipulation. **NL, BE:** clarify what is "engine". Is it just the engine block or also other components such as the carburettor and the fuel hoses? **IE:** agree new methodology and a timeframe for the introduction of a new regime. **PL:** difficult to implement. For ex, seals for limiting gear speed are removed every time the engine is repaired or service. The need to train inspectors in checking engine power needs to be borne in mind. **COM:** recalls many MS already apply these tools. Agrees to add necessary definitions. Can consider excluding vessels without nets, provided that these vessels are not affected by effort regimes. Cross checks and satellite monitoring can be used to verify engine power, for instance by checking whether the speed of the vessel is consistent with the declared engine power. The power of auxiliary engines is also counted. MS can certify the power engine themselves or delegate this function for instance to manufacturers. **LT:** add at the end of para 1: "The number of installed engines shall match the number indicated in the vessel certificate and the engine certificate". **ES:** delete para. 4: control "a posteriori" will be disproportionate for shipowners and MS and it will not allow to precise the maximum power of a fishing vessel.

1. Fishing shall only be allowed with fishing vessels equipped with engines that do not have a power exceeding that stated in the engine certificate.
2. It shall be prohibited to manipulate an engine with the aim of increasing its power beyond the maximum power according to the engine certificate.
3. It shall be prohibited to use new or replacement engines that have not been officially approved by the Member State concerned.
4. Member States shall ensure that certified engine power is not exceeded. Member States shall inform the Commission as part of the report referred to in Article 110 on the control measures they have undertaken to ensure that the engine power is not exceeded.

*Article 31<sup>120</sup>*  
*Certification of engine power*

1. New engines, replacement engines and engines that have been technically modified shall be officially approved by the Member States' authorities for not being capable of producing more power than stated in the engine certificate. Such approvals shall only be issued if the engine is not capable of producing more than the stated power.
2. Member States' authorities may assign the certification of engine power to classification societies, manufacturers of motor engines or other operators having the necessary expertise for the technical examination of engine power. Those classification societies, manufacturers or other operators shall only certify engines as not being capable of exceeding the officially stated power if there is no possibility to increase the performance of the engine above the certified power.

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<sup>120</sup> ***PT:*** agrees with principle but hard to apply, particularly in certifying any engine as not being capable of producing more power than stated. ***ES:*** delete article, except for the first sentence of para 2. Last sentences of paras. 1 and 2 would imply practical trials to determine maximum power which could actually deteriorate the engines. It is necessary to agree on a new method to measure power and a calendar to introduce it. ***SE, FI:*** first sentence should read "New engines, replacement engines and engines that have been technically modified shall be officially approved by the MS' authorities and the maximum power shall be stated". Delete last sentences in para. 1 and para. 2. ***LT:*** suggest the following para 1: "MS shall officially approve the maximum power of new engines, replacement engines and engines that have been modified by issuing the relevant document and shall affix a seal thereto". Then, the meaning of "engine power" referred to in section 2 must be consistent with the meaning of main engine power in art 4(7) (fishing licence.) ***IE, PL:*** same comments as in previous Article. ***UK:*** can derated engines be used? ***COM:*** yes, engines can be technically modified, therefore the need for control. The use of derated engines is permitted, but the control of this is problematic, so cross-checks are needed. ***NL:*** this approach is based on engine power at a given moment in time and its conformity with the certificate. Given the scope for engine manipulation, suggests that engine derating is frequently monitored, combined with a seal plan with unique seals placed on the engines. ***BG:*** clarify whether this will apply to all vessels. ***FR:*** define "technically modified" engines and make explicit that we are referring to Community vessels subject to effort limitation regimes. ***EE:*** does not support, concerns on costs.

*Article 32<sup>121</sup>*  
*Cross checking of engine power*

- 1.<sup>122</sup> Member States shall undertake data cross-checks to verify the consistency of engine power with all the information available to the administration concerning the vessel technical characteristics. In particular they shall verify the information contained in
- a) Vessel Monitoring System records;
  - b) the logbook;
  - c) the Engine International Air Pollution Prevention (EIAPP) certificate issued for the engine in accordance with the provisions of Annex VI to the MARPOL 73/78 Convention;
  - d) class certificates issued by a recognized 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.

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<sup>121</sup> **COM:** the aim is to verify real power. **IE, PL:** same comments as in previous Articles. **PL, DE, SE, DK:** control should be based on risk analysis rather than having an obligation for MS to systematically control certain specified documents, which are not always relevant and not always in the possession of the control authorities. **EE:** does not support. Concern on costs and administrative burden, difficult to apply in the Baltic.

<sup>122</sup> **DK, FR:** not possible to do systematic cross-checks for all vessels. Concern on costs. **NL:** are points a) to g) optional or mandatory? What is the added value of the EIAPP certificate? **FR:** points a) and b) in para. 1 are not relevant to verify the speed. **SE:** second sentence should begin: "Such information may be found in..". **UK:** there seems to be a mistake in b), since details of the engine power are not recorded in the logbook. **LV:** clarify the link between crosschecking of engine power and verification of the logbook (1b). **CY:** on cross checks with satellite data, what about very large fleets made up of very small boats? **COM:** VMS provides only data on speed, which then needs to be cross checked with sources that indicate the engine power. Maximum speed must correspond to maximum power. The Art. can be reviewed so that cross checks are not systematic but on the basis of sampling. **DK, LV:** which document does para. 1c refer to? **COM:** The MARPOL certificate, normally obligatory for big powerful vessels. Power figures in the engine specifications can be also used for cross-checks.

- 2.<sup>123</sup> When there are indications that the power of the engine 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

### Monitoring Of Multiannual Plans <sup>124</sup>

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<sup>123</sup> ***LV:** what is meant by "indications"? **SE:** it should not be an obligation for MS to proceed to a physical verification, since this is a very expensive procedure, or at least not until having convincing indications of manipulation of the engine power. In para. 2, replace "MS shall.." for "MS may..". **DK, FR:** what kind of physical checks are intended? Specify modalities. **COM:** the aim of physical checks on board is to verify that the engines have not been replaced or manipulated. It is a cumbersome procedure, so only to be used as a last resort.*

<sup>124</sup> ***COM:** the aim of this chapter is to set up minimum standards of control in multi-annual plans concerning weighing requirements in port, designated ports, separate stowage of recovery species to facilitate inspection and national control action programmes. As regards the latter (Art. 36) target benchmarks are defined in Annex I. **EE:** these measures should apply only to species outside safe biological limits, not to those under normal multi-annual plans.*

Article 33<sup>125</sup>  
Transshipments in port

Community fishing vessels engaged in fishing activities in the fisheries subject to a multiannual plan shall not transfer their catches on board of any other vessel or vehicle without previously landing their catches in order to be weighed in an auction centre or other body authorised by Member States.

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<sup>125</sup> **FR, ES, PL, UK, PT, MT, FI, NL:** transshipment should be differentiated from loading onto a vehicle. "Any other vessel or vehicle" not consistent with notion of transshipment. **NL:** reference to vehicles must be deleted. **COM:** will review wording. **FR:** transshipment cannot comprise transfer of catches from vessels to a lorry since the definition in Art 4 (8) only covers transfer from a vessel to another vessel. Allow for weighing not only at auction or other body authorized by MS but also on board or at landing on agreed scales. **UK:** use a less confusing wording: "The transshipment in port of stocks subject to a multiannual plan shall be prohibited". **DK:** simplify the text as follows: "transshipments in port are prohibited". **FI:** this requirement is also a problem for larger trawlers and it would also prevent transshipment operations directly to the parent vessel. **FI, DK, LV:** the obligation to weigh in an auction is too constraining, allow the use of agreed scales instead. Why only "Community vessels"? **SE:** also believes the obligation to be too constraining. **LV:** add at the end "or at a registered fish buyer". Fish caught in Latvia is sold directly to registered fish buyers. **PL:** problems with PL version regarding the word "transfer". **BE, ES, LT:** concerns with the obligation of systematic landing for weighing, since it would affect the quality of the product (break the cold chain). In case of inspection at sea, another inspection in port would affect the quality of the product. **BE:** obligation to weigh before transport is time consuming and bad for the quality of the fish as it "breaks" the refrigeration chain. **ES:** weighing is part of the landing process so, in case of transshipment, catches should be weighed when landed (i.e. after transshipment has taken place). **LT:** apply only to species subject to a multiannual plan. Suggests following wording: "Community fishing vessels shall not transfer their catches of species included in a multiannual plan on board any other vessels or vehicle without previously landing those species in order to be weighed in and auction centre of other body authorised by Member States"; need to replace the requirement for systematic weighing by the use of sampling and to weigh the entire quantity only where there is an irregularity in the weigh of the sample. **COM:** the intended system is similar to the one in the cod management plan, i.e. set certain obligations after the first landing. Accept the use of agreed scales. Third Country vessels will also need to comply.



*Article 34<sup>126</sup>*  
*Designated ports*

- 1.<sup>127</sup> The Council may decide, when adopting a multiannual plan, on a threshold amount applicable to the live weight of species subject to a multiannual plan, above which a vessel shall be required to land its catches in a designated port.
2. Where more than the threshold quantity 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 in the Community. When the multiannual plan is applied in the framework of a Regional Fisheries Management Organizations, the landings may take place in the port of a contracting party of that organisation.
3. Each Member State shall designate ports in which landings referred to in paragraph 2 shall take place.

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<sup>126</sup> ***UK:*** supports principle but concerns over the eligibility criteria for designated ports. ***SE, PT, FI, IT:*** reserve. Too difficult to apply to small scale fisheries. To comply with this Article would require a substantial increase in resources. ***SE, PT, FI, IT, DK:*** it should be up to MS to designate ports on the basis of risk analysis. ***DK:*** delete article. Need to carry out landing control outside designated ports. Concentrating control in a few ports would have socio-economic consequences as it could mean that some ports have to be closed. ***SE:*** decisions on where and when to exercise the control could be dealt with within a national control programme according to Art. 36. COM could then follow up on the MS commitments in the programme. ***EE:*** 73 landing sites of sprat and herring in Estonia. To designate some of them as designated ports will result for fishermen in increased port fees and cost of fuel. ***PT:*** ports should be designated in the light of the activities engaged in them, which may not be consistent with the criteria proposed. ***FR:*** the word "threshold" should be translated into FR by "plancher", not "plafond".

<sup>127</sup> ***ES:*** the requirement under this paragraph should also apply to transshipments.

- 4.<sup>128</sup> For a port to be determined as designated port, the following conditions shall be met:
- a) restricted landing times;
  - b) restricted landing places;
  - c) full inspection coverage during landing times and at all landing places;
  - d) the average landed quantity by weight of the species subject to a multiannual plan must represent at least 5% of the overall quantities landed in that port. The reference period to calculate such average shall be the three immediately preceding years.

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<sup>128</sup> ***FR, DE, DK, BE, ES, IE, IT, NL, PT, UK:*** reducing the number of designated ports makes sense but the conditions laid out under 34.4 are unrealistic. MS should have more discretion to designate ports. ***FR:*** the four criteria proposed here should be an indicative list. Otherwise, leave criteria to discretion of MS. ***BE, DE, DK, SE, LV, PT, IE:*** full inspection coverage (34.4 c) is unachievable. It would entail huge administrative costs. ***UK:*** clarify what is meant by it. There are situations in UK where there are two ports close together and it makes more sense for the inspection staff to be based at one of the two ports. They are nevertheless available to attend the unmanned port at short notice (e.g within 4 hours). ***SE:*** primarily wishes to rule out 34.4. At least change « restricted » in 34.4a) to « specific » and let the definition of « full inspection coverage » in 34.4c) be that it should be sufficient for the inspectors to be able to reach the ports from their base quarters during the times when the port is open for landing. ***IE:*** why not use CCTV? ***DK:*** if the article is kept, this para. should be deleted, since it makes the use of risk based control absolutely impossible. ***ES, EL, MT, PL, PT, LV:*** the 5% requirement in 34.4 (d) is too restrictive. ***EL, IT:*** delete 34.4 a), b) and d). ***ES:*** in a) and b) "restricted" should be replaced by "established". Exemptions from d) could be made in the case of islands. ***LT:*** in c) delete the word "full" (too vague). ***PL:*** clarify d). ***ES:*** in d) allow for exemptions in the case of distant coastal areas, islands or technical problems which make it impossible to designate certain ports. ***COM:*** takes note of MS demands for more flexibility, but stresses the need to avoid dispersion by setting minimum standards.

*Article 35<sup>129</sup>*

*Separate stowage of recovery species*

1. It shall be prohibited to retain on board a Community fishing vessel in any box any quantity of a species subject to a multiannual plan mixed with any other fishery product.
2. Boxes with species subject to a multiannual plan shall be properly marked with a label indicating the FAO code of the species subject to a multiannual plan and shall be stowed in the hold in such a way that they are kept separate from other boxes.

*Article 36<sup>130</sup>*

*National control action programmes*

1. Member States shall define a national control action programmes applicable to each multiannual plan.
2. Member States shall set out specific inspection benchmarks in accordance with Annex I. such benchmarks shall be revised periodically after an analysis has been made of the results achieved. Inspection benchmarks shall evolve progressively until the target benchmarks defined in Annex I are reached.

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<sup>129</sup> **FR:** *Art. 35 is too constraining, limit the obligation to separate stowage to one or two sensitive species, since small-scale fishing vessels do not have the necessary material capacity to comply with this and separate stowage can also undermine the stability of the vessel. NL: in para. 1 must a distinction be made simply according to whether or not catches come under multiannual plans or must catches covered by a multiannual plan be stowed separately according to species? Also, clarify para. 2. PT: this is not geared for fresh fish, which is not placed in covered boxes. This provision cannot be applied either in the case of small pelagic species. UK: clarify what is exactly meant by separate stowage". Include "other containers" in the wording as not all storage is done in boxes. ES: in para. 2. replace "and" by "or". EE, FI, LT, LV, PL, SE: impossible to separate herring from sprat in separate boxes in the Baltic. DK, DE: agree on principle but flexibility needed for small vessels. DE: foresee exemptions in these cases. IT: delete, not viable for fleet with many small vessels. BE, ES, PT: labelling should be optional. COM: can review Art. to specify that separate stowage will not affect pelagic species, as well as the type of containers that can be used. COM will reflect on the type of vessels to be affected by the obligation in particular as regards coastal fisheries.*

<sup>130</sup> **FR, IT:** *no problems in principle but reserve on related Annex I. EL: drawing up a control action programme for each multiannual plan entails a huge administrative and economic burden for MS. DK, PT, SE: national control programmes must be based on risk analysis. NL: doubts on usefulness of Art. 36 to make for equivalent controls in the various MS. Is there a "follow up" of these programmes? Does the COM have to be notified? COM: can make reference to risk analysis in 36.2, but harmonisation needed, hence benchmarks. MS to report to COM on progress of their national plans.*

# Chapter IV

## Monitoring Of Technical Measures <sup>131</sup>

### SECTION 1

#### USE OF FISHING GEAR

*Article 37<sup>132</sup>*  
*Fishing gear*

1. Any fishing gear used in a fishery shall comply with the technical specifications laid down in the rules of the Common Fisheries Policy for this fishery.
2. In fisheries in which it is allowed to have more than two types of gear on board, the gear which is not used shall be 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;

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<sup>131</sup> **COM:** existing rules on fishing gear and catch composition are in Section 1. Section 2 includes new rules for the monitoring of activities in, and transit through, Maritime Protected Areas. Section 3 is about new rules on compulsory registration of discards and systematic cross-checks using data from logbooks, VMS and observers. Section 4 includes new measures and others that already exist under TQR or RFMOs Regs. **FR, PT:** reserve on Section 1. Measures in Arts. 37 and 38 do not belong here but in Technical Measures Reg. **BE:** misgivings on this whole section, control on gear would be more effective before leaving port, on the basis of risk analysis.

<sup>132</sup> **FR:** fundamental reserve. The principle of the one net rule has not been adopted yet, so it should not be taken for granted. **FR, DK:** this provision should not be part of a control regulation but of a Technical Measures Regulation. **COM:** this section is on how to control technical measures so it does belong in here. It does not prejudice on the adoption of the one net rule. **LV:** notes differences between this proposal and the Baltic Sea rules. In case of contradiction, which norm would prevail? Also, are nets covered by this provision? **DK:** para 1 is superfluous. **FI, IT, PT:** problematic to apply para. 2. to small coastal vessels which use various mesh sizes during the same trip. **IT:** except vessels of less than 15 m which conduct fishing operations no more than 24 hrs or entirely within territorial waters. **EL:** in para. 2 clarify whether we are talking about keeping more than two types of gear on board or more than one? **UK:** it should read : "...two or more types of fishing gear. In 2 b) word missing after "lashed and..". **COM:** agrees. **PT:** clarify whole of para. 2. The fact that some gears such as longlines are stowed does not necessarily mean they have not been used. Also, replace "similar gear" by "items of equipment". **COM:** surprised about problems with these Arts., rules already existing, are MS not complying?

- b) nets which are on or above deck shall be securely lashed and
- c) longlines shall be stowed in lower decks.

*Article 38<sup>133</sup>*  
*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 logbook and the landing declaration.
3. In specific cases 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 111.

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<sup>133</sup> ***FR:*** this provision should not be part of a control regulation but of a technical measures regulation. ***BE:*** the requirement to report changes in mesh size in the landing declaration is not necessary. Delete "landing declaration". ***EL:*** impossible to apply in practice or to enforce. ***DE:*** take into account the conditions on board. ***FI:*** for inshore fisheries there is no justification for dividing up the catch by mesh size when fishing for non-quota species.

## SECTION 2

### MONITORING OF MARINE PROTECTED AREAS<sup>134</sup>

#### *Article 39<sup>135</sup>*

#### *Vessel monitoring system*

- 1.<sup>136</sup> When a Marine Protected Area is defined, the position limiting the geographical polygon and the correspondent rhomb lines and vessel positions shall be measured in accordance with the applicable standard.
- 2.<sup>137</sup> Fishing activities of Community fishing vessels in fishing zones where a Marine Protected Area has been defined shall be monitored by the Fisheries Monitoring Centre of the coastal State, which shall have a system to detect and record the vessels' entry into, transit through and exit from the Marine Protected Area.

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<sup>134</sup> ***DK, DE:*** this section is not clear and should be clarified. It should be simplified to specify only some principles enabling control of these areas. ***NL:*** this anticipates the as yet to be defined Nature 2000 areas. Monitoring requirements for MPAs should not be laid down without knowing what the MPAs will involve in practice.

<sup>135</sup> ***DK, IE, SE, IT, PT, UK, SI, NL, FI:*** concern on costs. ***EL:*** given the morphology of the Greek coastline and the fact that most bays where most fishing vessels dock are under protected status, the provision is impossible to apply. ***DK:*** VMS transmission is very expensive, why not use AIS? ***DK:*** is it the intention to cover all vessels? VMS should only be used for vessels under this obligation. ***UK:*** would vessels benefiting from the exemptions available in Art 9.6 still have to have VMS on board if operating in or close to an MPA? ***SE, LV:*** fisheries control should be limited to areas where no fishing is allowed, for example real-time closures and other permanently or temporarily closed areas for fishing. ***FR, UK, ES:*** this article implies incorrectly that no fishing whatsoever will be allowed in MPAs. ***ES:*** some fishing activities are compatible with MPAs, as is transit through them. ***FR, SE, EL, ES, SI, DK, DE:*** need for a better definition of MPAs. ***FR, ES:*** third country vessels need to be included. ***COM:*** recalls the alarm system is not new, it has already been applied in TQR on deep-sea species (protected area for orange roughy, Art. 7). The measures will apply to third country vessels as well. ***FR:*** if this is the case, it should be explicitly mentioned as "integral marine reserve".

<sup>136</sup> ***SE, PT:*** what does "geographical polygon and the correspondent rhomb lines" mean? ***SE, PT, SI:*** what is meant by "the applicable standard"? ***PT:*** Do there have to be records of entries into, transits through and exists from MPAs if those areas are defined in the monitoring centre's geographical information system? ***PL:*** imprecise translation into Polish of "polygon".

<sup>137</sup> ***LV:*** insert after marine protected area "which is subject to specific fishing restrictions".

- 3.<sup>138</sup> An alarm system shall be available in the Fisheries Monitoring Centre of the coastal State that can automatically detect vessels entering in the Marine Protected Area. The alarm system shall also be on board the vessel so as to alert the master of the vessel if he is about to enter the Marine Protected Area.
- 4.<sup>139</sup> Member States shall establish an alarm system when the vessel enters the control safety zone around the areas to be protected.
- 5.<sup>140</sup> By way of derogation from Article 8 (2) of Commission Regulation (EC) No 2244/2003 of 18 December 2003 the frequency of data transmissions shall be of at least once every 15 minutes when a vessel enters the control safety zone and it shall be real-time transmission when the vessel enters in the Marine Protected Area.

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<sup>138</sup> ***DK:*** not necessary to have both an alarm system and a reporting system. ***ES:*** clarify what an alarm system consists of. ***BE:*** doubts about possibility to install alarm system on board. ***NL, DK, DE, ES:*** doubts about effectiveness of alarm system on board. ***NL:*** doubts as to whether the vessels' alarm systems can be monitored. ***PT:*** since VMS is not interactive, it is not clear how alarms can be installed on board vessels. To comply with this is, alterations, technologically possible but fairly expensive, will have to be made to the present VMS. ***FR, IE, LT:*** concerns on costs. ***FR:*** concerns on delay of implementation. ***IE:*** all MS should use a common system of alarm. ***SE, DK:*** is the idea with this point to have the FMC's alert the masters that they are entering into such an area? The risk could then be transferred from masters to the FMC.

<sup>139</sup> ***LT:*** concerns on costs. ***SE, DK:*** delete. The protected closed area should be made larger rather than having a safety zone established. ***ES:*** reserve. When an MPA is established, safety buffer zones are already included as part of it and together they constitute the zone subject to protection. ***FR:*** define "safety zone"

<sup>140</sup> ***UK, FR:*** clarify what is meant by real-time transmission. ***SE, BE:*** uncertain whether there are any systems available at all on the market that can allow real time transmission. A minimum (and a maximum) size are lacking. ***ES:*** reserve in relation to the safety zones. Technically not possible to report satellite positions in real-time. ***FR:*** real time transmission is costly with no benefits for control. ***UK:*** what costs will be incurred by fishermen as a result. ***NL:*** the AIS can be of importance here. ***PL:*** the vessel's positions are recorded in real-time in the device's internal memory, making it impossible to send all these positions via the communications satellite given the bandwidth of the link. ***FI:*** there is not added value in transmitting data more frequently than every 15 minutes. The frequency of location data transmission should not be changed for different areas as changes in the transmission frequency poses a technical risk to the performance of the system. ***PT:*** where the VMS permits the storage of data and subsequent downloading to the monitoring centre, the 15 min frequency or real-time communication would not appear to be necessary, especially as it would result in very high costs. ***DK, IT, EL, LT:*** transmission every 15 min is an excessive requirement. ***DK:*** in the area, the frequency of data transmission should be 15 minutes. ***FR:*** a transmission every 15 or 30 min should be sufficient. ***FR, SE:*** take also into account the size of the zone in question.

Article 40<sup>141</sup>  
Transit through a Marine Protected Area

1. Transit through a Marine Protected Area is allowed for all fishing vessels 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 6 knots.
- 2.<sup>142</sup> Masters of Community fishing vessels intending to transit a Marine Protected Area shall communicate the following data in the form of a transit report, to the authorities of the flag Member State and to the coastal Member State:
  - a) the name of the vessel, external identification mark, radio call sign and name of the master of the vessel;
  - b) the coordinates of the geographical location of the vessel to which the communication refers;
  - c) the date and time of each entry into a Marine Protected Area, and
  - d) the date and time of each exit from a Marine Protected Area.

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<sup>141</sup> **NL:** need to better define what MPAs really are before setting rules on transit. **IE, SE, PT, DE, DK, UK, FR:** in para. 1, 6 knot transit speed too rigid, need to factor in bad weather, traffic in the area, state of the sea, power of the vessel etc. **UK:** 9 knots in demersal fisheries, now 6 knots! **FR:** in French law maximum speed is 5 knots. Add "except in cases of adverse conditions or force majeure". **DE, SE:** allow an exemption for cases of "force majeure". **SE:** obligation to hail if exemption applicable. **ES:** vessels exempted from VMS requirements must be able to transit across MPAs. **COM:** will review the definition of MPA. Maximum speed to be reconsidered to cater for circumstances such as poor weather conditions and national legislation.

<sup>142</sup> **ES, PT:** given transmission every 15 min, why need for transit report? **PT:** by the time the request is recorded the vessel may have already left the area. **EL:** this is excessive and impossible to apply. **SE:** increase burden for the masters. Exempt vessels equipped with VMS. **BE:** this paragraph is superfluous since already VMS data. If this paragraph remains, add under d) the "estimated" time of exit. **ES:** the transit report should also be required for third country vessels in Community waters. **PL:** lay down exactly when the master has to send in the transit report. **FR:** get rid of the transit report, since it is not cost-efficient. No added value in cases of vessels equipped with VMS or AIS and electronic data transmission, and not appropriate for small vessels and zones comprising several "integrated marine reserves". In any case, these provisions should only apply to those zones decided in a decision or regulation of the Council. **SI:** proposes following wording at the end of the paragraph: "Where Marine Protected Areas are smaller in size and are located in the vicinity of the coast in the territorial sea of a Member State, the Member State can control transit though a Marine Protected Area in accordance with its national legislation". **COM:** the need for a transit report is based on the model of the Irish protected areas. As regards para. 2, indeed VMS make transit reports redundant.



**SECTION 3**  
**MONITORING OF THE REDUCTION OF DISCARDS**<sup>143</sup>

*Article 41*<sup>144</sup>  
*Registration of discards*

- 1.<sup>145</sup> The master of a fishing vessel shall record all discards above 15 kg of live weight equivalents in volume and shall communicate, where possible by electronic means, this information without delay to its competent authorities.
- 2.<sup>146</sup> Member States shall establish a special scheme to monitor fishing vessels flying their flag with a fishing authorisation under a scheme of progressive reduction of discards.

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<sup>143</sup> ***EL:*** Arts. 41 and 42 would rather belong in Title IV, Chapter I, Section I. ***DK, IE:*** Art. 42 is not in the right place. ***DK:*** all cross checks should go together in logical sequence.

<sup>144</sup> ***FR, NL, DK, SE, DE, PT, DK, MT, UK, BE:*** clarify para. 1. and align it with Art. 14. ***SE:*** discard should be recorded in relation to every fishing operation according to Art. 14. Para. 1 could therefore be deleted. ***FR:*** include this provision in Art. 14. ***UK:*** supports principle. ***ES:*** under current legislation, including Reg. 1077/2008, notification of discards is optional. This obligation should be imposed on specific fisheries, but not apply generally. ***FR:*** define "discard". ***PT, UK, NL, FR:*** this rule is difficult to monitor or enforce. ***PT, ES:*** will registered discards be deducted from the quotas and/or the calculation of fishing effort? ***UK:*** do non commercial species also need to be recorded? The value of such recording could be questioned. ***FR, BE, IE:*** 15 kg threshold is unrealistic. ***FR, IE, ES:*** the trigger point must be 50 kg of species subject to TACs and quotas. ***FR:*** 50 kgs excluding margin of tolerance. ***DK, UK, ES:*** clarify if 15 kg refers to a haul, or to one species. ***UK:*** it should be applied on a haul by haul basis. ***DE:*** wonders whether the threshold value is appropriate for all vessels (in the case of factory ships a haul may contain up to 70 t). ***PL:*** reserve on threshold. A transitional period for the implementation of this provision should be considered. ***DK, BE, UK:*** delete second part of para. 1 (the info is already in logbooks, no need for immediate communication). ***BE:*** problems to record discards for vessels with sorting machines, e.g. in shrimp fisheries.). ***COM:*** will align para. 1 and Art. 14. Takes note of BE problem about the sorting machines. Progressive reduction of discards is a parallel discussion but COM is trying to anticipate the future. There are no standard measures to control discards at the moment but a DK pilot project is in place; we can learn from this and future similar experiences.

<sup>145</sup> ***UK:*** delete the latter part of this paragraph from "and shall communicate". The information recorded in the electronic logbook will be submitted in the usual way each day.

<sup>146</sup> ***DK, ES, LV:*** what is meant by "scheme of progressive reduction of discards"? ***ES:*** a definition is needed before monitoring procedures are put in place. ***LV:*** delete paragraph, since it is not clear what is meant by this scheme. Also, neither source of financing nor detailed rules are envisaged for implementation of such schemes. ***NL:*** reference to "progressive reductions" pre-empts future discussions on discards. ***IE:*** not convinced that this Reg. is the appropriate place to include this scheme.

*Article 42<sup>147</sup>*  
*Logbook checks*

For vessels fitted with Vessel Monitoring System, Member States shall verify systematically that the information received at the Fisheries Monitoring Centre corresponds to activities recorded in the logbook by using Vessel Monitoring System data and where available to the data from observers. Such cross-checks shall be recorded in computer-readable format and kept for a period of three years.

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<sup>147</sup> ***SE, NL, IE:*** question the need for this provision. ***ES:*** cross checks under this Article must not be "systematic". Clarify whether they apply to a vessel's positions or to catch data as well? Observers' reports should only be used in specific cases. Clarify legal status of observers. ***FR:*** against using the data taken by observers with a control purpose. ***LV:*** lay down the timing for the implementation of cross-checks. ***PT, LV:*** harmonise Art. 42 with Electronic Reporting Reg. ***NL:*** does this Art. specifically relate to discards? If not, it should be elsewhere in the Reg. ***COM:*** will check whether this Art. is needed.

## SECTION 4

### REAL TIME CLOSURE OF FISHERIES

Article 43<sup>148</sup>  
General provisions

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<sup>148</sup> **COM:** system inspired from Annex II of Reg. 43/2009. These provisions could be adjusted in the light of negotiations in the framework of the technical measures proposal and negotiations with Norway. **DE, DK, PL, IE, UK:** this should be coordinated to avoid double or triple regulation. Wait for results of consultations with Norway. **ES, IT, FR:** support principle but does not agree with COM that negotiations with Norway will automatically influence provisions to be applied within EU. **COM:** this is not the intention of COM, but would like to coordinate the different initiatives in this regard. **DE, IT, SE, PT, DK, PL, NL, FR, BE, UK:** believe real-time closures is a management issue and not a question to be dealt with in a control Reg., so remove the provisions from here. **FR:** the provisions here overlap and/or differ from those in the proposed Technical Measures Regulation. **SE:** rules on how to control these areas are relevant in a control Reg. and should be implemented. This could be done by having an extended surveillance over these areas. Alternatively, the level of surveillance could be determined in specific control programmes or the focus of Joint Deployment Plans (JDPs). **DE, FR:** the provisions are too general, take into account specificities of certain fleets. **PT, DE:** absolute ban on fishing for all fleets would not be acceptable, it should be related to specific net sizes or fish species. **SE:** scientific advice must demonstrate that the closures will have an effect on the improvement of the stock. Results from Working Group with Norway should be considered. **SE:** there is nothing set out for implementing rules. This Regulation should only set the framework and leave the rest to comitology. **DK, FR, IE, PL, PT:** concerned about increased costs and administrative burden. **PT:** Norway has 17 inspectors to monitor its real-time closures for a very limited range of species. Extrapolating this to the Community level the burden would be intolerable. Could COM produce a comprehensive analysis of the impact on costs for MS? Applying this measure is not appropriate for multi-specific fisheries. If, finally, it applies to multi-species fisheries, the concept of "by-catch" has to be defined. **NL:** the system could lead to manipulation by fishermen to have certain areas closed, for ex, because they have to return to port for repairs. **FR:** the possibility of a remedy against the closures should be foreseen.

- 1.<sup>149</sup> When a trigger by-catch level has been reached the area concerned shall be temporarily closed to fisheries in accordance with the provisions of this Section. Such a real time closure shall be established for a fixed time not exceeding 10 days.
2. The trigger by-catch level shall be calculated as the percentage of the live weight of each species of the total catch in a haul, or, when the objective of the real time closure is the protection of juveniles of a certain species, the percentage of the number of juveniles of a defined species compared to the total number of specimen of that particular species in that haul.

*Article 44<sup>150</sup>*

*Real- time closure by Member States*

1. When a trigger by-catch level has been detected by any fishery protection vessel of the coastal Member State or that is participating in a joint operation under a Joint Deployment Plan, the fishery protection vessel shall inform without delay the competent authorities of the coastal Member State.

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<sup>149</sup> ***LV, DE, ES, IT, DK, PL, NL, FR, EL, SE: define trigger by-catch level. It is not clear how the catch trigger level should be calculated. EL: include this definition in Art 4. PT: thresholds will depend on the fishing gear and the way in which vessel is equipped IE: scientists and not the control authorities are the ones that should define these levels. PL: there should be cooperation with fishermen and scientists, who should forward the information required for real-time closure to the proper authorities. ES: the trigger by-catch level should be determined on the basis of three hauls. COM: these levels must be defined according to the species, areas and gear used by STECF pursuant to the best available scientific information. These thresholds will be created only for the most affected species and will then have to be applied by the control authorities. FR: define also "by-catch". DE, SE, DK: why ten days? SE: does that not depend on what should be protected (juveniles, by-catches of certain species or spawners?). ES, UK: 10 days is too short. FR: 10 days is not consistent with TAC & quota Reg. (20 days).***

<sup>150</sup> ***ES: define trigger by-catch level. PL: trigger by-catch levels could also be detected by suitably equipped vessels (e.g. scientific research vessels) or specially designated fishing vessels. Also add the need for cooperation with fishermen and scientists.***

- 2.<sup>151</sup> Where the quantity of by-catches exceeds a trigger by-catch level in any one haul, the fishing vessel shall change the fishing area by at least five nautical miles from any position of the previous haul before continuing fishing and shall inform without delay the competent authorities of the coastal Member State. If at least three fishing vessels have had to leave a fishing area as a result of exceeding the trigger by-catch level, the information received from those vessels shall be used by the coastal Member State to establish a real time closure.
3. On the basis of the information received in accordance with paragraphs 1 or 2 the coastal Member State shall decide the real-time closure of the area concerned. It shall inform without delay the Commission, all Member States and third countries whose vessels are authorised to operate in the concerned area that a real-time closure has been established. Fishing activities in such an area are prohibited as defined in the decision establishing the real-time closure.

*Article 45<sup>152</sup>*  
*Real-time closure by the Commission*

1. On the basis of the information received demonstrating that a trigger by-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.

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<sup>151</sup> ***SE:*** in contrast to the Technical Measures proposal where both measures are separated, here the two systems are mixed in the way that the moving-on-principle can trigger a closure. However, there is no requirement to record such a move and there is no reason to believe that vessels would inform the authorities of what happens. Also, define "fishing area" in this article. ***FR, ES:*** do not support moving on after one haul. ***ES:*** it should be determined on the basis of at least three hauls. ***EE:*** reserve. To close fishing operations without delay is not possible in Estonia. This will take at least three weeks. ***IE:*** under Irish law it would take at least 10-15 days to both close and open areas. ***DE, ES, PL, LT, FR:*** for small-scale fisheries, 5 miles is excessive. ***LT:*** simplify the procedures for closure and exempt coastal fishing vessels from this requirement. ***SE:*** why at least 5 miles and in the technical measures proposal 10 miles? ***DE, UK, FR:*** problematic, it does not happen that often that 3 vessels are present in the same area at the same time. ***UK:*** a closure should be instigated each time that an individual vessel exceeds the trigger by-catch level. For three vessels to have had to leave an area to trigger a closure is too onerous. ***SE:*** add within which proximity the three vessels must be to one another for the closure to take place. ***PL:*** specify the time within which a fishing area subject to real-time closure has to be cleared. ***COM:*** will look into 5 miles and 10 days.

<sup>152</sup> ***PT:*** clarify what sources of information are concerned and what verification procedures are provided for. ***PL:*** inspection vessels should not be the only source of information. Also, there should be cooperation between fishermen and scientists on the need for a real-time closure in a given area. ***SE:*** in para. 2, the communication of the closure and its effect should be harmonised with Art. 44.3. ***ES:*** the duration of the closure must not exceed 10 days. ***UK:*** 10 days is not sufficient time for the potential benefits of the closure to be fully realised. Would prefer 21 days, after which the area would automatically reopen. ***PT:*** it is doubtful whether publication on the COM's website would be sufficient because of linguistic factors and access and/or format.

2. The Commission shall inform without delay all Member States and third countries whose vessels operate in this 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.

*Article 46*

*Re-opening of a temporarily closed area*

- 1.<sup>153</sup> After a minimum of 60 hours after the defined area has been closed, and under the control of the inspection services of the coastal Member State, a limited number of vessels carrying on board a scientific observer, shall undertake trial fishing operations to verify the level of by-catches.
2. If these operations referred to in paragraph 1 do not reach more than 60% of the trigger by-catch level the coastal Member State shall lift the real-time closures that it has established. The coastal Member State shall inform the Commission, all Member States concerned and third countries whose vessels are licensed to operate in the relative zone, that the real-time closure has been lifted.
- 3.<sup>154</sup> If the real-time closure has been established by the Commission in accordance with Article 45 the Commission shall be informed without delay by the coastal Member State of the results of the trial fishing operations referred to in paragraph 1. The Commission shall, if appropriate after examination of the information by the Scientific Technical and Economic Committee for Fisheries, lift the real-time closure if the operations referred to in paragraph 1 do not reach more than 60% of the trigger by-catch level. It shall inform all Member States concerned and third countries whose vessels are licensed to operate in the relative zone that the real-time closure has been lifted.

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<sup>153</sup> ***SE:*** the area should be closed for a predetermined period of time. It is too costly and unnecessary to start fishing activities after only 2,5 days. There would be a risk that MS do not close areas because it is too costly to comply with this article. In any event, having both an inspector present and an observer on board is excessive. One of the two is sufficient. ***DK:*** replace "shall" with "may". ***ES:*** specify the number of vessels required, who is to bear the costs, the period during which the vessels with observers are to operate and how they are to confirm the reopening of the area. Could the observer's costs be justified under Reg. 199/2008? ***DE, IE, LT, SE:*** very expensive procedure, in particular given the costs of observers. ***UK, FR, DK:*** opening should be automatic to reduce costs. ***COM:*** it could be good to have the two options, automatic and not automatic, depending on the species.

<sup>154</sup> ***UK:*** does not agree with this early reopening, 21 days time limit should apply to all closures. ***SE:*** since STECF information is not necessary when the MS reopen the area, it should not be necessary when it is the Commission that reopens an area. Both situations are based on data from MS. ***DK, PL:*** how long would STECF take in doing this? ***PL:*** set a deadline for the COM to lift the real-time closure. ***ES:*** this procedure seems protracted and unpractical. ***PT:*** the costs of a reopening a closure determined by COM should be born by COM.

## Chapter V

# Monitoring of Recreational Fisheries

Article 47  
Recreational fisheries<sup>155</sup>

<sup>155</sup> **COM:** the impact of recreational fisheries on species such as bluefin tuna and cod is important. At EU level, Regs. 1967/2006 and 1559/2007 already contain provisions on recreational fisheries. There are also different measures at national level. **FI:** big political issue in Finland Reservation on the whole article and whether it is necessary. **NL:** this control regulation is not the appropriate instrument for regulating recreational fisheries. **BE, ES, NL, PL, IE, IT, LT, FR:** support principle. **PL:** but the article should only apply to key threatened species, like cod. **IE, UK:** this is premature and unjustified. **UK:** a clear definition of recreational fisheries is first necessary as well as an evaluation of the impact of recreational catches upon certain stocks. Any measure considered necessary must be proportionate, easy to comply and easy to enforce. **IE, UK, PT:** careful examination is needed, including consultation with relevant stakeholders. **DK:** delete provision. Study the possible need for any measures first. **PT:** should be left to subsidiarity. **SE, BE, DK, NL, PL, FI, DE, EE, SE:** the article as it stands increases the administrative burden. **DE:** recreational fisheries have always taken place and should therefore not be viewed as the cause of additional fishing mortality. MS should in the first place look more closely into the effects of these fisheries and record them in a report to COM. On the basis of the reports, anything taken in recreational fishing should be included as additional catch quantities and if necessary monitoring rules should be developed. **EL:** would support ban on recreational fishing of a stock subject to a multiannual plan. **SE, NL, FR:** include definition of recreational fisheries in the Reg. **COM:** it is defined in Reg. 1899/2008, but no problem in defining it here too. **FR:** are sport fisheries also included in the definition? **SE:** reservation on article, not proportionate, scope is not clear (type of vessels and fisheries it applies to) Would like to keep the existing national Regs. to the largest extent possible. **SE, NL, DE:** impact analysis must show that this is a proportionate action. Consider to place this Reg. in long term plans rather than in the control Reg. (ex: Art 10 of Reg. 1559/2007). **SE, IE:** it seems necessary to create a good knowledge about the impact of this fisheries, but this is regulated in ERS Reg. (Reg. 199/2008) and should therefore not be regulated also here. **SE:** recreational fisheries and fishing tourism should be discussed within the reform of the CFP. **LV:** lay down a minimum catch threshold for recreational fisheries for this article to apply. **CLS:** intervened in order to confirm that, as a rule, the Community may validly adopt, on the basis of article 37 EC, measures regulating recreational fisheries in order to ensure conservation, management and rational exploitation of fishery resources and thus contribute to the achievement of the CFP objectives. Numerous examples exist in the existing EC legislation and international rules of law. However, a proper justification should be provided in the recitals and certain fine-tuning of the text of the Regulation is needed (such as adding the definition of recreational fishing).

- 1.<sup>156</sup> Recreational fisheries on a vessel in Community waters on a stock subject to a multiannual plan shall be subject to an authorisation for that vessel issued by the flag Member State.
- 2.<sup>157</sup> Catches in recreational fisheries on stocks subject to a multiannual plan shall be registered by the flag Member State.
- 3.<sup>158</sup> Catches of species subject to a multiannual plan by recreational fisheries shall be counted against the relevant quotas of the flag Member State. The Member States concerned shall establish a share from such quotas to be used exclusively for the purpose of recreational fisheries.

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<sup>156</sup> ***EE:** do not support authorisation of vessels for recreational fisheries, since catches are mainly taken on-shore or in water wearing wellington boots. If one has an authorisation, then this should be for the fishers and not for vessels. **PT:** an authorisation must also be given by the MS in whose waters the recreational fishing is carried out. **ES, IT, LT:** the possibility of recreational fisheries from other bridges, platforms, etc should also be included. **COM:** data suggest that recreational fisheries carried out from a vessel is the most important. **IT:** regulate also the cases of recreational fisheries in international waters. **FI, PL:** it is essential to take different approach for stocks really in bad a state and others subject to multiannual plans but under better biological conditions. **UK:** what is one trying to achieve here? **FR:** the obligation of authorisation is an excessive administrative burden, given the high potential number of recreational fishers. Also, the criteria for this authorisation are not set out. A declaration system would be more appropriate.*

<sup>157</sup> ***COM:** inspired from Art 11.3 of Reg. 1559/2007. The aim is to improve the data about these fisheries. **BE:** does not agree with this paragraph. **EL:** supports. This should serve not only to allocate catches to the MS's quota but also to derive useful conclusions as part of the application of a multiannual plan. **PL:** a standard format should be introduced for the logbook. **FI:** if the aim is to have more accurate data on recreational catches, the requirement to collect data should be included as part of the national data to be collected for implementing the CFP. Community financial assistance is provided for the collection of such data.*

<sup>158</sup> ***FR, BE:** oppose. **SE, PT, UK:** the proposal that the catches from recreational fisheries should be counted against the quotas that are set for commercial fisheries should be thoroughly discussed as quotas today are based on other premises and this is a delicate matter. **NL:** if recreational fisheries are allocated quotas, the total quotas must first be increased on the basis of research before parts of them are reserved for recreational fishermen. **COM:** there is a similar provision in Reg. 1559/2007. **DK:** how does the data have to be handed in? **PL:** make clear that this refers to quantities kept on board the vessels, not discards. Also, give consideration as to how this would fit in with the Eel Reg. **FI:** recreational catches of herring, sprat and cod are insignificant in the utilisation of the overall quota.*



- 4.<sup>159</sup> The marketing of catches from a recreational fishery shall be prohibited except for philanthropic purposes.

## TITLE V MONITORING OF MARKETING

### Chapter I General Provisions<sup>160</sup>

#### *Article 48*

#### *Principles for the monitoring of marketing*

- 1.<sup>161</sup> Each Member State shall be responsible for monitoring on its territory the application of the rules of the Common Fisheries Policy at all stages of the marketing of fishery and aquaculture products, from the first sale to the retail sale, including transport.

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<sup>159</sup> **COM:** inspired from Art 11 of Reg. 1559/2007. **NL:** only this paragraph concerning recreational fisheries should stay in the regulation, provided there is a complete ban of the sale of catches. Include a "bag imit" stating that a person may have in his possession a maximum of [...] Kg of fish caught recreationally. **NL, EE, PL, IT, UK, FR:** would like a complete ban without exceptions. Very difficult to check what happens finally with the fish. **EE, FR:** define "philanthropic purposes". **ES, PL:** sale for "philanthropic purposes" does not entail marketing. **FI:** supports to the extent that the purchaser is a commercial enterprise such as a dealer, restaurateur or processor. **IT:** it is appropriate to prohibit regular sales directly to consumer but not occasional and nominal payment for the purchase of a few fish. **BE, DK:** supports commercialization ban. **COM:** the same exception for "philanthropic purposes" is foreseen in Reg. 1559/07, but would look into MS comments.

<sup>160</sup> **NL:** these obligations must be laid down in the CMO Reg. and only monitoring of these obligations must be in the present regulation. **FI:** this is already in Regs. 2406/1996 and 104/2000. **RO, SE:** coordinate with information asked in the framework of other Regs., e.g. Reg. 1005/2008, to avoid duplication of data. **RO:** for example in the IUU Reg. **COM:** the aim is to develop a monitoring system for marketing and traceability inspired by general food law.

<sup>161</sup> **COM:** inspired by Art. 28 of current Control Reg.

- 2.<sup>162</sup> All lots of fishery and aquaculture products shall be traceable and the operators shall be able to identify the origin and destination of lots from catching or harvesting to final consumer.
- 3.<sup>163</sup> Where a minimum size has been fixed for a given species, operators responsible for selling, stocking or transporting must be able to prove the geographical origin of the products expressed by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation
- 4.<sup>164</sup> Member States shall ensure that all fishery and aquaculture products from catching or harvesting are put into lots.

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<sup>162</sup> **DK:** who is responsible for traceability? **DK, RO, PL, CZ:** is freshwater aquaculture included as well? **PL, CZ:** aquaculture should not be covered. **COM:** aquaculture products should be covered, since they end up in the same market as other fishery products. Avoids "laundering" of products that could be sold as coming from aquaculture. Reg. 104/2000 also includes aquaculture products. **NL, DK:** what is meant here exactly? The provision does not seem proportionate. **FI:** the proposal should be amended to reduce the burden of monitoring at the end of the food supply chain. **IT:** refer to restaurants as well as consumers. **DE:** for fisheries in which traceability back to the catch is only possible to a limited extent (e.g. shrimp fisheries and coastal fisheries), exemptions should be laid down accordingly. **LT:** explain scope. What about products that are being processed? **PT:** is this realistic? it appears that each operator must "himself" be able to identify the entire chain, from catching or harvesting, which is unfeasible. Problems in particular in small scale fisheries. **NL:** it should be enough to identify the origin and destination of the products, since it is unreasonable to expect market operators to know at all times what occurred before and will occur thereafter. **RO:** what is the added value? **COM:** each operator has to be responsible for the goods he buys and must know the destination of these goods.

<sup>163</sup> **EL:** specify: a) whether minimum sizes referred to here correspond to those established by EC regulations in force and b) whether "geographical origin" concerns only the scope as defined in Art. 2. **SE:** Not reasonable to require an operator responsible for selling, stocking or transporting to prove the geographical origin. Information about this should however follow the product (Art. 50). This paragraph should therefore be left out.

<sup>164</sup> **IT:** lot should be defined by reference to a minimum quantity. **FR:** the definition of "lot" in Art 4 (16) is different from the one applied to health monitoring and should therefore be harmonized. **NL, LV, RO:** what is meant by "put into lots"? Lot definition in Art. 4 is too vague. **LV:** referring to the definition of "lot" in Art. 4, the whole catch of one fishing vessel is considered to be one lot. What must be done in cases when this catch is divided and marketed into several parts? Also, the definition says that the lot "may have come from the same fishing grounds and the same vessel". This allows interpretation that catches obtained in different geographical areas and which are placed on one and the same vessel can be marked with one code. Thus imprecise origin can be indicated in the sales note, which contradicts the core idea of this Regulation: ensuring traceability of the products. **EE:** how are catches from coastal fisheries put into a lot? How are lots identified? **DK, NL:** what is the intention here? **SE:** alternative wording : « All fishery and aquaculture products from catching or harvesting shall be put into lots ». **COM:** lots are already defined in Reg. 2406/1996. Products put into lots have to be homogeneous, the amount is not the determining factor.

*Article 49<sup>165</sup>*  
*Common marketing standards*

- 1.<sup>166</sup> Member States shall ensure that the products to which common marketing standards apply are displayed for sale, offered for sale, sold or otherwise marketed only if they comply with these standards.
- 2.<sup>167</sup> Products withdrawn from the market, in accordance with Council Regulation (EC) No 104/2000 of 17 December 1999, shall respect common marketing standards, in particular freshness categories.
- 3.<sup>168</sup> Operators responsible for the selling, stocking or transporting of lots of fishery products shall be able to prove that the products comply with the marketing standards at all stages.

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<sup>165</sup> ***DK:*** this article deals with the CMO and should not be contained in the Control Reg. ***FR:*** ensure consistency between the minimum sizes and the marketing rules.

<sup>166</sup> ***COM:*** this requirements comes from Arts. 3 and 21.b of Reg. 140/2000. ***NL:*** standards should only apply at first sale as in current situation. In the case of freshness, it is impossible to keep to the category assigned at first sale, since this could mean that large quantities of fish suitable for human consumption could not be offered to sale. ***DE:*** in order to achieve meaningful results in scientific pilot projects, especially to avoid by-catches and discards, the marketing of undersized fish should be made possible within such projects. Introduce an exemption in this regard. ***SE:*** alternative wording: "Products to which common standards apply shall be displayed for sale, offered for sale, sold or otherwise marketed only if they comply with these standards."

<sup>167</sup> ***NL, SE, DK:*** why refer in particular to "freshness"? ***NL:*** the degree of freshness determines solely whether EU co-financing is possible. EU regulated product characteristics are all involved in determining withdrawal of fish products from the market and there is not separate status for freshness. ***COM:*** freshness should be referred to since without freshness one cannot benefit from financial compensation for withdrawal of products.

<sup>168</sup> ***IT:*** define a lot by reference to a minimum quantity. ***LV:*** by which means or which documents should be used as a proof that you comply with the standards? ***RO, SE:*** is this really operative? One should only be responsible for what one does, not for the whole chain. ***COM:*** obligation on standards refer solely to first sale but freshness and marketing size have to be proved at all stages (Art 3.1 of Reg. 1004/2000).

*Article 50<sup>169</sup>*  
*Traceability*

1. Without prejudice to Regulation (EC) No 178/2002<sup>170</sup> and to their national legislation, Member States shall ensure that their operators put in place systems and procedures which allow the information on the provenance of the fishery and aquaculture products to be made available to the competent authority.

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<sup>169</sup> **COM:** these provisions already exist in the framework of food safety (Reg. 178/2008). **DK:** supports, but exclude freshwater aquaculture products as they are included in rules about traceability of food products through the food chain. **FI:** does this Art. apply only to inland water or to marine waters? This article is more stringent than foodstuffs legislation and current requirements under Reg. 104/2000 and this should not be the case. **IE, UK:** support traceability but concerned that the proposals would be impractical and would be very burdensome. **NL:** concerned about workability of this provision, in particular, as regards products which are prepared by combining different lots (e.g. fish fingers). **UK:** this would be in particular disproportionate if applied to all operators. **IE:** supports improved labelling covering county of origin, area caught and species. **NL, DE:** a minimum level is needed for traceability. **COM:** will look into this.

<sup>170</sup> **OJ L 31, 1.2.2002, p. 1. SE:** alternative wording in para. 1 : « Without prejudice to Regulation (EC) No 178/2002 and to the national legislation in their Member States, the operators shall put in place systems and procedures which allows the information on the provenance of the fishery and aquaculture products to be made available to the competent authority ».

- 2.<sup>171</sup> The minimum information requirements for all lots of fishery and aquaculture products in order to trace their provenance shall be:
- a) the identification number of each lot;
  - b) the commercial and scientific name of each species;
  - c) the live weight in kilograms;
  - d) the date of catching and/or harvesting;
  - e) the production unit (name of the fishing vessels, aquaculture site);
  - f) name and address of the suppliers;
  - g) the gear.

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<sup>171</sup> ***UK:*** clarify "lot" and how far the supply chain operators are expected to label the product. ***LV:*** add geographical origin. ***COM:*** agrees, this is key for traceability. ***EL:*** some of this information is already contained in Reg. 2065/2001. Problem of duplication. ***PT:*** clarify whether all the information must be immediately available, in particular that mentioned in para. 2 c), e) and g), even on packaging (including small packaging of 100 grams). ***SE:*** in a), what is meant by identification number? In c), which calculation factor are we using? the conversion factors do not cover currently all processed products that could follow under this article; g) should not be necessary for aquaculture products. Also, the catch and harvesting area should also be included in the required information. ***DE:*** in c) it should say "processed" or "sale" weight, not live weight, as different conversion factors apply to live weigh. ***FR, LT, RO:*** d) is difficult to implement given the stockage constraints on board the vessel. ***FR:*** complying with d) would also be costly and difficult to implement in cases of mixed lots. Delete d). Mentioning the date of landing or sale would be more acceptable. ***RO:*** in f), why is suppliers in plural? Do you have to provide information on suppliers from the whole chain? ***DK:*** g) is difficult to implement. ***BE:*** delete c) and g). ***EL:*** two different regulations, 2065/2001 and this one here, will contain complementary provisions on minimum info on fishery products. This will make inspection tasks difficult. ***LT:*** specify all stages of marketing to which this provision applies, since at present its application to the supply chain is unclear. ***FR, FI:*** is this information due until the final consumer? This could lead to high costs. In c) the live weigh in kgs is not relevant after processing of the fish. In e) the name of the fishing vessel is difficult to implement in case of mixed lots. Delete g), since the operator not always knows it and it does not have any added value. ***ES:*** add the following concepts: catch area or where farms are located, landing point, presentation of the products, size, freshness. In f) replace "name and address" of the suppliers by name and address of the buyer and the seller.

- 3.<sup>172</sup> Each lot shall be submitted to a specific tagging and/or labelling system containing the information referred to in paragraph 2.

*Article 51<sup>173</sup>*  
*Consumer information*

Member States shall ensure that the information provided for in Article 8 of 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 consumer about fishery and aquaculture products shall be available at each stage of marketing of the species concerned. The catch area referred to in Article 8 of Regulation (EC) No 2065/2001 shall refer to the sub-area and division or sub-division or, where applicable, to the statistical rectangle in which catch limits apply pursuant to Community law.

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<sup>172</sup> ***LV:*** who should carry out the tagging or labelling system? The operator or competent institution? ***DE:*** traceability to an individual lot is scarcely practicable in the case of small catches, so introduce thresholds for such cases or make reference to sales report. ***LT:*** specify all stages of marketing to which this article applies. ***SE:*** would like the procedure to be described.

<sup>173</sup> ***FR:*** transpose "the sub area and division or sub-division or, where applicable, the statistical rectangle" into a clear geographical region to be defined at MS level. Arts. 5 and 8 of Reg. 2065/2001 only refer to 12 FAO sub-zones. ***ES:*** need to modify Art. 8 of Reg. 2065/2001 which refers to catch areas in terms of FAO zones, whereas this proposal refers to ICES subareas. ***LT:*** delete the second sentence of Art. 51 or adapt this provision to Art. 5 and Annex to Commission Reg. 2065/2001. ***DE, FI:*** provisions in Regs. 104/2000 and 2065/2001 already provide for a high degree of transparency for the consumer. The inclusion of all marketing stages might be problematic, in particular in the case of small catches, so introduce an appropriate exemption. ***FI:*** this provision would be better placed in the proposed Regulation on providing information on foodstuffs to consumers rather than in a fisheries regulation.

## Chapter II

### Post-landing activities<sup>174</sup>

#### Article 52

#### First sale in auction centres

- 1.<sup>175</sup> Member States shall ensure that the first marketing of all quantities subject to catch or effort limits are sold and/or registered at an auction centre to registered buyers.

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<sup>174</sup> **FI, RO, FR:** do these provisions apply to inland fisheries? **COM:** only applicable to marine waters. **FR, CZ:** not include aquaculture. **COM:** scope includes marine aquaculture, not freshwater aquaculture. **FR:** be consistent with terminology ("acheteurs agréés" v. "organismes agréés"). **PL:** apply a risk analysis approach. The approach taken is too strict. Reserve on Polish translation of "auction centre". **EL:** do the provisions apply to marine aquaculture products that are not subject to the landing declaration obligation? **COM:** concerns all fishery products. **LV:** the terms "registered buyer", "buyer", "persons" in this chapter are used ambiguously which creates misunderstanding as to whether any fish buyer must be registered.

<sup>175</sup> **ES:** supports. There are 250 auction centres for first sale in Spain. Proposes alternative text: "MS shall guarantee that all quantities subject to TAC or effort limits will be registered in an auction centre before their first sale". **NL:** agrees that registration of the first sale of all quantities landed takes place at a limited number of designated centres, but these designated places do not have to be an auction centre. The Commission would have to be notified of such designated places. **FR:** ambiguous drafting. **NL, PT, IE, DK, IT, FI, EE, DE, EL, PL, SE, FR, LV, UK:** do not agree with the sale of fish only at auction centres. **UK, EE, EL, IE, SE, LV:** should say "auction centres" or "registered buyers" (probably "or" is missing). **COM:** agrees. This will be corrected. **DK:** to require all quantities to be sold and/or registered at an auction centre is too limiting for the market. In Denmark fish is also sold for example on contracts. There should also be a limited possibility to sell fish directly from the vessel. Proposes new wording. **LT:** clarify this paragraph and the concept of "registered at auction centres"; suggests that all quantities of fish sold at an auction centre should be sold to registered buyers. **DE:** the registration of first sales should be possible not only through auction centres and registered buyers but also through producer organizations. **BE, FR, MT, UK, FI:** direct sales of small quantities to consumers should be possible. Apply same exception as in Art. 56. **EL:** sale at auction centres should be applicable only in cases of products subject to landing declaration. **SE, FR:** this restricts trade. **SE:** complying with it for small scale fisheries would lead to higher costs. **IT:** an exception should be made for vessels of less than 15 m which conduct operations for no more than 24 hrs or entirely within territorial waters. **FR:** use only "or" instead of "and/or". **COM:** this should stay to cover cases of separate amounts, some sold, some registered. **MT:** at the beginning, it should say all quantities of "stocks". **COM:** will specify this. **UK:** delete para. 1 and amend para. 2 to read: "Fisheries products shall only be sold at an auction centre or to bodies or persons authorized by MS". **FR:** catches to be sold at first sale should be weighed in an agreed scale before (on board or at landing), then registered at an auction centre or, if this does not exist, declared electronically to the authorities, with a possible exemption for small operators.

- 2.<sup>176</sup> Other fisheries products shall only be sold at an auction centre or to bodies or persons authorised by Member States.
- 3.<sup>177</sup> The buyer of fisheries products from a fishing vessel at first sale shall be registered with the authorities of the Member State where the first sale takes place. For the purpose of registration, each buyer shall be identified according to his VAT number in national databases.

Article 53<sup>178</sup>

*Weighing of fishery and aquaculture products*

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<sup>176</sup> **BE:** what is meant by persons authorized? Are they bodies or natural persons? **SE:** which criteria do you have to comply with to be "authorized"? **EL:** "After other fisheries products..", insert the words "..mentioned in Article 14..." **IT:** a list of wholesalers might be considered sufficient (wholesalers being in any case required to register with chambers of commerce). **DK, SE, FR:** what's the difference between para. 1 and para. 2 ("registered buyers" and "person authorized")? **SE:** when is para. 3 applicable? **COM:** see Basic Reg. Art 22.2.

<sup>177</sup> **UK, PL, ES:** why shall identification be done only with VAT number? **UK:** many buyers will be below the VAT threshold. **ES, PL:** allow also the tax identification number (NIF). **COM:** will look into this. **LT:** is the registered buyer of fisheries products from a fishing vessel referred to in this paragraph the same as an authorised body or person referred to in para. 2? Delete the second sentence of this paragraph since the issue of identifying the buyer should be left to MS' discretion. **DK:** are direct sales to individual consumers not included? **FI:** concerns about proportionality principle; this could increase administrative burden since consumers will have to register when they buy fish for their own use. Direct on-shore sales should be permitted without the obligation to register all buyers. **LV:** only buyers for commercial purposes should be registered.

<sup>178</sup> **FR:** confusing provision. **IT, UK:** too burdensome and costly. **UK:** does not support the principle that all fish should be weighed before it is sold. Use sample weighing procedures like those set out for frozen fish in the pelagic weighing regulation. **PT:** in the case of small pelagic fish, like sardines, weighing before can reduce the quality of the fish and involve an increase in labour costs, which would be unsustainable because of the low value of the product by kilogram. It must be possible to use estimates, as under the arrangements in force at present. **COM:** there is an obligation to weigh all pelagics, including sardines. **IT:** as Italy does not have fish markets at all landing places, it is practically impossible for all products to be weighed. Exempt vessels of less than 15 m in length which fish for no more than 24 h or entirely within territorial waters. **EL:** delete all mention of aquaculture products.



- 1.<sup>179</sup> All registered buyers purchasing fishery and aquaculture products shall ensure that all lots received are weighed on scales approved by the competent authorities. The weighing shall be carried out prior to the fish being sorted, processed, held in storage and transported from the place of landing or resold.
2. The figure resulting from the weighing shall be used for the completion of landing declarations, sales notes and takeover declarations.

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<sup>179</sup> ***DE:*** exclude freshwater aquaculture products. Include a specific provision for the weighing of frozen fish. Account must be taken of the fact that the weighing of individual cartons on discharge of frozen fish in ports (up to 200 000 cartons per fishing trip) is not at present possible. ***SE:*** agrees with exclusion of aquaculture products. ***FR:*** clarify if these provisions apply to both frozen and fresh fish. ***UK:*** clarify the reference to aquaculture here, as this term covers a broad range of fish farming. There is also an assumption that aquaculture buyers and sellers are controlled in the same way as commercial sea fishing, which is not the case ***EE, DK, FR:*** exclude "sorted" from this list. ***SE:*** fishermen must have the possibility to sort and process the fish on board the vessel in order not to let the fish be wasted. See Art. 19 in Reg. 1098/2007, to be used instead? In para. 2 the figure should only be used for the landing declaration. ***FR:*** delete "sorted", since fish is very frequently sorted on board before landing. ***DK:*** "sorted" should be amended to "graded" as the fish should be sorted after species if the weighing should fulfil its purpose. After "processed", add "by the buyer". ***NL, UK, BE, SE:*** problem with weighing before sorting. ***COM:*** agrees. Weighing can also take place after sorting. ***NL:*** otherwise there will be discrepancies between the figure in the sales notes or takeover declaration and that of the quantities established by auction centres, which would make cross check of data more difficult. ***UK:*** problem also with weighing before fish being "resold". ***DK, BE, FR, SE:*** weighing should be possible on board too. Modern vessels weigh the fish on board and there is no need to weigh twice. ***COM:*** this is problematic. ***LV:*** problem with weighing in cases when landed fish is frozen or mixed with water What can be done in such cases? Include a description of proper actions. Also, there is a problem linked to the weighing prior and after transportation because weigh loses occur during transportation (particularly in summer, hot weather and long transportation distances). Lay down the margin of tolerance for difference in weigh between the landed catch and that received in the place of destination after transportation. ***LT:*** ensure consistency with Art. 2(1) of Reg. 2406/1996. Fishermen must be responsible for sorting fish. ***BE:*** the provision will not make possible container transport. ***FR:*** weighing after sale should be possible.

- 3.<sup>180</sup> By way of derogation from paragraph 1, Member States may permit fresh fish to be weighed after transport from the place of landing provided that the fish could not have been weighed on landing and provided they are transported to a destination on the territory of the Member State that is no more than 20 kilometres from the place of landing.
- 4.<sup>181</sup> The competent authorities of a Member State may require that any quantity of fish first landed in that Member State is weighed in the presence of officials before being transported elsewhere from the place landing.

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<sup>180</sup> ***UK, IE, FR: the pelagic weighing Reg. speaks about 100 km. Keep the same rules here. FR, UK: this could be accompanied if necessary by a requirement to keep the fish in sealed containers. ES: delete the 20 km derogation. IT: why 20 km? EL, FR, BE: 20 km is too low. BE: container transports over longer distances must remain possible. EL: weighing should be allowed at the first point of sale regardless of distance; 20 km limit is inadequate to cover distances in Greece's island regions. FI, PL: 20 km is not enough for the pelagic fishery. COM: will look into this. PT: why does this paragraph not apply to frozen fish? COM: Art. 7 of Reg. 1542/2007 refers to 100 km for pelagic species, but the associated conditions on control are here very strict (have an observer on board, previous authorisation of competent authorities, written statement by the transporter with identification number). UK: stricter conditions for the pelagics are linked to the nature of this fishery. UK, FR: a similar provision to Art. 20.2 of the cod recovery plan would be more appropriate here. COM: physical inspection will be more burdensome but it can be considered. LT: problem with para 3 in connection with para 2: allowing fishery products to be transported from the place of landing without any landing declaration being completed can impede checks on the landing of fishery products.***

<sup>181</sup> ***IT: clarify what is meant by "official". PL: replace "may" by "shall". ES: include also control officers ("agentes controladores"). FR: would prefer "agent" in the sense of Art. 4 (6) to "fonctionnaire". Keep consistency in terminology. COM: could also have "agent". In any case this is left to MS to decide the person authorized to do this.***

*Article 54<sup>182</sup>*  
*Sales notes*

- 1.<sup>183</sup> Registered buyers, registered auctions or other bodies or persons which are responsible for the first marketing of fishery products landed in a Member State, shall submit electronically, within 2 hours after the first sale, a sales note to the competent authorities of the Member State in whose territory the first sale takes place. If this Member State is not the flag State of the vessel that landed the fish, it shall ensure that a copy of the sales note is submitted to the competent authorities of the flag Member State upon receipt of the relevant information. The accuracy of the sales note shall be the responsibility of these buyers, auctions, bodies or persons.
- 2.<sup>184</sup> Where the first marketing of fishery products does not take place in the Member State where the products have been landed, the Member State responsible for monitoring the first marketing shall ensure that a copy of the sales note is submitted to the authorities responsible for monitoring the landing of the products concerned and to the authorities of the flag Member State of the vessel within 2 hours after the receipt of the sales note.
- 3.<sup>185</sup> Where a sales note does not correspond to the invoice or to a document replacing it, 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.

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<sup>182</sup> ***FI:** there should be a reference in the article to the Council Directive 1966/2006 on Electronic Reporting, according to which registered buyers whose turnover of fishery products exceeds EUR 400,000 must report purchases of fishery products electronically. Since there are only 10 operators in Finland which fulfil this requirement, would prefer to apply the electronic reporting requirement in the future to all undertakings having a turnover of over EUR 200,000. **ES:** align the obligations and time limits with Reg. 1077/2008.*

<sup>183</sup> ***FI, UK, LT, NL, DK, SI, EL, ES, PL, PT, FR, IE, IT:** 2 hrs is too short. **PL:** need for transitional period. **DE:** as with the landing declaration sales notes should be transmitted within 2 hrs of the discharge log being adjusted. **BE:** could agree with 2 hrs if the time period of first sale is established at the end of the sales according to the clock. **LT:** extend to 8 hours. **SE:** better to have 24 or 12 hrs. **FI, FR, PL, NL, SI:** propose 24 hrs. **EL, IE, IT:** would prefer status quo, i.e. 48 hrs. **EL:** and it should only concern species enumerated in art. 14. **UK:** exemptions should be foreseen for small business to be consistent with logbook and landing declarations. **LV:** which "persons" are we referring to in this Art.? **COM:** the persons authorized by the competent authorities (See Art. 52). **SE:** clarify what exactly is covered by « after first sale ». **SI:** as regards the Mediterranean, sales declaration should only concern species that are in Reg. 1967/2006.*

<sup>184</sup> ***NL:** 2 hrs too short. Proposes 24 hrs.*

<sup>185</sup> ***IT:** too burdensome, this is a fiscal requirement, not for the fisheries authorities. **NL:** problem with NL version, adjust wording. **PL:** clarify that this article refers to circumstances where the sales document is not an invoice or document replacing it. **NL, EL, FR:** not clear what is meant here. **COM:** agrees it is not clear. Will take same wording as Art. 9.4 of Control Reg.*

*Article 55<sup>186</sup>*  
*Content of the sales notes*

The sales notes referred to in Article 54 shall contain as a minimum the following data:

- a)<sup>187</sup> the Community fleet register number and name of the fishing vessel that has landed the products concerned;
- b) the port and date of landing;
- c)<sup>188</sup> the name of the vessel's owner or master and, if different, the name of the seller;
- d)<sup>189</sup> the name of the buyer and his VAT number;
- e)<sup>190</sup> the relevant name or FAO alpha code of each species and its geographical origin expressed by reference to a sub-area and division or sub-division in which catch limits apply pursuant to Community legislation;
- f)<sup>191</sup> for all species subject to marketing standards, as appropriate, the individual size or weight, grade, presentation and freshness;
- g) 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);
- h) the place and the date of the sale;
- i) where possible, the reference number and date of invoice and where appropriate, the sales contract;
- j) where applicable, reference to the transport document referred to in Article 58.

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<sup>186</sup> ***IT:*** the amount of information to be provided is excessive. ***UK:*** has the price been deliberately dropped from this provision? ***EE, DK, NL:*** add the price. ***DK:*** give information on price according to marketing standards. ***FR:*** notes that these data are a "minimum" but that they are at the same time in some cases only required "as appropriate". ***COM:*** will look into this.

<sup>187</sup> ***BE, FR, UK, DK:*** delete reference to Community fleet register number. This information is not available to the buyer nor known by the seller. Should refer to the number on the vessel (external number).

<sup>188</sup> ***DK:*** why ask for the name of the vessel's owner?

<sup>189</sup> ***UK:*** many small operators do not have a VAT number. A unique number would be sufficient. ***SE:*** add « where applicable ». ***LT:*** the identification of the buyer should be left at the discretion of MS. ***ES, PT:*** allow for identification with tax identification number. ***COM:*** agrees.

<sup>190</sup> ***FR, UK:*** the geographical origin cannot be known and verified by the buyer. ***UK:*** this information should be taken from the logbook. ***DK:*** why is this alpha code asked here? ***COM:*** this code makes the work of inspectors easier. ***SE:*** catch area is already provided in other documents. Should be enough to have it once.

<sup>191</sup> ***NL:*** replace species by "products" since there are species for which marketing standards are laid down only if they are offered in a particular form

*Article 56*  
*Exemptions from sales notes requirements*

- 1.<sup>192</sup> The Commission, in accordance with the procedure referred to in Article 111, 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 fishery products landed from certain categories of Community fishing vessels having an overall length of up to 10 meters or for quantities landed of fishery 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 22.
- 2.<sup>193</sup> A buyer acquiring products up to an amount of 15 kg which are not thereafter placed on the market but used only for private consumption shall be exempt from the requirements of Articles 54 and 55.

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<sup>192</sup> ***DK, SE:*** delete. ***IE, ES:*** decision on granting exemptions should be up to MS. ***DK, SI, ES, PL, PT:*** do not foresee exemptions according to the length of the vessel. ***IT, FR:*** the derogation should apply automatically and not via comitology procedure. ***EE:*** does not support exemptions, since this could mean that in the transportation of fish from one state to another the traceability will disappear if in one MS this exemption is established but not applied in the other one. ***UK:*** delete reference to vessels under 10m. ***EL:*** vessels <10m are not subject to the sales note requirement therefore they do not need an exemption.

<sup>193</sup> ***FR:*** a general exemption to Arts. 52, 54 and 55 should be foreseen for cases of direct sale to consumer. ***EE, NL, PT:*** not foresee any exemptions to ensure perfect traceability. Monitoring arrangements in all MS must as far as possible be the same. ***LT, FR, BE, IE:*** should be more than 15 kgs. ***UK:*** prefers 25 kgs. ***ES, PL:*** would like 50 kgs. ***IE:*** not support extending the sales notes requirement to quantities of 15 kg and more, would prefer the status quo or leave to discretion for MS, subject to an overall threshold. If it was discretionary subject to a max then the 15 kgs would be OK, but would suggest 10. ***COM:*** does not exclude the possibility that MS decide the threshold and communicate it to COM for sake of transparency. ***BE, SE:*** add reference in para. 2 to Arts. 52 and 53.

*Article 57*  
*Take-over declaration*

- 1.<sup>194</sup> Without prejudice to specific provisions contained in multiannual plans, when the products are intended for sale at a later stage, a take-over declaration shall be submitted, if possible by electronic means, as soon as possible and not later than 2 hours after completion of landing, to the competent authorities or other authorised bodies 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 the holder of this declaration.
2. The take-over declaration referred to in paragraph 1 shall contain at least the following information:

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<sup>194</sup> ***LT:** clarify whether Arts. 52 and 54 apply to the sale of fishery products for which a takeover declaration has previously been completed. **IT:** this provision would entail a high cost. Stipulate a minimum lot for which a takeover is required. **UK:** Is electronic transmission compulsory? If not, delete "if possible by electronic means". What is meant by "at a later stage"? Take over declarations should only be required where the fish is either not being sold at the next available auction at the port of landing or is not being sold immediately to a registered buyer. **COM:** this is foreseen for cases in which the vessel is part of a company that sells in another MS. **BE, LT, SI, ES, PL, FR, IT, DK:** 2 hrs is too short. **LT:** extend to 8 hours. **SE:** should be correspondent with the time limit in Art. 54. **PL, SI:** 24 hrs. **ES, EL:** 48 hrs. **SI, EL:** and should only apply to species foreseen in Reg. 1967/2006. **DK, SE, UK, FR:** who has to submit this declaration? **UK, DK:** should be the owner of the fish. **COM:** it should be the owner or its representative. Will make this clear, will take same wording as in Art. 9.4 of Control Reg.). **FR:** delete reference in 2a) to the Community fleet register number, since this information is not available to the transporter nor known by the seller. The person responsible for takeover declaration cannot be responsible for accuracy of information such as the name of the vessel, the date of landing or the geographical area of origin or the weigh of each species.*

- a) the Community fleet register number and the name of the fishing vessel that has landed the products;
- b) the name of the vessel's owner or master;
- c) the relevant name or FAO alpha code of each species and its geographical area of origin expressed by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation;
- d) the weight of each species, broken down by type of product presentation;
- e) the port and date of landing;
- 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 58.

*Article 58*  
*Transport document*

- 1.<sup>195</sup> Fishery products landed into the Community, either unprocessed or after having been processed on board, that 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, if possible by electronic means, within 24 hours after the loading, a transport document to the competent authorities of the Member State in whose territory the landing has taken place.
2. 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 24 hours following the loading of the fishery 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.

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<sup>195</sup> ***DE:*** previously transporters had to produce movement documents before the goods were taken away. A document may now be submitted after removal of the goods, making inspection no longer possible. The existing rules should be retained. ***FI, UK, DK, BE, PL, FR, IT, SE:*** this proposed document would increase the administrative burden. Cross-checking of the transport document with the sales note and the fishing log would not add any value to the inspection. ***UK:*** the only possible value of the document is for carrying ex post checks. ***COM:*** this is a very important document because it contains also the place of destination of the fish. ***DK:*** would it not be better to have prior notification of transports of fish that are transported before first sale? Will the traceability system in Art. 50 not make this obligation superfluous? ***FI:*** It should be possible to grant exemptions on a national basis. ***SE, ES, LV, PT, FR, FI:*** 24 hrs is too short. ***LV, ES:*** would like 48 hrs as currently. ***LV:*** specially short time in cases when only a physical submission of documents is possible. ***SE:*** would it be possible to use here a copy of the landing declaration like the exemption currently in the Control Reg.? ***UK:*** Is electronic transmission compulsory? If not, delete "if possible by electronic means".

- 3.<sup>196</sup> The transporter shall be responsible for the accuracy of the document.
- 4.<sup>197</sup> The transport document shall indicate:
- a)<sup>198</sup> the place of destination of the consignment(s) and the identification of the transport vehicle;
  - b)<sup>199</sup> the name and Community fleet register of the fishing vessel that has landed the products;
  - c) the quantities of fish for each species transported in kilograms of processed or unprocessed weight, the name(s) and address(es) of the consignee(s), the place and date of loading and the geographical origin of each species, expressed by reference to a sub-area and division or sub-division in which catch limits apply pursuant to Community legislation.
- 5.<sup>200</sup> The competent authorities of Member States may grant exemptions from the obligation set out in paragraph 1 if the fishery products are transported within a port area or not more than 20 kilometres from the place of landing.
- 6.<sup>201</sup> Where fishery 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.

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<sup>196</sup> ***ES:*** the transporter cannot be responsible for drafting the transport document, only for transporting the document given to him by the owner of the goods. ***FR:*** the transporter cannot be responsible for accuracy of information such as the geographical area of origin, the quantities of fish, etc. ***COM:*** transporter has to know at least who has caught the fish and where it goes.

<sup>197</sup> ***EE:*** in c) add number of lots. Also, does each successive transport document to indicate all the data mentioned here? ***SE:*** catch area as information is being asked here again.

<sup>198</sup> ***LT:*** replace "transport vehicle" by "vessel".

<sup>199</sup> ***FR:*** delete reference in 2a) to the Community fleet register number, since this information is not available to the transporter nor known by the seller. ***LT:*** replace "fishing vessel that has landed" by "vessel that has landed", so that landings from transport vessels are included.

<sup>200</sup> ***FI:*** extend the possibility of exemption. ***FR:*** 20 km is too restrictive. Same comments as in Art. 53. ***PL:*** fish being transported should be accompanied by a document certifying its origin, therefore PL opposes the provision "...or not more than 20 km from the place of landing". ***SI:*** keep the possibility in Art. 13 (4) of current Control Reg.

<sup>201</sup> ***EE:*** Does this obligation proceed from the requirements for fishing vessels over 10 m length overall or is it obligatory to all catches?



## Chapter III

# Producer Organisations And Price And Intervention Arrangements<sup>202</sup>

### Article 59<sup>203</sup>

#### *Monitoring of producer organisations*

- 1.<sup>204</sup> 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 organisation 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 organisations 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 60<sup>205</sup>

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

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

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<sup>202</sup> **COM:** this chapter reflects current obligations in Reg. 1004/2000. **DK:** this chapter deals with CMO and should not be contained in the Control Reg.

<sup>203</sup> **SE, DE, FR, LT, NL:** why repeat this Art. here if already in Regs. 104/2000 and 2318/2001?

**COM:** the provisions do not create any new obligation but it is essential to have them here.

<sup>204</sup> **IT:** in c) the "immediate withdrawal" is not possible. **FR:** in c) "immediately" is not necessary since the decision has retroactive effects. **COM:** same wording as in Art. 6.1b) of Reg. 1004/2000.

<sup>205</sup> **NL:** this provision must be laid down in the CMO Reg. **SE:** would like to remove the word "all" in the first sentence.

- (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 61<sup>206</sup>*

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

- 1.<sup>207</sup> Member States shall carry out surveillance in maritime waters under their sovereignty or jurisdiction based on
  - (a) sightings of fishing vessels by inspection vessels or surveillance aircrafts,
  - (b) a Vessel Detection System as referred to in Article 11.
- 2.<sup>208</sup> 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.

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<sup>206</sup> **COM:** implements Art. 24 of Basic Reg. **IT:** delete. This would mean considerable cost for MS and seems to have little bearing on fisheries control and a far stronger impact in the broader context of maritime surveillance. **NL:** define "surveillance" in Art. 4 of this Reg. **COM:** agrees.

<sup>207</sup> **IT:** delete b), since it involves considerable costs and seems to have little bearing on fisheries control. **SE, FR:** why "maritime waters"? Should say Community waters. **COM:** Community waters. **SE, DK, RO, BE, PT, IE, MT:** as regards VDS in b), it should be added "if MS applies it" since VDS is not compulsory. **UK:** in b) either remove reference to VDS or add "where appropriate". Include a reference to VMS. **SI, PT:** refer in b) to VMS instead of VDS. **FR:** instead of b), mention "if appropriate, by means of any other surveillance means" (radar, AIS, etc). **NL:** in b) problem with NL version. It should read "vaartuig detectie systeem"(VDS) and not "satellietvolgsysteem" (Satellite Tracking System). **PL, LT:** same comment as in Art. 11. **PL, PT:** refer to other detection and identification methods together with a) and b).

<sup>208</sup> **FR:** clarify "appropriate follow up".

- 3.<sup>209</sup> 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 countries concerned. In case of a third country vessel, the surveillance report shall also be sent to the Commission or to a body designated by it.
- 4.<sup>210</sup> In the event that an official of a Member State sights or detects a fishing vessel engaged in activities that may be considered as an infringement to the rules of the Common Fisheries Policy, he shall without delay issue a surveillance report and send it to their competent authorities
- 5.<sup>211</sup> The form of the surveillance report shall be determined in accordance with the procedure referred to in Article 111.

*Article 62<sup>212</sup>*

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

- 1.<sup>213</sup> 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 fishery 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.

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<sup>209</sup> ***PT:*** *what is the objective here? **COM:** important in case of third countries having activities in Community waters. **ES:** all surveillance activities, in particular those relating to a flag state different from the inspecting MS, should be reflected in a surveillance report, therefore not only under the circumstances referred to here. Criteria on the proceedings to submit these reports as well as on the content and minimal requirements of these reports should be established. Include an article to regulate surveillance reports similar to Art. 67 on inspection reports. **DK:** if "a body designated by COM" is the CFCA, state this explicitly.*

<sup>210</sup> ***FR:*** *would prefer "agent" in the sense of Art. 4 (6) to "fonctionnaire". **PT:** the inspector (official) must take precautionary measures to prevent continued infringement, in accordance with national law. **SE:** after "competent authorities" add "of the Member State". **COM:** agrees.*

<sup>211</sup> ***NL:*** *it is important for the proper functioning of the system that the form of the report be determined in this way.*

<sup>212</sup> ***SE:*** *what is meant by "appropriate" in paras. 1 and 2? **COM:** this would be for example accompanying the surveillance with an inspection. **PL:** extend the list of sources of information on sighting (to include Commission bodies, RFMOs, etc). **ES:** need for a protocol to coordinate the actions specified in this article. Wonders whether this coordination will be developed within the mutual assistance scheme referred to in Art. 109.2. Questions why proceedings on inspection reports are not regulated, unlike in the event of surveillance reports.*

<sup>213</sup> ***NL:*** *should the flag MS also inform the other MS of an investigation?*

- 3.<sup>214</sup> Flag Member States, other Member States and the Commission or the body designated by it 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 63<sup>215</sup>*  
*Observers*

1. Observers on board vessels shall monitor the fishing vessel's compliance with the rules of the Common Fisheries Policy. They shall implement all the tasks of an observer scheme and in particular verify and record the vessel's fishing activities and relevant documents.

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<sup>214</sup> **FR:** delete or amend to leave MS discretion to decide what they do with this information on the basis of risk-analysis. Otherwise the administrative burden would be excessive. **IT:** clarify meaning of "examine". **PL, FR:** add "where appropriate". **NL:** what is the added value of this paragraph? Already covered in IUU Reg. **COM:** this provision already exists (Art. 49.2 of IUU Reg.). The main aim is to allow MS to use the widest set of information possible. **FR:** Art. 49.2 of IUU Reg. refers only to COM and not to MS. **DK:** if "a body designated by COM" is the CFCA, state this explicitly.

<sup>215</sup> **COM:** these principles will apply automatically when Council decides that an observer system has to apply. **SE:** this should be clarified in the article. Also, does this Art. impose an obligation for MS to have a programme for control observers on board fishing vessels? Would like to know what are the purpose, frequency and cost effectiveness of such a scheme. **PL:** this would increase costs. **LT:** only apply this article when strictly necessary. **LV:** add references to regulations or conditions when presence of observers is required. **EE:** complete the article with the point that "as soon as the observers find out an infringement, they shall immediately inform the competent authorities of the flag state". **FR:** delete article or amend substantially. **FR, UK IT, SE, BE, PT, ES:** the roles of observation and inspection seem to be mixed here. Observers only have a role of scientific observation and not of surveillance for enforcement or control purposes. **COM:** agrees. In fact, the report of an observer does not have the same value as the report of an inspector, although it can be useful for this second report. Surveillance reports are only established by the inspection authorities. **NL, DK:** make explicit in para 1. that this article. only applies when the decision has been taken to have an observer scheme. **COM:** will specify this. **NL, DK, ES, PT, PL:** the competences and role of observers must be clearly set out. **ES:** clarify legal status of observers. **PT:** if necessary, add definitions at the beginning of the Reg. **ES:** the role of the observers should be better laid down in Reg. 199/2008. **FR:** the precise role of observers must be decided on a case by case basis by a Council decision (for example in case of key species such as bluefin tuna the competences will be larger). **MT:** in para. 2, qualification should be enough. Delete "experience". **NL:** in para. 4, make clear that observers can use electronic communication means to draw up the reports. **COM:** agrees. **MT:** put para. 6. in line with multiannual plans (for example, the cost of observers in the ICCAT framework is for the operators). **IT, PL:** make clear who bears the costs. **NL:** it must be a requirement that all costs are charged to the operators. **PL:** who would bear the accommodation costs? **COM:** it is up to the MS to decide. **FR:** difficult for MS to charge the cost to the operators in the current crisis context. Concerns on costs.

2. Observers shall be qualified and experienced for their tasks. They shall be independent of the owner, the master of the vessel and any crew member. They shall not be a member of the crew of the vessel.
3. As far as possible 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. Observers shall draw up a surveillance report and forward it to their authorities and/or to the flag State authorities. Member States shall insert the report in the data base referred to in Article 69.
5. Masters of Community fishing vessels shall provide adequate accommodation for assigned observers, facilitate their work and avoid interference with the discharge of their duties. Masters shall provide observers access to relevant parts of the vessel, including the catch, and to the vessel's documents including electronic files.
6. All costs arising from the operation of 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 vessels flying their flags involved in the relevant fishery.
7. Detailed rules for the application of this Article may be adopted in accordance with the procedure referred to in Article 111.

*Article 64<sup>216</sup>*

*Admissibility of surveillance reports*

Surveillance reports drawn up by persons authorised by national and Community authorities to carry out surveillance shall constitute admissible evidence in administrative or judicial proceedings of any Member State. For establishing facts they shall be treated equally to surveillance reports of officials of the Member State where the administrative or judicial proceedings take place.

Appropriate follow-up action shall be taken on the basis of those reports.

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<sup>216</sup> ***FI, UK, IT, DE, DK, PL, RO, PT, IE, FR: judicial and administrative authorities must have full discretion about what evidence is admissible and to what extent is taken into account. DE: a basic principle of German criminal procedural law is "directness", i.e. only under specified conditions may statements by authorities be read out in place of a witness examination. COM: exists already in Art 28.5 of the Basic Reg. but this provision could be clarified if necessary. FR: take same wording as Art 28.5 of Basic Reg. Also, the same legal value cannot be given to a report by an observer and by an official. FI, FR: not clear what is meant by "follow up". PL: delete "follow up". FR: replace "persons authorized" by "official" ("agent") in the sense of Art.4(6).***

# TITLE VII INSPECTION<sup>217</sup>

## Chapter I General provisions<sup>218</sup>

### Article 65<sup>219</sup> Conduct of inspections

- 1.<sup>220</sup> Member States shall set up and keep up to date a list of officials responsible for carrying out inspections.
- 2.<sup>221</sup> 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 fish.
- 2.<sup>222</sup> 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 relating to it;

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<sup>217</sup> **FR:** this Title is called "Inspection" but this reference is not correct since Art. 77 covers prosecution of infringements.

<sup>218</sup> **EL:** the inspections provided for in Arts. 65, 67, 71 and 75, which involve carrying out checks in international waters, on other MS's vessels or on third country vessels, raise a legal problem that must be dealt with. Difficulties to implement arts. 65-69, which should be reworded. **RO:** align with IUU Reg.

<sup>219</sup> **PT:** "officials" should be replaced by "inspectors". Inspectors have an authority that officials may not have. **COM:** will use "inspector" in all cases. **EL, DE:** spell out the specific powers of inspectors.

<sup>220</sup> **FR:** in France there is not a single list of officials with inspection tasks (7 different authorities involved and officials do not carry out inspections as their main professional activity). Delete since there is not added value. **COM:** all MS should have this list already available, since it is necessary, for example, for the purposes of the national control programmes or for financial requests.

<sup>221</sup> **NL:** the enumeration seems arbitrary and incomplete. These inspection priorities may be better laid down by the committee procedure or left to MS. If this paragraph remains, then would like to include engine power.

<sup>222</sup> **PL:** correct numbering (repetition of 2). **NL, IT, UK, FR, IE:** not have a "check list". It is up to the inspector to decide what he has to check in each specific case. **EL:** the list only concerns fishing activity, it is not clear whether it also concerns CMO provisions. **BE:** is this list exhaustive? In d), add beam trawls. **PL:** in d) active gear should be marked too. **BE, DE:** add a point e) on "information on the engine". **COM:** list is not exhaustive since it is mentioned "in particular". Happy to add new elements or leave it as a "numerus apertus".

- 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 and
  - d) the marking of passive gear.
- 3.<sup>223</sup> Officials shall examine all relevant areas, decks and rooms where fishery products are caught, stored, transported, processed or marketed. They shall also examine catches, processed or not, nets or other gear, equipment, containers and packages containing fish or fishery products and any relevant documents 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.
- 4.<sup>224</sup> 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.
5. 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 111.

*Article 66<sup>225</sup>*  
*Duties of the operator*

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

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<sup>223</sup> ***PL:*** replace "areas" in first sentence by "spaces". Linguistic reserve. ***UK:*** the reference "to relevant areas, decks and rooms" could prevent access to all areas that an inspector may need to see (e.g. the wheel house). Therefore, delete "where fishery products are caught, stored, transported, processed or marketed". ***FR:*** clarify "question" persons.

<sup>224</sup> ***UK:*** have same wording as in Art. 4 of current Control Reg. ***PL:*** Standardize terms (official/officer/inspector).

<sup>225</sup> ***EE:*** duties of the masters should be included here or in a separate article.

*Article 67*  
*Inspection report*

- 1.<sup>226</sup> Officials shall draw up an inspection report after each inspection and shall forward it to their authorities. In case of the inspection of a fishing vessel flying the flag of another Member State or a third country, a copy of the inspection report shall be sent without delay to the flag Member State or the third country authorities concerned. In case of an inspection carried out in the waters under the sovereignty or jurisdiction of another Member State, a copy of the inspection report shall be sent without delay to that Member State.
- 2.<sup>227</sup> The officials shall sign their report in the presence of the operator, who shall also sign it and have the right to add any comment to it. The officials shall indicate in the logbook that an inspection has been made.
- 3.<sup>228</sup> A copy of the inspection report shall be handed over to the vessel master or his representative.

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<sup>226</sup> ***PT:*** clarify the legal value of these reports sent to other MS. ***NL, ES:*** specify time limit and formalities for drawing up and sending the report. ***ES:*** stipulate that the report must be signed ***FR:*** allow for electronic signature and electronic reports. ***LV:*** have in an annex to the Reg. the format of the report. ***COM:*** this will be done through comitology. ***IT, EL:*** what is the legal basis for allowing an inspection in the waters under the sovereignty or jurisdiction of another MS? ***SE:*** harmonise the last sentence with the final wording in Art. 71. ***EL:*** what about inspections of third country vessels? ***PL:*** in case of a report affecting a third country, transmission should be made by COM or body designated by it unless a MS has a cooperation agreement with the third country in question. ***ES, UK:*** transmission of reports should only take place where an infringement has been committed. ***ES:*** or where the flag state so requests. ***UK:*** replace second sentence of para 1 with wording similar to that used in Reg. 1042/2006.

<sup>227</sup> ***PT:*** the inspection report is not enough to confirm there is an infraction. ***EE:*** should say "in the presence of the operator and master of the vessel". ***PL:*** the presence of the operator is not necessary for the inspector to sign, could sign first the report, then give it to operator. ***COM:*** this is based on international rules. ***FR:*** add that the master should sign the report too. ***PL:*** is the report still valid if the captain refuses to sign? ***SE:*** is electronic databases considered? The inspectors do not have access to ERS information from the masters' computer on board according to common practise regarding COM Reg. 1077/2008. ***COM:*** the signature of the captain strengthens the value of the report.

<sup>228</sup> ***EE:*** should say "to the operator or his representative and the master of the vessel". ***SE:*** should only apply if required by the master. ***NL, FR:*** allow for digital inspection reports too. ***PL:*** This should apply also to vessels other than fishing vessels, therefore specify how notes are to be entered in an electronic logbook.



Article 68<sup>229</sup>

*Admissibility of inspection reports*

Inspection reports drawn up by persons authorised by national and Community authorities to carry out inspections shall constitute admissible evidence in the administrative or judicial proceedings of any Member State. In the establishment of facts they shall be treated equally to inspection reports of officials of the Member State where the administrative or judicial proceedings take place and appropriate follow-up action may be taken on the basis of those reports.

Article 69<sup>230</sup>

*Electronic database*

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.

Article 70<sup>231</sup>

*Community inspectors*

- 1.<sup>232</sup> A list of Community inspectors shall be established by the Commission in accordance with the procedure referred to in Article 111. Community inspectors shall be officials of a Member State or the Commission or the Agency.
- 2.<sup>233</sup> Without prejudice to the primary responsibility of the coastal Member States, Community inspectors shall carry out inspections in accordance with this Regulation on the territory of

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<sup>229</sup> ***FI, UK, IT, DE, DK, PL, RO, PT, IE, FR:*** same reserve as with Art. 64. ***SE:*** the definition officials (Art. 4(6)) should be used instead of persons authorised by national and Community authorities. ***FR:*** in FR replace "fonctionnaire" by "agent" in the sense of Art. 4(6).

<sup>230</sup> ***COM:*** this is a new provision. Previous experience in FR shows that the cost is not very high. ***FR, DK:*** support but need for common standards to ensure an efficient exchange of information between COM and MS. ***FI:*** supports the idea in principle, but the access to this database by authorities outside the fisheries domain is very problematic. ***PL:*** supports but details would need to be set out. Implementation of this measures in PL will require capital investment. ***IT:*** does not support. It should be up to the discretion of the police. ***COM:*** suggests FR to share its experience with other MS.

<sup>231</sup> ***FI:*** this provision has constitutional impact. Community inspectors should be public employees of the national authorities, the Commission or the Control Agency. ***PT:*** reserve on the conferral of official powers in MS on individuals designated by the COM. ***FI, PL:*** clarify the competences of Community inspectors in relation to the ones of national inspectors. ***PL:*** inspections should be made by group of inspectors including one of the concerned flag state. ***SE:*** place this article under Chapter II. Define Community inspectors and insert rules on identification of Community inspectors.

<sup>232</sup> ***NL:*** not convinced of the added value of designating officials of the Commission or the Agency to be Community inspectors. ***FR:*** does not support. Keep current lists, which only include inspectors from MS. ***COM:*** political issue.

Member States, in Community waters and on Community fishing vessels outside Community waters.

3. Community inspectors may be assigned for
  - a) the implementation of the Community control and inspection programmes adopted in accordance with Article 87;
  - b) international fisheries control programmes, where the Community is under an obligation to provide for controls.
- 4.<sup>234</sup> Community inspectors shall have the same powers as national inspectors. While performing their tasks and exercising their powers, Community inspectors shall comply with Community law and the national law of the Member State where the inspection takes place.
- 5.<sup>235</sup> Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

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<sup>233</sup> ***FR:*** does not support inspections by foreign inspectors on the national territory or in territorial waters.

<sup>234</sup> ***PT, NL, DK, FI, PL, FR, IE, RO, DE:*** reserve on giving the Community inspectors the same powers as national inspectors. ***NL, DK, BE, FI, PL, SE, DE:*** powers of Community inspectors should not go further than in current legislation. Make clear that Community inspectors do not have any execution powers. ***FI:*** otherwise Community inspectors would have more powers than national inspectors. ***NL:*** as regards enforcement powers, proposes taking over the existing text of Art. 8 (1) and (2) of COM Reg. 1042/2006 or, alternatively, follow the system in Art. 37 of Council Reg. 1290/05. ***COM:*** this is a purely political issue. In any case functions of Community inspectors are limited to the two cases in para. 3.

<sup>235</sup> ***PT:*** it should be kept within the Council competence.

## Chapter II

### Inspections outside the waters or the territory of the inspecting Member State<sup>236</sup>

#### Article 71<sup>237</sup>

##### *Inspections of 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.
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:
  - a) following authorisation by the coastal Member State concerned, or

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<sup>236</sup> **RO, DK, SI, IE, DE:** reserve on whole chapter. **FI:** it is possible that inspections in accordance with Arts. 71 and 72 would be carried out by naval vessels, which is problematic in the area of the Aland Islands, a demilitarised zone which naval vessels may not enter.

<sup>237</sup> **COM:** based on Art. 28 of Basic Reg., but here all Community waters are included (also the 12 miles). **BE, FR, IE, IT, FI, UK, NL, MT, PT, PL, SE:** reserve. Why go further than Art. 28 of Basic Reg.? This needs careful examination. **FI:** the powers should not be changed. Access without authorization to Finland's territorial waters to inspect vessels sailing under the flags of other countries is problematic. The authorization should be maintained without exception. Para 2. also poses problems in relation to a State's sovereignty to control vessels flying its own flag. **PT:** reserve regardless of whether the MS with sovereignty or jurisdiction over the water agrees. **SE:** it might be considered to extend the cooperation within the JDPs instead of having a general possibility to inspect vessels in the waters under another MS jurisdiction. Important to clarify the powers of inspectors from another MS. They should not have police or enforcement powers beyond the jurisdiction of their own MS. Prefer national inspectors or community inspectors to carry out inspections. **COM:** this is a political issue. A high number of infringements take place within the 12 miles. **PL:** will joint deployment plans in the Baltic continue? **COM:** yes, but in the framework of the specific Community control action programmes.

- b)<sup>238</sup> where a Specific Community control action programmes has been adopted in accordance with Article 87.
- 3.<sup>239</sup> A Member State may 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 72*  
*Requests for authorisation*

- 1.<sup>240</sup> 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 71(2)(a), shall be decided by the coastal Member State concerned within 12 hours of the time of the request or within an appropriate delay where the reason for the request is a hot pursuit commenced in the waters of the inspecting Member State.
- 2.<sup>241</sup> 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.<sup>242</sup> Requests for authorisations shall be denied in whole or in part only to the extent necessary for compelling reasons of national security. Denials and the reasons underlying them shall be sent without delay to the requesting Member State and the Commission or to the body designated by it.

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<sup>238</sup> ***UK:*** in this case, is it not the Community inspectors that take part in these programmes?

<sup>239</sup> ***ES:*** there should be clearer provisions on inspections in international waters, and, in particular, on the port to which the vessel should proceed, if it is required to do so. The applicable authorisations regime for these inspections should be the same as in Art. 73 regarding inspections on the territory of another MS. ***PL:*** replace "international waters" by "in waters not under the jurisdiction or control of the coastal state".

<sup>240</sup> ***EL:*** delete last part of the paragraph (.. "or within an appropriate delay....of the inspecting Member State". ***PL:*** clarify responsibilities of EC inspectors. ***PT, FI:*** 12 hrs is too short. ***SE:*** prolong the time limit to 24 hrs. Consider a request instead of a notification when the reason for inspection is a hot pursuit.

<sup>241</sup> ***EL:*** unclear as to its application.

<sup>242</sup> ***BE, FR, NL, PT, SE:*** denials limited only to security reasons goes too far. ***NL:*** delete " only to the extent necessary for compelling reasons of national security". ***SE:*** delete paragraph. ***FR, PT:*** as concerns controls in territorial waters the authorisation should be fully left to the discretion of national authorities without need to motivate a possible denial on the basis of national security.

Article 73<sup>243</sup>

*Inspections outside the territory of the inspecting Member State*

A Member State may carry out inspections in accordance with this Regulation on the territory of another Member State:

- a) following authorisation of the Member State concerned, or
- b)<sup>244</sup> where a Specific Community control action programmes has been adopted in accordance with Article 87.

### Chapter III

## Infringements detected in the course of inspections

Article 74<sup>245</sup>

*Procedure in the event of an infringement*

If the information collected during an inspection leads the official to believe that an infringement of the rules of the Common Fisheries Policy has been committed, he shall:

- a)<sup>246</sup> 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/her competent authority;

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<sup>243</sup> **COM:** new provision. However, there are examples already in EC legislation or in the practice, such as for bluefin tuna. **FI:** very sensitive issue, since Finland regards the article as problematic from the point of view of Finland's sovereignty. **PL:** need to enshrine in this article a possibility whereby Community inspectors carry out their activities in waters managed by RFMOs. **FR:** same comments as in Art.70. **SE:** same comments as in Art. 71. The word « territory » should be altered to « land territory » for clarification.

<sup>244</sup> **UK:** in this case, is it not the Community inspectors that take part in these programmes?

<sup>245</sup> **FI, IT:** does this Art. have to be drafted with so much detail? **IT:** it is redundant and states obvious things. Clarify the term "official". **COM:** will improve the wording. **ES:** reference should be made to inspectors or inspection agents, rather than to "officials". In any case, ensure consistency of terminology throughout the regulation. **IE, NL, PT, DK, MT:** reserve as refers to the assignment of penalty points. **SE:** this Art. seems to partly repeat Art. 67. **EL:** the articles in this chapter only refer to infringements by fishing vessels rather than generally to all activities within the scope of this proposal. **PL:** the Art. refers to "information collected during an inspection", but it may be that some set of data can only be checked at a later point, for example, during cross-check of documents. **ES:** in c), clarify what is meant by "immediately" ("sin demora" in ES version). **PL:** in d), replace "natural person" by "person" to cover legal persons.

<sup>246</sup> **PL:** comment on Polish translation of "report".

- d)<sup>247</sup> inform the natural person suspected of having committed the infringement or who was caught in the act while committing the infringement, that the infringement should entail assignment of appropriate penalty points in accordance with Article 84. It shall be noted in the inspection report.

*Article 75<sup>248</sup>*

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

If an infringement has been detected as a result of an inspection carried out in accordance with Article 71(2), the inspecting Member State shall immediately submit a summary inspection report to the coastal Member State. A full inspection report shall be submitted to the coastal and to the flag State within seven days from the time of inspection.

*Article 76<sup>249</sup>*

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

- 1.<sup>250</sup> The flag Member State or the coastal Member State in whose waters a vessel is suspected to have:

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<sup>247</sup> **ES:** should read "inform the natural or legal person...".

<sup>248</sup> **NL:** should not the coastal state and the flag state receive the reports at the same time? **FR, DK, IT, SE:** reserve, linked to the reserve on Art. 71. **DK:** the follow-up should be carried out by the coastal state. **PL:** replace the concept of "summary report" by "dispatch" (to be sent also to flag state authorities). **ES:** clarify "immediately" ("sin demora"). **FR:** replace "immediately" by "without delay".

<sup>249</sup> **COM:** this provision exists already in the framework of RFMOs (NAFO, ICCAT, etc). It strengthens the powers of inspectors in cases of serious infringements.

<sup>250</sup> **UK, FI, IE, NL, LT, PT, SE, PL, FR, DK, IT:** serious infringements can be "minor", so leave some discretion to MS to decide if vessels have to go to port for a full investigation in each specific case. **FR:** in this regard, add "where appropriate". **COM:** will look into this. **DK:** for vessels from the coastal MS, there are no legal reasons to demand that vessels should go to port for full inspection. That would be an additional "sanction" in the form of loss of fishing days that the coastal MS could be held liable for if it turns out that a MS cannot take somebody to court. **PL:** at the beginning of the paragraph, add: Without prejudice to rights and obligations arising under international regulations...". **LT:** not clear if these 500 kgs (10%) are calculated taking into account the permitted margin of tolerance in Art. 14.3. Suggests the following drafting for a): "misrecorded catches of more than 500 kg or 10% calculated taking into account the permitted margin of tolerance as laid down in Art. 14(3). **PT:** the limits in a) are very low. Should quantities recorded be small, this would involve errors measurable in grams. **FI:** the thresholds for the recording of catches should be more adaptable to different circumstances. **LV:** in a) delete 500 kgs and keep only the 10% threshold. Misreporting of catches is only one situation of serious infringement referred to in Art.3.6 of Reg. IUU. Which Reg. should prevail? **FR:** 10% in a) is too low. **PT, FR, IT:** reserve, since not yet decided on margins of tolerance. **PL:** replace "whichever is greater" by "whichever is higher". **SE:** why point out a specific infringement as in 1a)? **DK:** reserve on 1b) **FR:** letter a) is already covered by b), so a) is superfluous. Takes note that only in b) is recidivism taken into account. **COM:** the threshold would be in reality 15% (10% + 5% margin).

- a) misrecorded catches of more than 500 kilograms or 10%, calculated as a percentage of the logbook figures, whichever is the greater or to have
- b) committed any of the serious infringements as referred to in Article 42 of Regulation (EC) No 1005/2008 within one year of committing the first serious infringement,

shall require the 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. Inspectors may remain on board a fishing vessel until a full investigation as referred to in paragraph 1 has been undertaken.
- 4.<sup>251</sup> The master of the fishing vessel referred to in paragraph 1 shall cease all fishing activities and proceed to port as required.

## Chapter IV

### Prosecution of infringements detected in the course of inspections<sup>252</sup>

#### *Article 77<sup>253</sup>* *Prosecution*

Where an infringement of the provisions of this Regulation is discovered by the competent authorities in the course of inspection, the competent authorities of the inspecting Member State shall take appropriate action in accordance with Title VIII against the master of the vessel involved or against any other person responsible for the infringement.

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<sup>251</sup> ***FR***: change "as required" by "if he has been requested to do so".

<sup>252</sup> ***MT***: reserve on Arts. 77, 78 and 79 with regard to the extension of powers of Community inspectors. ***FI, IT, FR, PT, LT***: reserve on whole chapter since it has important implications in criminal law systems under national competence. ***FI***: the proposal should make clear that the criminal rules are discretionary or alternative. ***RO***: clarify the scope of the chapter. In ***RO*** version refers only to criminal proceedings. ***EL***: the articles in this chapter only refer to infringements by fishing vessels rather than generally to all activities within the scope of this proposal. ***UK, NL, FI, PL***: remove "prosecution" in the entire chapter since it has clear criminal connotations. ***NL***: replace "prosecution" by "follow-up of infringements" to cover also measures under administrative law.

<sup>253</sup> ***PL***: problems with "in the course of inspection": it should be possible to discover an infringement also in other cases. ***DK, IT, IE***: the existing rule is that it is the coastal MS and not the "inspecting MS" that can take appropriate action. ***ES, LV***: specify: Any other "natural or legal" person. ***FR***: take out the word "judiciaire" of title of this article in ***FR*** version ("poursuite judiciaire"). What is an "appropriate action" should be left to the discretion of national authorities.

*Article 78<sup>254</sup>*

*Transfer of prosecution*

The inspecting Member State may also transfer prosecution of the infringement to the competent authorities of the flag Member State or the Member State of registration or the Member State of which the offender is a citizen so long as this is done, with the agreement of the latter Member State and on condition that the transfer is more likely to achieve the result referred to in Article 81(2).

*Article 79<sup>255</sup>*

*Infringement detected by Community inspectors*

Member States shall undertake all necessary actions to prosecute any infringement that a Community inspector has discovered on their territory, in the waters under their sovereignty or jurisdiction, or on a vessel flying their flag.

*Article 80<sup>256</sup>*

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

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<sup>254</sup> **COM:** taken from Art. 31.4 of Control Reg. **PL:** clarify whole article. **ES:** problems of implementation. It should be possible to transfer proceedings to the State where the infringement was committed. Establish system to attribute competence when more than one State could be competent. **UK, PL, IT:** clarify "the Member State of registration". Is this not the same as "flag MS"? **COM:** agrees. will take out "MS of registration". **DK:** it should be the coastal MS and not the inspecting MS that has competence to transfer the proceedings. **IE:** proposes "action" instead of "prosecution". **COM:** agrees. **FR:** the modalities of transfer must be framed and published. Also, add a reference to Art. 51 of the IUU Reg. or to Art. 109 of this proposal and to the chapter on mutual assistance of the proposed implementation regulation of IUU Reg. **PL:** proposes using the expression "A MS discovering an infringement of the rules.." as an inspection is not the only way to find out an infringement.

<sup>255</sup> **COM:** provision taken from Art. 10 of Reg. 1042/06. **PT, PL, IT, FR:** reserve, since this is a consequence of the extension of powers of Community inspectors. **COM:** political issue. **IT:** concerned about protection of rights of its citizens. **UK:** replace "prosecute" by "to take appropriate action in respect of" to cover administrative as well as criminal sanctions. **PL:** make clear that there can be also administrative proceedings. **FR:** in any case, prosecution cannot be automatic, respect discretion of MS. Clarify "all necessary actions". **ES:** clarify whether it refers to any infringement that has been "discovered" or "committed".

<sup>256</sup> **COM:** provision taken from Art. 32.2 of Control Reg. **FI:** the "corrective measures in the absence of prosecution" falls within national competence.



- 1.<sup>257</sup> 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 prosecution in accordance with Article 78, the quantities illegally landed or transhipped may be set against the quota allocated to the Member State of landing or transshipment.
- 2.<sup>258</sup> 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 111 after the Commission has consulted the two Member States concerned.
- 3.<sup>259</sup> If the Member State of landing or transshipment no longer has a corresponding quota at its disposal, Article 28 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 81<sup>260</sup>* *Measures to ensure compliance*

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<sup>257</sup> ***PT, FR:*** clarify "appropriate measures". ***COM:*** means destruction of the illegal fish and all other measures that deprive the person responsible of the economic benefit expected from the infringement and prevent similar infringements in the future. ***FI, IT:*** it is up to a MS to decide what measures it considers appropriate. ***UK:*** there can be instances when it may not be readily apparent to the coastal MS that an infringement has been committed, e.g. breaches of national quota management rules. ***FR:*** does not support setting the quantities against the quota, since this is a collective sanction. Set out a procedure to allow for evidence of the MS default having to be provided and the possibility for MS to defend itself. ***ES:*** in no case should quotas be deducted from the MS where landing or transshipment takes place as a result of quantities illegally landed or transhipped by vessels of other MS. ***PL:*** clarify this refers to quantities kept on board the vessels, not discards.

<sup>258</sup> ***FR:*** not leave this important decisions to comitology procedure.

<sup>259</sup> ***PT, IT:*** clarify. Is there here a double discount (Flag state and state of landing)? ***PT:*** clarify, in particular, what is meant by "equivalent to the amount of the prejudice suffered ..by the flag Member State".

<sup>260</sup> ***FR:*** since IUU Reg. already foresees sanctions for "serious" infringements, this Control Regulation should refer to IUU Reg. for this type of infringement and only foresee sanctions for non-serious infringements to CFP rules. ***EL:*** the proposed enforcement measures are not worded clearly; e.g., if an infringement is detected in a transaction between fishermen and a processing firm upon whom will the sanctions be imposed?

- 1.<sup>261</sup> 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.<sup>262</sup> The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements and of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind.
- 3.<sup>263</sup> 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 the commission of the serious infringement.
- 4.<sup>264</sup> 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 the follow up of the infringement of the criminal or administrative proceedings or other measures taken and of any definitive ruling relating to such infringement, including the number of points assigned.

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<sup>261</sup> **FR:** *this paragraph goes beyond Art. 31.1. of current Control Reg. since it adds the words "systematically" and "suspected". Prosecution of infringements cannot be automatic, since discretion of administrative and judicial authorities must be respected. Would like to keep current legislation. COM: systematic controls are necessary, as expressed by the Court of Auditors report and the ECJ case law.*

<sup>262</sup> **DK:** *redraft to make meaning clear. IT: proceedings are not capable of depriving those responsible of the economic benefit. Only a judicial decision is. FR: this refers to serious infringements so IUU Reg. should apply. PL: replace "shall be capable" by "should".*

<sup>263</sup> **PT:** *why should the fine be proportionate to the turnover or to the financial advantage? COM: to be able to adapt to the economic power of the operator. NL: what would be the role of COM in assessing financial advantage? DE: delete since a binding requirement to match the fine to turnover or financial advantage violates the German constitutional principle of liability. ES: "Turnover" and "financial advantage" are not suitable criteria to determine sanctions. Prefer "economic value" or "market value" of the products, which is a more objective criteria and easier to assess. FR: problems with FR version.*

<sup>264</sup> **PT:** *reserve on the reference to "points assigned" since it links with the penalty point system. DE: delete, impossible under German law. IE: clarify meaning. FR: remove "without delay" since national proceedings apply and replace it by "as soon as possible and in any case within 2 months". An obligation to inform on the sanction and the judgment would be more appropriate than to inform about proceedings taken, since these could not come to an end but in this case, setting a deadline is not convenient. ES: MS should establish the organisms that would be notified and ways in which this could be done. The use of the administrative cooperation system in Art. 109 would facilitate things.*

Article 82<sup>265</sup>  
Sanctions for serious infringements

1. 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

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<sup>265</sup> **COM:** the objective is to have more harmonisation at EU level as regards sanctions. Consistency between this Reg. and the IUU Reg. is intended, with a new element being the introduction of thresholds. **UK, IE:** reserve. **ES:** in para. 1 include legal persons. **LV:** differentiate between responsibilities of legal persons and natural persons. **DE:** define "legal person". This should conform to the definition already developed as the standard for EU legal acts: "any legal entity having such status under the applicable national law, except for States or public bodies in the exercise of State authority and for public international organizations". **COM:** Art. 47 IUU concerning liability of legal persons is also applicable here. **PL:** clarify provisions: need for separate systems: a) for holders; b) for masters and crew. **SE:** it is essential to be able to make an overall assessment of the facts in each case. **LT, NL, SE, FI:** MS should be free to choose the need for and level of the sanctions. **RO, LV, SI, LT:** cannot go further than what was agreed in IUU Reg. **FI, IT, PL, FR:** very difficult to go beyond. **UK:** removing Art. 82.2 and 3 would deal with UK concerns. **PT, LV, PL, LT, NL, SE, DK, FR, DE, EL, FI:** not agree with including minimum sanctions in paras. 2 and 3. The impact of EUR 5,000 can be very different from MS to MS. Take into account different economic and social situations of MS. **PL:** use an indicator reflecting the economic situation of a given MS, such as the average remuneration. **SE:** guidelines on the level of sanctions would be more appropriate. **PT:** the same level of sanction conduce to an unequal treatment of Community citizens and introduced unbalance in the MS legal and sanction systems. **DE:** not agree with maximum fines either. Setting of fines is a matter for MS in order to preserve the consistency of criminal systems. According to case law of ECJ, "criminal sanctions" referred to in para. 6 are admissible only when "indispensable" for combating serious environmental damage. Proposes alternative wording for this article. **LT, SE:** take also into account the fisheries concerned (ex: small scale fisheries). **COM:** sanctions are currently discriminatory, depending on the MS in which the infringement takes place. The objective is to have a level playing field for sanctions, leaving MS full discretion between the minimum and the maximum level. Also, according to the case law of the ECJ, the Community has competence to apply these sanctions. This is more a political than a legal issue. Also, main thrust of this proposal lies in administrative and not criminal sanctions, although MS may impose the latter too. **PL LT, SE, DE:** define "serious infringement". Same definition as in IUU Reg.? **COM:** yes, see Art. 44 of IUU Reg. A definition could be included in this Reg. too. **NL:** please explain how this provision relates to Art. 43 of IUU Reg. If it covers same thing, delete from this proposal. **FR:** concerns about lack of articulation with IUU Reg. IUU Reg. already covers "serious infringements", so this proposal should refer to it for this type of infringements and should focus on other types of infringements. **ES:** ensure consistency between the level of sanctions under the proposed regulation and those in IUU Reg. **PT:** as regards para. 3, recidivism is a criminal concept. **COM:** does not agree. **SE:** what is meant exactly by "repeated"? how many times? **PT, DK:** clarify in para. 4 how to assess the prejudice to the fishing resources and the marine environment. **DK:** how does this interact with IUU Reg.? **FR:** does not support para 4, this should not be included in a Control regulation. Take into account instead the type, gravity duration and repetition of the infringement. **IE, DK:** of utmost importance to maintain para. 6 in its current wording. **PL:** concerns on compatibility of repeated infringements with national law.

administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.

2. In addition, for all serious infringements which level cannot be linked to the value of the fishery products obtained by committing the serious infringement, Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by an administrative fine of a minimum of at least 5.000 EUR and a maximum of at least 300.000 EUR for each serious infringement. The flag Member State shall be immediately notified of the sanction imposed.
3. In case of a repeated serious infringement within a 5 year period, a Member State shall impose an administrative fine of a minimum of at least 10.000 EUR and a maximum of at least 600.000 EUR.
4. In fixing the amount of the fines 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 in which the Euro has not been adopted shall apply the market exchange rate between the Euro and their currency of the last but one day of the month proceeding the one when the administrative fine is imposed, as published in the C series of the Official Journal of the European Union .
6. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.
7. The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular those described in Article 45 of the (EC) Regulation No 1005/2008.

*Article 83<sup>266</sup>*

*Immediate enforcement measures*

Member States shall take immediate measures to prevent vessels, natural or legal persons found *in flagrante delicto* while committing a serious infringement, as defined in Article 42 of Regulation (EC) No 1005/2008 from continuing to do so.

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<sup>266</sup> **UK:** unclear what is envisaged here. **FI:** delete "in flagrante delicto", not understandable. **COM:** could replace it by "caught red-handed" or "caught in the act". **PT, ES:** it is a criminal term. **ES:** replace by "flagrant illegal behaviour" which would cover both criminal and administrative infringements. **COM:** the term appears in Art. 44.3 of IUU Reg. **SE:** clarify "immediate measures". Add a definition here or reference to Art. 43 of IUU Reg. **PT:** "Immediate measures" are not possible, only interim measures. **FR:** equivalent to Art. 43 of IUU Reg. Do we need to repeat it here? How can a legal person be found 'in flagrante delicto'? **NL:** delete since no added value with respect to Art. 44 of Reg. 1005/2008. **PL:** same position as in previous article.

Article 84<sup>267</sup>  
Penalty point system

1. Member States shall apply a penalty point system on the basis of which the holder of a fishing authorisation receives appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy.

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<sup>267</sup> **COM:** new provision. The aim is both to strengthen a culture of compliance and to harmonise sanctions. 2 systems: points assigned to vessels (EU competence) and points assigned to captains (beyond EU competence). **RO, SI:** serious reservation. **BE, DE:** reserve of principle. **UK:** reserve. Not against the principle but many unanswered questions, for ex, what happens if the holder of a fishing authorisation with points attached to it sells his fishing vessel to someone else? **DK, RO, FI:** the system seems to lack proportionality. **NL, RO, FI:** this Art. creates a high administrative burden. **NL, RO:** Also, it could lead to double penalties (fines and withdrawal of authorisation). **DE:** these provisions run counter to the desired harmonisation of penalties in MS. **BE:** under BE law a judicial decision is needed. **IE, LV, IT, DK, UK, FR, BG:** support system but "devil is in the detail" and detailed implementing rules are necessary to avoid different systems in each MS. **NL:** the system should be developed further in this article and a more accurate indication should be given of the aspects which will be dealt with under the committee procedure. Who will assign penalty points in the case of infringements committed and prosecuted by a MS other than the flag State? **LT:** the system may vary from one MS to another, which would be against the objective of harmonisation. Lack of consistency in connection with Art. 82, which establishes the same minimum and maximum amount of fines for all MS whereas each MS would have discretion to assign the number of penalty points to individual infringements. **SE:** reserve, important to be able to make an overall assessment of the facts in each case. The term "penalty point" has criminal connotations. Prefers "remarks". Only use these points when the offence reaches a certain minimum level, not for minor offences. **PL:** points should only be assigned in cases of most serious infringements. Maximum number of points for same infringement should be the same across MS. If parallel system for masters and officers, then set penalties similar to those applied in maritime courts. **FR:** the number of points to be attributed to each infringement should be laid down in this regulation to ensure equal application across MS. The automatic character and the duration of the suspension are excessive and should be graduated. The system should not apply to all infringements of CFP rules. Criteria concerning the type, gravity, duration and repetition of the infringement should be introduced. **PT:** need for all-round revision of the proposal, e.g. as regards authorization suspension periods, for which there should be a wider range available, beginning with shorter times. this needs careful examination. Authorisations are issued to vessels and vessels are the instrument of the offence, therefore subjective responsibility is transformed into objective responsibility. However, the link must be kept between the offence and the legal or natural person. **DK:** clarify when the system would be set up. What are the consequences for vessels? **PL:** in case of a vessel owned by two owners, would there be joint liability? **BG:** exchange of experience and good practice is necessary. **COM:** the points are assigned to the vessel owner or holder of the authorisation not to the vessel. On double penalty, this is currently the case in penalty point systems applied to drivers in certain MS.

- 2.<sup>268</sup> When a natural person has committed or a legal person is held liable for an infringement of the rules of the Common Fisheries Policy, the appropriate number of points shall be assigned to the holder of the fishing authorisation as a result of the infringement. The holder of the fishing authorisation shall be entitled to review proceedings in accordance with national law.
- 3.<sup>269</sup> When the total number of penalty points equals or exceeds a specified number of points, the fishing authorisation shall be automatically suspended for a period of at least six months. That period shall be one year if the fishing authorisation is suspended a second time as a consequence of a permit holder being assigned the specified number of points. In case of the holder being assigned the specified number of points for a third time, the fishing authorisation shall be permanently withdrawn.
- 4.<sup>270</sup> In the event of a serious infringement, the penalty points assigned shall be at least, equal to half of the points referred to in paragraph 3.
- 5.<sup>271</sup> If the holder of a suspended fishing authorisation does not commit, within three years from the date of the last infringement, another infringement, all points on the fishing authorisation shall be deleted.
- 6.<sup>272</sup> Provisions for the application of this Article may be adopted in accordance with the procedure referred to in Article 111.

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<sup>268</sup> ***IE***: review procedure is too vague. Which national law applies? ***LT, LV***: distinguish between the liability of natural and legal persons. ***LT***: the person who has committed the infringement of the rules (in particular, a natural person) is not always the holder of a fishing authorisation. Clarify how penalty points would be assigned to specific vessels and to fishing authorisations issued to those vessels.

<sup>269</sup> ***DE***: what happens to the quota in these cases? Are the fishing rights deducted from quota? ***SE, DK, UK, FI, RO, PT, NL***: 6 months withdrawal is draconian and would mean bankruptcy for many operators. ***NL***: a shorter period (e.g. a maximum of eight weeks) would seem to be more appropriate. ***SE***: apply according to a scale, from 14 days up to 6 months. ***RO***: for other operators 6 months can be too short. Prefer to have a scale going from 15 days to 6 months depending on the gravity of the offence after an assessment of the specific case. ***IE, NL***: since a fishing authorisation is fishery specific, what happens in the case of mixed fisheries? ***NL***: it is the fishing licence and not the fishing authorization which should be suspended. ***PT, RO, FR***: delete "automatic", since there must be a margin of discretion for the national authority.

<sup>270</sup> ***PT***: unclear. ***FR***: notes that this is not consistent with IUU Reg. where withdrawal is possible from the first serious infringement and for an indefinite duration (Art. 45.4). Furthermore, Art. 82.7 of present proposal allows for a possibility of withdrawal in cases of serious infringements (not an obligation), also indefinitely. Therefore, the current point system should focus on non-serious infringements.

<sup>271</sup> ***LT***: unclear. Set a period after which, provided that no new infringements were committed, all earlier accumulated points would be deleted. Apply this provision to holders of all fishing authorisations, not only to those which have been suspended.

<sup>272</sup> ***DK, FI***: which provisions does the COM intend to decide by comitology? would be useful to have a doc from COM on this. ***FR, PT***: these important decisions should not be dealt with by comitology, but by the Council. ***COM***: this is necessary to have real harmonization.

- 7.<sup>273</sup> Member States shall also establish a penalty point system under which the master and the officers of a vessel receive appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy committed by them.

*Article 85<sup>274</sup>*

*National registers of infringements*

- 1.<sup>275</sup> Member States shall register in a national data base all infringements against 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 vessels flying their flag or by their nationals prosecuted in other Member States shall also be entered by Member States in their national data base on infringements, upon notification of the definitive ruling by the Member State having jurisdiction, pursuant to Article 82.

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<sup>273</sup> **RO:** does not support. **FI:** particularly problematic. **BE, SE, DK, LT:** questions the system under which the master and the officers of a vessel who are not the holder of the authorisation might receive penalty points. What is the purpose of this and how can it be used in practice? **LT:** in the absence of legal consequences, assigning penalty points to master and officer is meaningless. 'Vessels' do not commit infringements, therefore all penalty points should be assigned to the master. Consider imposing a fine to the owner in addition to the penalty imposed to the master. **NL:** clarify Art. What is the benefit of this system? Specify the consequences which would be attached to such penalty points or the type of conduct in respect of which they would have to be applied. Impossible to implement in the Netherlands, since there is no licensing requirements for masters or officers. **ES:** the crew cannot be subject to penalty points since they follow orders. **UK:** would prefer to take out "officials" since in UK action can only be taken against masters. **LV:** clarify correlation with para. 3 where the possibility is provided to grant penalty points only to legal persons. Also, change the words "shall" by "may".

<sup>274</sup> **SE, PL, IT, NL, FR:** concerns about protection and confidentiality of personal data. **FR:** concerns also about the access to and the use of this data. **SE:** only information relevant to a specific case should be provided. Suggests making a link to national legislation as to which kind of information should be provided. **PT:** the register should only show infringements finally adjudged to have been committed. Problem when a MS considers as a criminal infringement an act that does not constitute a criminal infringement in another MS. **LV, FI, RO:** concerned about costs and administrative burden. **LV:** add provisions that this database on infringements is available only for representatives of competent authorities of a MS. **IT:** would prefer to eliminate this Art. since not applicable. **NL:** keep possibility for a separate national register on criminal proceedings and not a specific one for fisheries. **FR:** set out rules on the necessary time for conservation of data and the arrangements for transmission of information among MS. Consistency in terminology as regards "vessels"; "fishing vessels", etc. **ES:** inquiries whether the communications foreseen here will take place within the administrative cooperation system in Art. 109.

<sup>275</sup> **RO:** the content of this database seems disproportionate. What about nationals that do not hold authorisations? **FR:** not contemplate the case where the offence is still being prosecuted. **PL:** have uniform database for point systems across MS.

- 2.<sup>276</sup> When prosecuting an infringement against rules of the Common Fisheries Policy, Member States shall systematically request other Member States to provide information in their national data bases, on the fishing vessels and persons suspected of having committed the infringement in question or caught in the act while committing the infringement in question.
- 3.<sup>277</sup> Where a Member State requests information from another Member State in relation to the prosecution of an infringement, that other Member State shall provide the relevant information on the fishing vessels and persons in question.

## TITLE IX CONTROL PROGRAMMES

### *Article 86<sup>278</sup>*

#### *Common control programmes*

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

### *Article 87<sup>279</sup>*

#### *Specific Community control action programmes*

- 1.<sup>280</sup> The Commission in accordance with the procedure referred to in Article 111 and in concert with the Member States concerned may determine which fisheries shall be subject to Specific Community control action programmes.

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<sup>276</sup> ***IT:*** does not support. ***DK:*** requests for information should not take place during the prosecution. ***EE, PL:*** data should not be changed too often to avoid administrative burden. ***EE:*** twice a year as established in the North Atlantic would be reasonable.

<sup>277</sup> ***EE:*** if a MS starts proceedings against a vessel of another MS, it shall inform the latter thereof to avoid that both MS prosecute the same infringement. It could be that a MS only gets information on infringements of its vessels from the annual reports of other MS. ***LV:*** add that the competent authority of other MS can request information only concerning vessels of its flags.

<sup>278</sup> ***COM:*** existing legislation. ***MT:*** add "joint" or "common" before "initiative". ***PL:*** add at the beginning: "Without prejudice to common operations conducted under annual control programmes established pursuant to Council Regs in the form of Commission decisions establishing control and inspections programmes for species covered by multiannual programmes.."

<sup>279</sup> ***COM:*** see Art. 34.c of Control Reg. These specific control programmes are foreseen for multiannual plans. ***FR:*** consult RACs and Control Agency on these programmes. ***COM:*** they are consulted formally on any proposal for a multiannual plan and also informally on any debates on the issue. ***PL:*** reverse the order of Arts. 87 and 86, as Community programmes are more important.

<sup>280</sup> ***DK:*** have criteria as to when COM can propose these specific control programmes. ***FR, PT:*** this decision is not for the COM but for the Council (ex: linked to a recovery plan) ***COM:*** agrees.



- 2.<sup>281</sup> The Specific Community control action programmes referred to in paragraph 1 shall state the objectives, priorities and procedures as well as benchmarks for inspection activities. Such benchmarks shall be revised periodically after an analysis has been made of the results achieved.
- 3.<sup>282</sup> When a multiannual plan has entered into force and before a Specific Community control action 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 Community control action programmes, particularly as regards required human and material resources and the periods and zones where these are to be deployed.

## Title X

### Evaluation, management and control by the Commission

#### *Article 88<sup>283</sup>* *Responsibilities of the Commission*

- 1.<sup>284</sup> 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 on-the-spot visits and inspections and shall facilitate coordination and cooperation between them. For this purpose the Commission may, on its own accord and by its own means, initiate and carry out inquiries, audits and inspections. 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;

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<sup>281</sup> ***DK, SE, FR:*** apply a risk based management scheme for benchmarks. ***DK:*** proposes second sentence as "Such benchmarks shall be established based on risk management and shall be revised periodically after an analyses has been made of the results achieved". ***COM:*** supports.

<sup>282</sup> ***COM:*** new.

<sup>283</sup> ***COM:*** Art. 29 of Control Reg. and Art. 27 of Basic Reg. ***PL:*** Ensure that COM acts in agreement with the Control Agency.

<sup>284</sup> ***SE:*** the list a) to g) should be left to implementing provisions. ***IT:*** delete the list since this is already in Art. 92. ***COM:*** finds necessary to keep this list. ***ES:*** COM should communicate with the MS concerned to facilitate the inspection process. ***COM:*** inspections without notice exist already and never raised any problem. ***DK:*** reserve on the extension of powers of COM. ***NL, PL:*** in letter f) the term "prosecution" has a criminal connotation. ***NL:*** replace "prosecution" by "follow up of infringements". ***PL:*** administrative proceedings should be equivalent to prosecution.

- 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 prosecution of infringements;
  - g) the cooperation between Member States.
- 2.<sup>285</sup> The Commission shall issue written instructions to its inspectors indicating their authority and the objectives of their mission.

*Article 89<sup>286</sup>*  
*Programmed 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, the Commission shall establish appropriate contacts with Member States with a view, wherever possible, to establish a mutually acceptable control programme.
2. If the control and inspection operations envisaged in the framework of the initial control and inspection 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 control and inspection programme.
3. 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 officials the opportunity to evaluate the specific control and inspection operations. Member States shall in particular take all necessary steps to ensure that the control and inspection missions are not subject to publicity that is harmful to the control and inspection operations.
4. In case of sea or air controls and inspections, the commander of the vessel or aircraft shall be in sole charge of the operations. In exercising his command he shall take due account of the control and inspection programme referred to in paragraph 1.

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<sup>285</sup> ***PT:*** COM should inform MS of scope of mandate of inspectors. ***COM:*** this is what this para. foresees.

<sup>286</sup> ***COM:*** Art 29.2 of Control Reg. Verification at notice. ***PT:*** COM must take account of the availability of MS's inspectors, so that their national inspection and monitoring responsibilities are not undermined. ***SE:*** include a reference to Art. 29.2c) in current Control Reg. that the inspectors shall abide by the rules and procedures laid down by the Commander. ***FI:*** in para. 3, which difficulties are meant here? Para 4, fist sentence is problematic during the implementation of JDPs, where vessels's movements are directed by the coordinator of the control campaign and therefore the commander of the vessel is not in sole charge of the operation.

- 5.<sup>287</sup> 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, albeit at short notice, 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.

*Article 90<sup>288</sup>  
Autonomous verifications*

- 1.<sup>289</sup> Commission inspectors may, in the context of verification without prior notice, conduct observations on the implementation of this Regulation.
- 2.<sup>290</sup> During their observations, Commission officials, without prejudice to applicable Community law, and complying with the rules of procedure provided for in the laws of the Member State concerned, shall have access to the relevant files and documents and to the public premises and places, vessels and private premises, land and means of transport where the activities covered by this Regulation take place, in order to collect data (not containing named references) necessary for the accomplishment of their tasks.

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<sup>287</sup> ***PL, FR, PT:*** oppose. *It should not be compulsory to make national officials available to accompany COM officials. MS should be able to refuse to this. SE:* clarify that this is optional. ***FR:*** this could lead to confusion of roles which could be detrimental to relations among MS. ***PT:*** what is the purpose here? ***COM:*** this is optional.

<sup>288</sup> ***COM:*** Art. 29.3 of Control Reg. Verification without notice but limited to observation tasks. ***FR:*** opposes, these powers should be reserved to national inspectors. ***BE:*** the title should be "autonomous observations". ***PT:*** in view of the powers conferred on inspectors in different MS, it is important to ensure that COM inspectors operate at the same level in all MS. ***FI:*** what is different from an inspection? Consistency of terminology ("inspector" in para. 1 and "official" in para. 2). Also, COM "official" is not always a "fonctionnaire". Does not support the extension of measures which infringe the inviolability of private property in the form proposed. Opposes the significant use of public power of the Commission inspector and those carrying out inspections of private premises which could, according to the proposed text, act other than as agents of government authority. ***NL:*** the powers relating to the access to private areas and private documents are not in keeping with its national system of competences and the protection of privacy. Make clear who is responsible for monitoring the exercise of such powers. Furthermore, the means are disproportionate to the objective.

<sup>289</sup> ***IT:*** clarify "conduct observations".

<sup>290</sup> ***PT, FR, ES, DK:*** excessive. To have access to some of these data and places (for ex, private premises) a judicial decision is necessary. ***DK:*** how will COM ensure that its officials respect the national procedures of MS? Should autonomous verifications not only allow for observations accessible from public places?

*Article 91<sup>291</sup>*  
*Autonomous inspections*

- 1.<sup>292</sup> When there is reason to believe that irregularities occur in the application of the rules of the Common Fisheries Policy, in particular in the implementation of multiannual plans, the Commission may carry out autonomous inspections. The Member State concerned shall accept the autonomous inspections and shall ensure that the bodies or persons concerned accept to be submitted to such inspections. The national authorities of the Member States concerned shall facilitate the work of Commission officials.
- 2.<sup>293</sup> Commission officials may carry out inspections on fishing vessels, transport vehicles as well as on the premises of businesses and other bodies with activities relating to the Common Fisheries Policy. They shall have access to all information and documents needed to exercise their responsibilities. They may in particular request the presentation of the logbook, landing declarations, catch certificate, transshipment declaration, sales notes, business records and other relevant documents from fishermen, fishing companies and companies transporting, processing or trading in fisheries products.
- 3.<sup>294</sup> Commission officials shall have the same powers as national inspectors. They shall present a written authority stating their identity and capacity. In the exercise of their duties on the territory or in waters under the jurisdiction of a Member State, the procedural rules of that Member State shall apply.

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<sup>291</sup> **COM:** new provision. *Inspection when there is suspicion that a MS does not respect its obligations. Community inspectors are given same powers as national inspectors. PT, DK, RO, PL: reserve of principle. RO: cooperation between Community and national inspectors should be exhausted before Community inspectors can carry out autonomous inspections. Otherwise, national control programmes would be weakened. COM: this is a practice that exists since 1998 (for ex in NAFO area), so COM would like to build on this. FR: same comments as in previous article. ES: if COM produces a control report, a time-limit for the inspected MS to make observations should be envisaged. BE: why are these inspections called "autonomous" if inspectors from MS are also present? PL: clarify the extension of Commission competence. "Official" and "inspector" seem to be used interchangeably. COM: will ensure consistent terminology.*

<sup>292</sup> **PT, FI:** what is understood exactly by "facilitate"?

<sup>293</sup> **PT:** a judicial decision is necessary in some cases. **PL:** competences of COM inspectors go beyond powers of national inspectors.

<sup>294</sup> **SE, BE, NL, PL, PT, FI, DK, FR, PL:** reserve on COM officials having the same powers as national inspectors. **FI, SE:** make clear that they do not have police powers. **FI:** also, clarify the definition of Commission official. **NL:** same comments as on Art. 70. **PT:** national inspectors are civilly liable for any damage, so COM inspectors would have to have the same. **COM:** MS have the main responsibility for fisheries control, but COM has to ensure that they comply with their obligations in this regard. COM inspectors do not have executive powers.

- 4.<sup>295</sup> Officials of the Member State concerned shall be given the possibility to be present during the inspection and shall, at the request of the Commission officials, assist them to carry out their duties.
- 5.<sup>296</sup> All operators may be subject to autonomous inspections where these are considered necessary. Where undertakings oppose an inspection, the Member State concerned shall afford Commission officials the necessary assistance including by the police authorities, to enable them to carry out the inspection.

*Article 92<sup>297</sup>*  
*Audit*

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 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;
- g) designated ports.

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<sup>295</sup> ***IT:*** clarify the meaning of "official". ***PL:*** the presence of MS official should be compulsory and not optional.

<sup>296</sup> ***NL, FI:*** remove reference to police. Assistance may be provided by other authorities than the police. ***FI:*** who has to consider the assistance "necessary"?

<sup>297</sup> ***SE:*** this provision seems to be a repetition of Art. 88.1. ***FR:*** in c) does not support the Commission power to assess the administrative organisation of MS, including the adequacy of the available staff and the available means. ***DK, SE:*** both d) and g) refer to designated ports. What is the difference? ***IT, DK:*** in f), reserve as regards COM power to assess national judicial systems. ***PL:*** same reserve as in Art. 91.

*Article 93<sup>298</sup>*  
*Inspection and audit reports*

- 1.<sup>299</sup> The Commission shall inform the Member States concerned of the findings of autonomous verifications and of autonomous inspections within one day after they have taken place.
- 2.<sup>300</sup> Commission inspectors shall draw up an inspection report after each inspection. The report shall be made available to the Member State concerned within one month after the conclusion of the inspection. Member States shall have the possibility to comment on the findings of the report.
- 3.<sup>301</sup> The Commission shall draw up an audit report after each audit. The report shall be made available to the Member State concerned within one month after the audit. Member States shall have the possibility to comment on the findings of the report.
- 4.<sup>302</sup> Member States shall take the necessary action on the basis of the report referred to in paragraph 2 and 3.
- 5.<sup>303</sup> The Commission may publish the inspection and audit reports, together with the comments of the Member State concerned, on the secure part of its official website.

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<sup>298</sup> ***ES:*** add a new paragraph on the need for COM to report to the Council periodically about the main findings concerning the different fisheries where controls have been carried out.

<sup>299</sup> ***ES, PT:*** one day is too short. ***ES:*** would prefer 10 days for normal cases and leave 24 hrs only for urgent cases. Specify that the time-limit will be counted from the receipt of the document in the official language of the MS.

<sup>300</sup> ***ES:*** there should be a deadline for MS concerned to reply. ***PT:*** how can MS contradict reports if they were not present? ***FR:*** MS should have the right to comment on the inspection and audit reports, as is currently the case.

<sup>301</sup> ***ES:*** there should be a deadline for MS concerned to reply.

<sup>302</sup> ***NL:*** clarify what is meant by "necessary action".

<sup>303</sup> ***UK, DK:*** replace "may" by "shall". ***ES, PL:*** only the final version of the reports should be sent for publication after insertion of comments by concerned MS.

*Article 94<sup>304</sup>*  
*Follow-up of inspection and audit reports*

- 1.<sup>305</sup> Member States shall provide the Commission with such information as it may request on the implementation of this Regulation. In submitting a request for information, the Commission shall specify a reasonable time limit within which the information is to be supplied.
- 2.<sup>306</sup> 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 inspectors may participate.
- 3.<sup>307</sup> 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.<sup>308</sup> 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 inspections referred to in Articles 89, 90 and 91 or in the audit referred to in Article 92, the Commission shall establish an action plan with that Member State. The Member State shall take all necessary measures to implement this action plan.

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<sup>304</sup> ***PL:*** need constructive dialogue. ***DK:*** how does this article relate to the provision about real time access to data for the COM (Art 108.2)? Specify that COM only requests for data that are strictly necessary to analyse a specific problem and that it will take into account the burdens which the request will imply for MS. ***DK, DE:*** add a new Art. 94bis on "Simplification of control" to enable COM to suspend for a limited period certain control provision in a MS in cases where they are duplicated by other control systems in the MS, mainly in the framework of a reliable traceability system.

<sup>305</sup> ***FR:*** clarify "reasonable time limit".

<sup>306</sup> ***SE, PT:*** clarify what is meant by "administrative inquiry". ***COM:*** provision already exists in Art. 30.1 of Control Reg. "Administrative inquiry" is a second stage to follow up irregularities already identified and can eventually lead to an "action plan". ***PT:*** clarify to which extent "Commission inspectors may participate" in an administrative inquiry. ***PL:*** COM should guide MS on how to solve problems and how to obtain material or financial support.

<sup>307</sup> ***FR:*** clarify "reasonable delay".

<sup>308</sup> ***PT:*** clarify meaning of "action plan". ***DK:*** greater transparency is needed.

**TITLE XI<sup>309</sup>**  
**MEASURES TO ENSURE COMPLIANCE BY MEMBER STATES**  
**Of COMMON FISHERIES POLICY OBJECTIVES**

**Chapter I**  
**Financial Measures**

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<sup>309</sup> ***NL: need for a clear link between an individual MS's shortcoming and the sanction which COM may impose. Decisions by COM must be properly justified and there must be effective channels for appeals. Clarify when and under what circumstances the various measures may be imposed by COM. Make clear whether all measures may be imposed cumulatively.***



<sup>310</sup> **COM:** conditionality of Community financial assistance exists in other domains, such as structural funds and agriculture, and, in the fisheries sector, in Art. 16 of Basic Reg. ECJ case law has ruled the legality of this conditionality, provided that the principle of proportionality and the defence rights are respected (which is the case here). **UK, DK, SE:** supports principle but work out the detail. **ES, FR, PT, BE, PL, IT, UK, DK, NL, BG, FI:** the article is too vague. **NL:** there must be a clear link between deductions from EFF assistance and the contested behaviour. **ES, PT, IT, UK, SI:** In 1b) clarify "serious threat". **UK:** how is the "serious threat" to be measured? **PT, IT:** clarify "information available"? **FR, RO, IT, EL, BE, SI, PL, ES, LT, FI:** do not support as the scope is too wide. **ES:** Community financial assistance should not be linked to this Regulation. **FR, PT:** Oppose. Suspending financial assistance can undermine compliance with CFP objectives, since it can mean that a breach of rules in one sector affects funding for another. **PT:** this proposal constitutes a penalty and, in that sense, it should be a result of a procedure where both parties have the same possibility to intervene and a decision should be taken by an equidistant and independent entity (the Court). If funds are removed to punish a specific case of non-compliance this could lead to further non-compliance due to a lack of funding. **EL:** too severe, can lead to important socio-economic consequences. **RO, LT, FI:** lack of proportionality. **RO, BE:** the provision gives too much discretion to COM. **LT:** there are not enough guarantees in the procedure allowing MS to provide explanations. **BE:** more transparency is needed. **RO:** infringement procedure should be enough. **PT, NL:** would like written explanation from COM of the reasoning behind this proposal. **PL:** it is important to avoid collective responsibility. The burden of proof should rest with COM and this should be made more clear. **LT:** cases of suspension of financial assistance and conditions for suspension are already laid down in Reg. 1198/2006 and 861/2006. **IT:** Reg. 1198/2006 has a much wider scope than control. **SI:** does not see correlation of suspending all aid in para. 1. **DK:** in para. 3, add "...of its findings relating to failures in the control system of the MS and documentation for that and its intention to adopt the decision". **COM:** agrees. Also, can supply a non-paper with ECJ rulings on the issue and examples of EC legislation in other domains. **COM:** reference to "serious threat" is already made in Art. 7 of Basic Reg. and was used to close the bluefin tuna fishery last year. This definition must be determined on a case-by-case basis (ex: very small overfishing of a stock subject to a recovery plan might constitute a serious threat). Suspension of aid is a last resort, to be only used if there is evidence of a clear intention by a MS not to comply with this regulation. These are not sanctions, but counter-measures to prevent failures of implementation. COM will not have full discretion as many safeguards for MS are built in (ex: the right to defend themselves or the real economic link in para. 6).

- 1.<sup>311</sup> The Commission may decide to suspend for a maximum period of eighteen months all or part of the payments of the Community financial assistance under Council Regulation (EC) No 1198/2006 and Article 8, paragraph a, of Council Regulation (EC) No 861/2006 where there is evidence that:
- a) the provisions of this Regulation have not been complied with as a result of an action or omission directly attributable to the Member State concerned, and that
  - b) this 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, as 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.<sup>312</sup> 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. 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.<sup>313</sup> 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

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<sup>311</sup> **BG:** *it is necessary to establish detailed rules concerning its proportional application in compliance with the fishing sector of each MS.*

<sup>312</sup> **PT:** *too vague, make reference to parameters by which to gauge both nature and seriousness.*

<sup>313</sup> **PT:** *specify "circumstances".*

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.<sup>314</sup> Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

## Chapter II Closure of fisheries

### *Article 96<sup>315</sup>*

*Closure of fisheries for failure to comply with the objectives of the Common Fisheries Policy*

1. Where a Member State does not respect its obligations for the implementation of a multiannual plan, and where the Commission has reasons to believe that the non respect of those obligations is particularly detrimental to the stock concerned, the Commission may provisionally close the fisheries affected by those shortcomings.

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<sup>314</sup> ***PT, PL, FR: comitology should not apply here.***

<sup>315</sup> ***DE, UK, SE: supports principle. ES, IT, FR, FI: should only apply in exceptional and clearly demonstrated cases. IT, ES, UK, PL, FR, PT, NL, DK: very vague provision. Need for clearer wording. IT: define "obligations for the implementation of a multiannual plan". COM: obligations contained in control provisions of multiannual plans. UK, NL, PT: clarify "particularly detrimental" PT, NL: clarify "reasons to believe". FR, FI: closure should not be based on suspicions ("where the Commission has reasons to believe"). NL: clarify "provisionally close". DE, LT, PL: make clear that closure can only affect MS in question and not all MS. Add at the end of para 1 "for the Member State concerned". COM: agrees. PL: concerns about shifting of burden of proof. Clarify what information is sufficient to result in a closure. Would like more provisions for a dialogue between MS and COM. MS should be allowed to close the fishery. PL, FR, NL: would like a deadline for the lifting of closures. FR: the ten day limit for MS to reply is too short. Would prefer a month. COM: 10 days is a reasonable time. More time can mean a very significant overfishing. PT: how does this article apply to multi-species fisheries? NL: would have permanent closure if MS or COM disagrees. How to get out of that? FR, DK, PL: COM should communicate to the MS concerned the evidence of its default. DK: in para. 2 add "...of its findings and documentation for that and set a deadline of no more than 10 working days". COM: agrees. Wording will be made clearer and could take Art.7 of Basic Reg. as a reference. Currently if a MS does not respect plan COM has no means to protect the resource and this can impact on all MS. This is not an automatic measure and will only been used in extreme circumstances.***

2. The Commission shall inform in writing the Member State concerned of its findings and set a deadline of no more than 10 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 this 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.
5. 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<sup>316</sup>

### Deduction and transfers of quotas

#### Article 97<sup>317</sup>

##### Deduction of quotas

1. When the Commission has established that a Member State has overfished its quota, allocation or share of a stock or a group of stocks available to it 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:

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<sup>316</sup> **FR:** this chapter would be better contained within a resource management regulation, not a control regulation. **UK:** supports principles in this chapter but would like a de minimum provision, e.g. 100 t. Also, on the banking of quota, would suggest that this is strengthened from 2 to the previous 3 years. **PT:** when introducing a sanction (multiplying factor) it should be a result of a procedure where both parties have the same possibility to intervene and a decision should be taken by an equidistant and independent entity.

<sup>317</sup> **COM:** the only novelty is the multiplying factors, which are higher than in current legislation and, in para. 2, the fact that the repeated nature of the overfishing is taken into account. Aim is to avoid systematic overfishing by some MS. **PT:** the proposal disregards that reducing a MS's quota as a result of what may be an unusual year will leave the MS in a worse position for the following year/s, thereby increasing the risk of non-compliance COM should monitor catches reported by MS and itself take steps to close fishers in time. **SE:** this should apply to stocks with quotas only. **SE, PT, PL, ES:** does this cover by-catches also, or only target species? **NL:** in para. 1, clarify difference between quota, allocation and share? **UK, NL:** there should be an exception for stocks with quotas of less than 100t, as in current Flexibility Reg. **NL:** how does the doubling of "multiplying factor" in para. 2 work? Clarify how quota deduction in para. 3 works. How does this apply to straddling stocks? **IE:** the penalties proposed are excessive. The provision for doubling of penalties is not acceptable. **IE, ES:** situations where the illegal landings are discovered at a later date and refer to a number of years are not taken into account. **COM:** current legislation caters for repayment over several years. **RO, ES:** Are the multiplying factors applied to the whole quota or just the amount overfished? **COM:** to the amount overfished. **ES, FR:** would prefer linear penalties for quotas of less than 100t. **ES:** In other cases, the deduction percentages in Reg. 847/1996 should be maintained. How is this article applied if one MS overfishes its quota but the Community TAC is not reached? A new Article 97a should be included governing the use of unfished quotas. Under which reasons or conditions can penalties be imposed on a MS for more than a year? Reg. 847/1996 provides only for penalties to be applied from one year to the next. **UK:** clarify "particularly detrimental". **COM:** this has to be assessed on a case by case basis according to the status of the stock. **DK:** what procedure would apply here? **COM:** via management procedure by means of a COM decision as is currently the case.

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

2. If a Member State has repeatedly overfished its quota, allocation or share of the stock or group of stocks over the previous two years, if the overfishing is particularly detrimental to the stock concerned or if the stock is subject to a multiannual plan, the multiplying factor referred to in paragraph 1 shall be doubled.
- 3.<sup>318</sup> If a Member State takes catches from a stock subject to a quota for which it has no quota, allocation or share of a stock or a group of stocks available to it, the Commission may deduct in the following year or years quotas for other stocks or groups of stocks available to that Member State in accordance with paragraph 1.

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<sup>318</sup> ***PT, PL:*** how is any equivalence between different stocks and areas to be determined? ***PT:*** reducing fishing quotas by applying a multiplying factor increases the possibility of non-compliance. Which criteria are intended to be applied to choose the quota to be reduced and fleets to affect and how is the amount corresponding to the penalty going to be distributed? (all MS? Only those with fishing possibilities?) ***COM:*** para. 3 responds to request of several MS (e.g. for PT haddock in Norwegian waters). ***ES, LT:*** in para. 3, to what other species will the deduction be applied? Clarify when the deduction would be in the following year or in several following years. ***ES:*** is it intended to apply to species which are caught together with the depleted species? ***FR:*** does not support since this is a collective sanction.

Article 98<sup>319</sup>

*Deduction of quotas for failure to comply with the objectives of the Common Fisheries Policy*

1. Where there is evidence that rules on conservation, control, inspection or enforcement under the Common Fisheries Policy are not being complied with by a Member State and that this may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system, the Commission may operate deductions from the annual quotas, allocations or shares of a stock or group of stocks available to that Member State.
- 2.<sup>320</sup> The Commission shall inform in writing the Member State concerned of its findings and set a deadline of no more than 10 working days for the Member State to demonstrate that the fisheries can be safely exploited.
- 3.<sup>321</sup> The measures referred to in paragraph 1 shall only apply if the Member State fails to respond to this 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.

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<sup>319</sup> ***PT:*** this measure will prove counterproductive, since quota-swapping arrangements have enabled MS to balance their fleets' operations and better achieve CFP objectives. ***DK:*** set clear criteria for the application for this article. ***DE:*** the wording in para. 1 is too imprecise to make application possible. ***EL:*** this should apply to stocks subject to quotas only, not to all species. ***PL:*** same comments as in Art 96. ***NL, PL, RO, ES, DE, DK, PT, FI:*** too vague. This should be made more detailed. ***ES:*** this gives rise to considerable legal uncertainty. Limit to strongly justified and clearly demonstrated cases. Define the criteria, elements and procedures for proving non-compliance. ***NL:*** give an accurate indication of when and in respect of which quotas and periods such deduction may be operated. ***ES, LT:*** The 10 day limit is too short. It should be a month from receipt of notification in the official language of the MS. ***IE:*** any measures taken must be subject to full transparency and must be processed through the Management Committee and involve a formal Commission decision. ***DK:*** under para. 2, COM should provide proof in writing. ***COM:*** agrees. ***LT:*** explain the link between Arts. 95 and 98; which criteria would be used to decide which measure would apply to the non-compliant MS? Could the measures provided for in both articles be applied to the same MS in respect of the same infringement? ***FR, FI:*** in para. 1. clarify "serious threat".

<sup>320</sup> ***LT, FR, PT:*** 10 working days deadline is too short, should be one month.

<sup>321</sup> ***PT:*** set parameters by which to gauge whether a MS's response is "unsatisfactory".

- 4.<sup>322</sup> 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 111.

*Article 99<sup>323</sup>*  
*Refusal of quota transfers*

The Commission may deny the transfer of quotas for stocks of a Member State to the following year in accordance with Article 3 of Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas if:

- a) the quota to be transferred has been overfished by the Member State concerned in any one of the immediately preceding two years or
- b) the quota refers to a stock that is under a multiannual plan or is caught in association with a stock under a multiannual plan and there has been an overfishing of that quota or of quotas for stocks under a multiannual plan in association with which that stock is caught, by the fleet of that Member State in one of the immediately preceding five years or
- c) the Member State concerned does not take appropriate measures to ensure a proper management of the fishing opportunities of the stocks concerned, in particular by not operating a computerized validation system as referred to in Article 102 or by insufficiently operating the systems providing the data for this validation system.

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<sup>322</sup> ***FR, PT:*** this should not be left to comitology.

<sup>323</sup> ***COM:*** new provision. ***NL:*** There should be a lower limit (up to 5%). Clarify which species are covered under b) ("stocks caught in association with"). ***PT, ES:*** It should be possible to transfer quotas from one year to the next. ***ES:*** the penalties in this article will only aggravate the difficult situation of insufficient quotas which already exists. ***PL:*** what is the added value of this article? What is the reason for including overfishing from previous years in a)? This provision encroaches on MS competence. ***UK:*** in para 3 clarify "caught in association with". Almost every stock in the North sea is taken in association with cod. ***COM:*** responds to concrete cases. ***DK:*** reserve on "computer validation system" in c). See together with concerns in Art. 102.



*Article 100<sup>324</sup>*  
*Refusal of quota exchanges*

The Commission may exclude the possibility to exchange quotas according to Article 20 paragraph 5 of Regulation (EC) No 2371/2002:

- a) for quotas for which there was an overfishing of more than 10% of the quotas available to one of the Member State concerned in one of the immediately preceding two years or
- b) if the Member State concerned does not take appropriate measures to ensure a proper management of the fishing opportunities of the stocks concerned, in particular by not operating a computerized validation system as referred to in Article 102 or by insufficiently operating the systems providing the data for this validation system.

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<sup>324</sup> **COM:** new provision. **SE, PL, IE, DK, FI:** would like clarification on when COM may refuse to exchange quotas. **PL, FR:** competence of MS. **COM:** agrees, but this is limited to cases of systematic overfishing (more than two years). This does not apply retroactively. **ES:** COM cannot oppose the exchange of quotas which Reg 2371/2004 provides for. **PL, PT, FR, SE:** does not support. Quota exchanges are a good mechanism allowing flexibility to MS. what is the added value of this provision? **SE:** the article does not reflect COM's explanation. **IE:** does not support a) as circumstances may have changed and/or revised management measures put in place that would allow for swaps regardless of past circumstances. **FR:** the refusal to quota exchanges must only be allowed in exceptional cases. **DE:** should apply only in case of target species and not affect fisheries with by-catches, since where a MS is banned from quota exchanges even slight overshoots of by-catches will be impossible to offset. **LV:** what is the link between b) and the data collection and exchange systems in Art. 102?. **ES:** the 10% limit should apply only to quotas of over 100t. **DK:** reserve on "computer validation system" in b) which must be seen together with concerns about Art. 102. When will this article enter into force?

## Chapter IV Emergency measures

### Article 101<sup>325</sup> 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 Common Fisheries Policy 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 one year. 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;

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<sup>325</sup> **COM:** inspired by Art 36 of IUU Reg. These measures can be necessary and have been used in the past, for example, to close the bluefin tuna fishery in 2008. **PT:** the measures are disproportionate and disregard the economic impact on firm's business. **IE, PT, IT, DE, FI:** language is too vague. Include more detail. **PT:** specify in para. 1 how COM is to show by sampling that fishing activities undermine the CFP or how any "threat" to the marine ecosystem is to be measured. **SE, IT, IE, FR:** clarify "marine ecosystem" in para. 1. **IE:** Suggests "stocks" instead. **COM:** CFP covers marine ecosystem, not just fish **FR:** 18 months is too long to be considered "emergency". **FR, ES:** Stick to current regime (6 months). **LT:** limit initial duration of emergency measures to six months that could be extended twice for further six-month periods. **FR, NL, DK, IE:** in para 3, want same period for COM and MS to reply (15 days). **NL, IT:** clarify the relationship between Art. 96 and this article. **COM:** this article is for emergency measures and deals not only with failure to comply. **IT:** Does a) mean that activities of all vessels will be suspended? **COM:** will make explicit that it covers fleet concerned on the stock concerned, not all fishing by that MS. **EL:** problematic. Measures are strict. **IT:** linking sampling measures not relevant. Unhappy with concept of "threat" in para 2. Clarify 2g). **DK:** reserve on para. 2h).. in h), what is the reasoning to include this as an emergency measure? **PL:** ensure consistency with Art. 7 of Reg. 2371/2002. **DK, PT:** 5 days for comments for MS is very short **UK:** what kind of redress/compensation would there be if measures COM took were wrong? **IE:** add reference that these measures can only be taken in the most exceptional circumstances. **IE, PT, EL:** too strong powers for COM. **EL:** such measures cannot be part of a Control regulation. **SI:** had question on power of COM to suspend activities of vessels. **PL:** overlaps with Arts. 26 and 27 of Basic Reg. without repealing them. **COM:** no overlap because here set out measures in emergency situation e.g. do not have ban on fish farming in Basic Reg. **LT:** the procedure for adopting these measures should be set out in more detail. Need to set out the procedure to inform MS in cases where the measures are established by the Commission.

- c) prohibition for Community operators to accept landings, placing in cages for fattening or farming, or transshipments of fish and fishery products caught by the vessels flying the flag of the Member States concerned;
  - d) prohibition to place on the market or use for other commercial purposes fish and fishery products caught by the vessels flying the flag of the Member States concerned;
  - e) prohibition of provision of live fish for fish farming in the waters under the jurisdiction of the Member States concerned;
  - f) prohibition to accept 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 for 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 10 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 102<sup>326</sup>

*General principles for the analysis of data*

1. Member States shall check the accuracy of all data recorded in accordance with this Regulation, and the respect of deadlines for the submission of data in order to ensure compliance with obligations laid down in the field of the Common Fisheries Policy. For that purpose Member States shall establish a computerised validation system that includes in particular:
  - a) procedures for checking the quality of all data recorded in accordance with this Regulation;
  - b) cross-checks, analysis and verification of all data recorded in accordance with this Regulation;

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<sup>326</sup> **COM:** central to proposal for validating data including by cross-checking data. Builds on Art. 19 of current Reg. Court of Auditors has highlighted need to validate, especially on quotas. Some MS have already set up a database to check data. If not done year, can get EC co-financing to set these up. **RO:** strong reserve. **SI:** does this pertain to all data? Can two or more systems be set up for this purpose? (In Slovenia, the system for analysing the data on catches does not have anything in common with the record of administrative offences of fishermen). **SE, ES, DK, PT, FI:** impossible to check "all" data. Specify which data is meant. **SE, FR, PT, FI:** should only apply to some data after risk analysis. **FR:** otherwise, this will create a considerable volume of data difficult to handle, diluting the information really relevant for control purposes. Harmonize the database and validation systems across MS. Will this all be carried out in one language? Definitely not feasible by 1 Jan 2010. Clarify algorithms in para 6. **SE, PT:** remove the word "all" from first para. and from p.1a) and 1b) and from para. 6. In which format will the data be presented? **SE, DK, LV, FR, BG, RO, ES:** concerned over data protection on the Internet and flow of information between many parties. **DK, LV, FR, ES, FI:** concerned over the costs and administrative burden involved setting up this system. **BG, ES:** is there a mismatch with the confidentiality provisions in Arts. 104 and 105? **DE:** need guidelines for proposed computerised validation system to have uniformity throughout MS. **DK:** MS have existing data systems, but it is doubtful whether these can continue to be used or completely new systems will be needed. It must be specified that MS' efforts are based on risk management. **COM:** this data will come from the logbooks and transfer documents, but this will be made more clear in the text. The only difference to current regulations is the online access. COM already carries out cross-checks with MS over the validity of data. The format for presenting the data will be decided after adoption of this Regulation. This is a very important article because unless we can validate the data we cannot ensure effective control.

- c) procedures for checking compliance with deadlines for the submission of all data recorded in accordance with this Regulation.
2. The validation system shall allow the immediate identification of inconsistencies of related data and their consequent follow-up.
3. Member States shall set up a computerized database for the purpose of the validation system referred to in paragraph 1, having regard to the data quality principle is applicable to computerized databases.
4. Member States shall ensure that the database provides information on the follow-up of inconsistencies, allows the identification of fishing vessels or operators for which inconsistencies of data were repeatedly found, and permits the correction of wrong data entries. In such a case, Member States shall clearly identify the data that were corrected and the reason for such a correction.
5. If data referred to in paragraph 1 are not transmitted by electronic means Member States shall ensure that they are entered manually into the database without delay.
6. Member States shall continuously, systematically and thoroughly validate all data referred to in paragraph 1 on the basis of automated computerised algorithms and mechanisms, in particular by means of data cross-checking.
7. If an inconsistency of related data has been identified the Member State shall undertake the necessary investigations and, if there are reasons to suspect that an infringement has been committed, take the necessary action.

*Article 103<sup>327</sup>*  
*Communication of data*

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<sup>327</sup> ***SE:*** proposes COM to announce which info it wants and in what format. Para. 2 imposes huge administrative burden. MS must be able to decide on which info to analyze, based on risk analyses. ***ES, PT:*** COM may have access via Web-based services to the data it requires for control purposes, but there will be information in the database which is confidential and cannot be made public. ***BG:*** reserve on COM having "direct real time access at any time without prior notice..". Para 1 contradicts Arts. 104 and 105. ***SI:*** will COM always have direct access? if this provision is adopted, expects that reports will no longer have to be submitted. ***UK:*** production of these additional systems will come at the same time that other major changes are taking place to national systems, e.g., e-sales note and e-logbooks. MS' resources would be best focused on the introduction of such changes. These other new requirements should be phased in afterwards. ***FI:*** cumbersome system. The proposal for COM to have direct live access to MS's systems would be disproportionate with the aim of ensuring that MS actually have their systems in place. Such access to verify that systems exist could take place during the numerous controls visits to MS. Otherwise security and confidentiality of the data may be compromised. ***DK:*** in para. 4, concerns about COM being able to demand that a MS amend registered data only on the basis of examination and not of administrative or judicial decisions.

1. For the purpose of the verification of the completeness and the quality of the data referred to in Article 102, Member States shall ensure that the Commission has direct real time access at any time without prior notice, to the computerised database referred to in Article 102. The Commission shall be given the possibility to download these data for any period or for any number of vessels.
2. Inconsistencies detected by the validation system and the follow-up of such inconsistencies shall be connected to the relevant data in such a way that, when the information on the secure part of the official website provided for in Article 106 is queried, such detected inconsistencies and the follow-up can be traced. Dates for data receipt, data entry and data validation, as well as follow-up data, shall be clearly visible.
3. The data of the validation system made available on the official website provided for in Article 106 shall be updated in real-time.
4. If the Commission has identified inconsistencies in the data entered in the validation system of the Member State as a result of its own investigations, it may require the Member State to correct these data, and shall inform the other Member States.
5. Detailed rules for the application of this Chapter, in particular for establishing a standardised format for the download of data referred to in Article 102, shall be adopted in accordance with the procedure referred to in Article 111.

## Chapter II Confidentiality of data

### *Article 104<sup>328</sup> Protection of personal data*

1. Member States and the Commission shall ensure that all applicable provisions laid down in Regulation (EC) No 45/2001 and Directive 95/46/EC are respected.

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<sup>328</sup> **COM:** exact copy of Art. 37 of existing Control Regulation. **SE:** Heading under Chapter II should read « Handling of information ». Why need para. 1? Can it not be deleted? In para. 2 the reference to para. 1 is misleading and should be deleted in any case since there can be no general rule that personal data should be kept secret. **FI:** not clear what is meant by applicable provisions in para 1. Is this para. 1 necessary? Also, the personal data protection requirements put forward in this article could be in conflict with Art. 102, which requires that COM should have real-time access to the MS's database. **PT:** delete in para 2. afrom "except in the case.." Why does COM need this paragraph? **MT:** why has para. 7 of Art. 37 been removed? **COM:** will include Art. 37.7 to ensure completeness. **MT:** in para. 2, refer to both natural and legal persons. **COM:** agree. **DK:** how is para 2 understood in relation to the obligations in Arts. 102 and 103? **COM:** these two articles cover all the data asked for under this entire regulation, not just Arts. 102 and 103. **BG:** are Arts. 104 and 105 in contradiction with Reg. 45/2001? **NL:** the opinion of the European Data Protection Supervisor should be taken into account. **COM:** wrote to him agreeing on the minor changes he had requested. Data supervisor said no contradiction with Reg. 45/2001. Invites BG to send in concerns.

2. The names of natural persons shall not be communicated to the Commission or to another Member State except in the case where such communication is expressly provided for in this Regulation or if it is necessary for the purposes of preventing or pursuing infringements or the verification of apparent infringements. The data referred to in paragraph 1 shall not be transmitted unless they are aggregated with other data in a form, which does not permit the direct or indirect identification of natural persons.

*Article 105<sup>329</sup>*

*Confidentiality and 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 a confidential manner and shall respect all 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 or communication.

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<sup>329</sup> ***SE:*** for constitutional reasons SE cannot accept so-called originator control clauses (requiring consent from the MS furnishing the info). Furthermore, to provide the info must be decided on a case-by-case basis according to national law. The same reasoning applies to the institutions within the Community according to Reg. 1049/2001. Although we have similar rules in Art. 37 of the current Control Reg., the rules must be in accordance with Reg. 1049/2001, adopted after the Control Reg. Therefore, SE proposes a new wording of the articlet. Also proposes new wording in the preamble. Proposal to find in written comments of 5th of May. ***PT:*** COM or body designated by it have no powers to impose penalties on individuals or firms and data therefore cannot be disclosed to them. ***EE:*** in para. 3, what "other purposes" are foreseen? ***FI:*** para. 3 is problematic. The purposes for which the use of personal data would be allowed should be spelled out. ***COM:*** para. 3 is the same as Art. 37.5 in current regulation, but not used so far. Could refer, for example, to data used in a publication by an NGO.

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 permitted only if it is necessary to bring about the cessation or prohibition of an infringement of the rules of the Common Fisheries Policy and the authority communicating the information consents to its disclosure.
5. Such data shall benefit from the same protection accorded to similar data by the national legislation of Member State receiving them and by the corresponding provisions applicable to Community institutions.
6. Paragraphs 1 to 6 shall not be construed as obstacles to the use of the data, obtained by virtue of 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 the said 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 106<sup>330</sup>  
Official websites

1. For the purpose of this Regulation each Member State shall set up by 1 June 2010 at the latest an official website accessible via Internet and containing the information listed in Articles 107 and 108. The website shall follow the guidelines of the 'Web Accessibility Initiative'. 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 Agency and the Commission, including transmission of regular snapshots on records of fishing activities in relation to fishing possibilities.

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<sup>330</sup> **FR:** concern on costs and complexity of the system. Has hundreds of inspection officers, so does not see the benefit of having these names published on a website (see comments in Art. 70). Opposes an unconditional access to satellite localisation data in the waters under national jurisdiction or sovereignty, data relating to catches and fishing effort for its vessels and those relating to infringement and sanctions concerning its vessels or nationals. Also, only aggregated and anonymous data can be made public. **SE:** para. 2 should specify exactly what data. **UK, LV, FI:** production of these additional systems will come at the same time that other major changes are taking place to national systems, e.g., e-sales note and e-logbooks. MS' resources would be best focused on the introduction of such changes. These other new requirements should be phased in afterwards. **FI:** need to look closely at the cost-benefit of this. If it is decided to set up the websites, more time should be allocated to comply with it (e.g., 1 January 2010) **RO:** heavy burden. **DK:** what is "Web Accessibility Initiative"? **PT:** in para. 1, proposes the adoption to develop common standards and procedures under comitology procedure (Art. 111) In para 2., list expressly which data is necessary for control purposes. **COM:** these systems will be essential in the future as more information is transferred via the Internet. Will clarify exactly what data and exchanges are necessary between MS. The COM will increase co-financing to ensure new technologies can be implemented wherever possible. Reassures SE that no MS will be forced to share information which is protected by national law. Will look at compatibility with ERS regulation.

2. Each Member State's official website shall be composed of a public 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 107<sup>331</sup>*

*The public accessible part of the website*

1. On the public accessible part of their website Member States shall publish without delay
- 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 18;
  - c) one month after entry into force of a multiannual plan, and after approval by the Commission, the list of designated ports, specifies their operating hours as referred to in Article 34, 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 contact point details for the transmission or submission of logbooks, prior notifications, transshipment declarations, landing declarations, sales notes, take over declarations and transport documents as referred to in Articles 14, 17, 18, 21, 54, 57 and 58;
  - e) a map with the coordinates of the area of temporary real time closures as referred to in Article 45, specifying the duration of the closure and the conditions governing fisheries in that specific closed area;
  - f) the decision to close a fishery under Articles 26 and all necessary details.

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<sup>331</sup> ***PT: reserve on 1 c) and d) resulting from comments in Arts. 37 and 14, 17, 18, 21, 54, 57 and 58 respectively. Reserve on 1e) resulting from comments in Art. 45.***

*Article 108<sup>332</sup>*  
*The secure part of the website*

1. On the secure part of the website each Member State shall establish, maintain and keep up to date the following lists and data bases:
  - a) the lists of officials in charge of inspections as referred to in Article 65;
  - b) the electronic data base for the treatment of inspection and surveillance reports established by the officials as referred to in Article 69;
  - c) the Vessel Monitoring System computer files recorded by its Fisheries Monitoring Centre as referred to in Article 9;
  - d) the electronic data base 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 electronic data base containing all relevant data on fishing opportunities as referred to in Article 23;
  - f) the electronic data base containing all infringements of rules of the Common Fisheries Policy including the sanctions they incurred, relating to vessels flying its flag and to its nationals as referred to in Article 85;
  - g) the electronic data base for the purpose of the verification of the completeness and the quality of the data collected as referred to in Article 102.
2. On the secure part of its website each Member State shall establish a national fisheries related information system, which allows for the direct electronic exchange of information with other Member States, the Commission or the body designated by it as referred to in Article 109.
3. For the secure part of its website, each Member State shall provide remote access to the Commission and the body designated by it. The Member State shall grant access to Commission officials based on electronic certificates generated by the Commission or the body designated by it.

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<sup>332</sup> ***FR***: reserve on unlimited access for catch data. ***NL***: in 1f), there should be a separate system for criminal law. ***SE, PT***: para. 2 should be harmonized with Reg. 1077/2008. These articles should only apply if it agrees with MS own legislation on secrecy. ***SE***: exclude the wording « ...data contained in the... » in the first sentence in para. 4. ***DK***: in para. 2 exchange of data should not be via a website but from one database to another provided that formats for the exchange are agreed. ***UK, PT***: system in paras. 2 and 3 rejected as part of data collection regulation so why has it been resurrected here? ***BG***: Establish detailed rules for implementation of this article. ***PT***: authorization to access MS data should only be granted by MS and not by COM or any other entity designated by it.

4. The data contained in the secure parts of the websites shall be made available only for specific users authorised to that effect by either the Member States 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 parts 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.

## TITLE XIII IMPLEMENTATION

### *Article 109<sup>333</sup>*

#### *Administrative cooperation of Member States*

1. The authorities responsible for the implementation of this Regulation in the Member States shall cooperate with each other, with authorities of third countries, with the Commission and the body designated by it in order to ensure compliance with this Regulation.
2. To this end, 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. An automated information system via national databases, shall also be established.
- 3.<sup>334</sup> Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

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<sup>333</sup> ***COM:*** equivalent to Art. 51 of IUU Reg. This system already exists in the field of customs and agriculture. ***PT:*** Allow for the possibility of transfer of cases between MS. There is already a mutual assistance system under Reg. 1005/2008. Reserve on establishing an automated information system via national databases, as details of its specific purpose need to be provided; this cannot be left to comitology, since it is a sensitive matter. ). ***DK:*** explain relationship between this system and the system proposed in Art. 108.2 ***COM:*** Art. 108.2 refers to only one element of mutual assistance. This provision goes further (exchange of information, of inspectors, etc). ***ES:*** questions the need for parallel systems of mutual assistance here and in the COM regulating implementing Reg. 1005/2008. Need to establish system of mutual recognition of economic sanctions for infringements of CFP rules by one MS in other MS. ***FR:*** title should be changed since the provision speaks also about third countries. Make explicit link with Chapter XI of IUU Reg. on mutual assistance. Instead of "body designated by the Commission" say "Control agency" as in Art. 70. ***COM:*** agrees to change title, could take same title as in Art. 51 of IUU Reg. Could refer here to Art. 51 of IUU Reg., since both systems are complementary. Prefers to leave "body designated by the Commission" for sake of consistency with regulations already adopted.

<sup>334</sup> ***PT:*** the ruling of cooperation between MS shall be kept within the Council competence.

*Article 110<sup>335</sup>*  
*Reporting obligations*

1. Every four 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 Council and the European Parliament.
3. An evaluation of the impact of this Regulation on the Common Fisheries Policy shall be undertaken by the Commission 5 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 from the basic data for producing reports.

*Article 111<sup>336</sup>*  
*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.
3. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

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<sup>335</sup> ***DE:*** specify the essential points of the report to be submitted by MS. ***PT, SE:*** period should be the same in para. 1 and 2. ***PT:*** COM report should cover the same period as MS's reports, i.e. four years, even if its is drawn up in the fifth year. If the report is to state the rules followed in producing it, this could be stated in Para 1. ***COM:*** agrees with 5 years for both COM and MS provided MS send in their reports in time. ***MT, PL, DK, SE, LV:*** clarify para. 4, bad wording. ***COM:*** this refers, for example, to the case of sampling where MS would need to establish a methodology to be used. ***PL:*** specify which information is to be included in the report and the form it should have to ensure comparison among MS ***COM:*** this is to be agreed by the Management Committee.

<sup>336</sup> ***PT:*** power should lie with the Council, in particular, under Arts. 9 (10), 28 (2), 29 (1)(d), 70 (5), 84, 87, 95 and 98, since these are in substance not concerned merely with implementation. As to the type of procedure proposed elsewhere, in view of the subject matter, a regulatory committee should be used, i.e. para. 2, should refer to Arts 5 and 7 of Decision 1999/468. In para. 3, the period should be extended to three months as the Decision 199/468 establishes as a rule. ***FR:*** should be Regulatory Committee and not the Management Committee. ***COM:*** does not agree.

Article 112<sup>337</sup>

Amendments to Council Regulation (EC) No 768/2005

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

1. In Article 3, the following point is 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 programmes, IUU control programmes and international control programmes;
  - the carrying out of audits of national control systems and cooperation between Member States related to their control systems, being assisted by high national authorities or independent qualified entities;
  - inspections as necessary to fulfil its tasks.'
2. In Article 5
  - a) paragraph 1 is replaced by the following:
    - '1. Operational coordination by the Agency shall cover control of all activities covered by the Common Fisheries Policy:

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<sup>337</sup> **COM:** current role of the Agency is limited to coordination. Its mandate must be extended in line with the control reform. **UK, IE, LT:** happy with the work of the Agency and support expansion in principle. **UK:** however, the role of the Agency must remain primarily a coordinating one. **DK, SE, BE, FI:** give agency more time to accumulate more experience before expanding its mandate. **NL:** before expanding the mandate assess the likely impact in terms of financing and staffing. The new functions for the agency will be taken from COM? **MT:** reserve on new Art. 3. **PL:** in Art. 3, why reference made only to "high" authorities?. **NL, UK, FR:** in Art. 3 reserve on "inspections" in third intent. **NL:** in Art.3, reserve on IUU and international control programmers. What is the relationship between audits carried out by the Agency and those carried out by COM? In Art. 5, it is unclear how the operational plans are to be established. Proposes a reference to Art. 12 of Reg. 768/2005. **DK:** clarify "operational plan "in Art. 5 (b). In 7 (b), can COM confirm that this provision does not mean that a national inspector must have participated in a course before the inspector can work in his/her MS? In 7 (e) add that the elaboration of criteria should be made in collaboration with MS. **IT:** in Art. 7, clarify c). **COM:** Agency tenders for "gauge" for all MS to get a better price. **NL:** is the title in Art 7 appropriate? Assistance is to MS only. **PL:** In 7a), amend Polish version to "...and training seminars for those inspectors".

(b) the following paragraph is 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 is 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 inspectors and other personnel involved in control 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 inspectors;
- c) at the request of Member States, undertake the joint procurement of goods and services relating to control 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 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 comparing 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 to comply with their and the Community's and their other 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 Community legislation.'

In Council Regulation (EC) No 768/2005, the following chapter shall be inserted:

### **‘Chapter IIIa Competences of the Agency**

*Article 17a<sup>338</sup>*

#### *Inspections of Member States*

1. Without prejudice to the enforcement powers conferred by the Treaty on the Commission, the Agency shall assist the Commission for the purpose of evaluating and controlling the application of the rules of the Common Fisheries Policy by the Member States. The Agency may undertake inspections of public authorities and private operators in the Member States. For this purpose it may, in compliance with the legal provisions of the Member State concerned,

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<sup>338</sup> **COM:** new. Agency can undertake inspections and assist COM with evaluation and controlling. However, final evaluations rests with COM. **ES, FR, MT, PT, BE, LT, IT, PL, SE, DK, NL, RO, FI, UK:** reserve on the extension of the mandate of the agency, as regards inspections and assistance to COM to evaluate MS. These are COM's competences. **PL, PT, BE, UK, SE, FR:** give more powers to the Agency could undermine its coordination role. Safeguard separation of functions. **IE:** inspection powers for the Agency requires further consideration. **DK, SE:** need more time for agency to accumulate more experience and develop its initial tasks before extending its powers. **IT:** to do some of these things, such as enter means of transport in d) a judicial authorisation is necessary. **PL:** reserve on Polish translation of para 2. **COM:** political issue but it is important to foresee this possibility in order to fulfil our international obligations in cases where there are not enough inspectors from MS available (ex: Greenland halibut or bluefin tuna).



- a) examine relevant records, data, procedures and any other relevant material;
  - b) take copies of or extracts from such records, data, procedures and other material;
  - c) ask for an on the spot explanation ;
  - d) enter any relevant premises or means of transport.
2. The officials of the Agency shall produce written authority stating their identity and capacity. The Agency shall inform the Member State concerned of the planned inspection and the names of the officials within a reasonable time before the inspection.
  3. The Member State concerned shall accept such inspections and shall ensure that any bodies or persons concerned shall also accept such inspections.
  4. Where an operator opposes such inspection, the Member State concerned shall afford the necessary assistance to officials authorised by the Agency to enable them to make their inspection.
  5. Reports drawn up in fulfilment of this Article shall be sent to the Member State concerned and to the Commission.

*Article 17b<sup>339</sup>*  
*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) monitor the overall functioning of the control of the Common Fisheries Policy control, including in individual Member States. This may include visits to Member States;
- d) provide the Commission with the necessary technical and administrative support to carry out its tasks;
- e) monitor the level and quality of training of national officials and national means of control.

*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.

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<sup>339</sup> ***MT, IT, DK, MT: reserve. IT, SE: oppose. NL: in c) and e) would prefer "evaluate" to "monitor". D) is too vague. What tasks are being referred to? COM: only COM can "evaluate" as "Guardian of the Treaties". BE, PL: oppose c).***

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<sup>340</sup>*  
*Emergency unit*

1. Where the Commission, on its own initiative or at the request of a number of 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 such notification or on 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 formed 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.

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<sup>340</sup> **COM:** new. Already have in Food Safety Agency. At the moment control Agency needs specific monitoring control programmes to act which takes 4-6 months to agree. **NL:** clarify what constitutes an an emergency. and where the emergency unit would stand in relation to the emergency measures which the Commission may take under Art. 101. The emergency unit should be answerable to the Council rather than COM. **COM:** this emergency unit would be created inside the agency, not by COM.

*Article 17f<sup>341</sup>*  
*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 5 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 5 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 annual work programme mentioned 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<sup>342</sup>*  
*Cooperation in Maritime Affairs*

1. The Agency shall contribute to the implementation of the integrated EU maritime policy, and in particular to the achievement of the integrated EU maritime surveillance network, by making available its operational systems as well its data on fisheries monitoring and compliance to the EU Institutions, bodies and the Member States.
2. On behalf of the Agency, the Executive Director may conclude administrative agreements with other bodies in matters covered by this Regulation after having informed the Administrative Board. The Executive Director shall inform the Commission thereof at an early stage of such negotiations.'

*Article 17h<sup>343</sup>*  
*Detailed rules*

1. 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.

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<sup>341</sup> **COM:** *at the moment Agency only has annual work programmes, which does not allow long- term planning.*

<sup>342</sup> **COM:** *Agency already cooperates in maritime affairs informally (ex. with FRONTEX or EMSA). NL:* *doubts as to the Agency's role in maritime policies. Also, the personal data to be exchanged must be accorded a sufficient degree of protection. FR, IT:* *support but this Control regulation is not a good framework to deal with this. IT:* *maritime surveillance goes beyond the scope of this Regulation. COM:* *would prefer to keep this here. Agency should be able to contribute to implementation of new maritime policy (a pilot project is already taking place in the Mediterranean).*

<sup>343</sup> **COM:** *new. NL:* *since the emergency unit must be an instrument at the service of the Council, detailed rules on it should be adopted not under the committee procedure but by the Council or by the Agency itself.*

2. 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 113<sup>344</sup>*  
*Amendments to other Regulations*

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

- a) Article 21 is replaced by the following:

'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 monitoring, surveillance, inspection, and enforcement of the rules of the Common Fisheries Policy shall be established.'

- b) Articles 22 to 28 are deleted.

2. In Council Regulation (EC) No 423/2004<sup>345</sup>, Chapter V is deleted.
3. In Council Regulation (EC) No 811/2004<sup>346</sup>, Articles 7, 8, 10, 11, 12 and 13 are deleted.
4. In Council Regulation (EC) No 2166/2005<sup>347</sup>, Articles 9, 10, 11, 12, and 13 are deleted.
5. In Council Regulation (EC) NO 2115/2005<sup>348</sup>, Article 7 is deleted.
6. In Council Regulation (EC) No 388/2006<sup>349</sup> Articles 7, 8, 10 and 11 are deleted.
7. In Council Regulation (EC) No 509/2007<sup>350</sup>, Articles 6, 8, 9, and 10 are deleted
8. In Council Regulation (EC) No 676/2007<sup>351</sup> Articles 10, 11, 12, 14 and 15 are deleted
9. In Council Regulation (EC) No 1098/2007<sup>352</sup>, Articles 15 and 25 are deleted
10. In Council Regulation (EC) No 847/96, Article 5 is deleted.

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<sup>344</sup> **DK:** reservation about deletion of Arts. 22-28 of Reg. 2371/2002. **UK:** in 2) should refer to Reg. 1342/2008. **COM:** agrees

<sup>345</sup> O.J. L 70, 9.3.2004, p. 8.

<sup>346</sup> OJ L 185; 27.5.2004, p. 1.

<sup>347</sup> OJ L 345; 28.12.2005, p. 5.

<sup>348</sup> OJ L 340, 23.12.2005, p. 3.

<sup>349</sup> OJ. L 65; 7.3.2006, p. 1.

<sup>350</sup> OJ. L 122, 11.5.2007, p. 7.

<sup>351</sup> OJ L157, 19.06.2007, p. 1.

<sup>352</sup> OJ L 248, 22.9.2007, p. 1.

*Article 114*  
*Repeals*

Council Regulation (EEC) No 2847/93 and Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits shall be repealed.

*Article 115*  
*References*

References to provisions deleted in accordance with Article 113 and to Regulations repealed in accordance with Article 114 shall be construed as references to the present Regulation and shall be read in accordance with the correlation table in Annex II.

## **TITLE XIV**

### **FINAL PROVISIONS**

*Article 116<sup>353</sup>*  
*Entry into force*

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

It shall apply from 1 January 2010.

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

Done at Brussels,

*For the Council*  
*The President*

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<sup>353</sup> **COM:** the intention is to align the date of entry into force with that of IUU Reg. and Authorisations Reg. since the control reform covers these three Regs. **FR, ES, LV, BG, DK, BE, LT, DE, PT, SE, FI, NL:** the date for entry into force is unrealistic. Need more time to adapt legal systems to the new provisions. **ES, UK:** bear in mind the need to agree a number of detailed implementation rules. **EE, ES, LT, DK, SI, IT, SE, PT, IE, RO, MT, PL, FR:** would prefer 1 January 2011. **FR:** at the earliest. Need similar time as with IUU Reg. (approx. 15 months). **COM:** political issue. **LT:** Ensure that EC financial assistance under Reg. 861/2006 will be granted to the preparation of the implementation of this Control Reg.

• ANNEX I<sup>354</sup>

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 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 can 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 the number of patrol days at sea in the management areas, possibly with a separate benchmark for days patrolling specific areas.

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<sup>354</sup> ***FI: problems with 4a): laying down an inspection level of 20% of landings for inspection in ports is not justified, especially taking account of the value of the catch. The cost of the control must not be inordinately high in relation to the value of the catch.***

(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**

<b>Regulation (EEC) No 2847/93</b>	<b>Present regulation</b>
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	Article 5
Article 5 (a), (b)	Article 65
Article 5(c)	Article 8
Article 6	Articles 14, 15, 16
Article 7	Article 17
Article 8	Article 21
Article 9 (1); (2), (3), (4)	Article 54, 55
Article 9(4b)	Article 57
Article 11	Article 18, 19
Article 12	
Article 13	Article 58
Article 14	Article 52
Article 15	Articles 23, 25
Article 16	Article 24
Article 17	Articles 5, 65
Article 19	Articles 102, 103
Article 19a	
Article 19b	
Article 19c	
Article 19d	
Article 19 <sup>e</sup>	Article 14
Article 19f	
Article 19g	



Article 19h	
Article 19i	
Article 19j	
Article 20	Articles 37, 38
Article 20a	
Article 21(1), (2), (3)	Articles 26, 27
Article 21 (4)	Article 28
Article 21a	Articles 26, 27
Article 21b	Articles 23, 25
Article 21c	Article 27
Article 22	
Article 23	Articles 97, 98
Title V	Title IV, Chapter II
Article 28(1)	Article 48
Article 28(2)	Article 60
Article 28 (2a)	Article 48
Article 28c	Articles 9, 14
Article 28a, b, c, d, e, f, g, h	
Article 29	Articles 88, 89, 90, 91, 92, 93
Article 30	Article 94
Article 31(1), (2)	Article 81
Article 31(3)	Article 82
Article 31(4)	Article 78
Article 32	Article 80
Article 33	Article 81
Article 34	
Article 34 a	Article 109
Article 34b	Article 89
Article 34c	Article 87
Article 35	Article 110
Article 36	Article 111

Article 37	104, 105
Article 38	Article 3
Article 39	Article 114
Article 40	Article 116
<b>Regulation (EC) No 2371/2002</b>	<b>Present regulation</b>
Article 21	Articles 1, 2
Article 22 (1)	Articles 6, 7, 9, 14, 66
Article 22 (2)	Articles 50, 52, 54, 58, 66
Article 23 (3)	Articles 5 (3), 5 (5), 11
Article 23 (4)	Article , 28 (2), 97
Article 24	Article 5, Title VII, articles 61, 83
Article 25	chapter III, IV of Title VII
Article 26 (1)	Article 88
Article 26 (2)	Article 101
Article 26 (4)	Article 27
Article 27 (1)	Articles 88 – 91
Article 27 (2)	Articles 93, 94
Article 28 (1)	Article 109
Article 28 (3)	Articles 71-73
Article 28 (4)	Article 70
Article 28 (5)	Article 64
<b>Regulation (EC) No 1627/94</b>	<b>Present regulation</b>
The entire regulation	Article 7
<b>Regulation (EC) No 423/2004</b>	<b>Present regulation</b>
Article 9	Article 14 (2)
Article 11	Article 17
Article 12	Article 34
Article 13	Article 14 (3)
Article 14	Article 36
Article 15 (1)	Article 53 (4)
<b>Regulation (EC) No 811/2004</b>	<b>Present regulation</b>

Article 7	Article 14 (2)
Article 8	Article 17
Article 10	Article 14 (3)
Article 11	Article 35
Article 12	Article 53 (4)
<b>Regulation (EC) No 2166/2005</b>	<b>Present regulation</b>
Article 9	Article 14(3)
Article 10	Article 53 (1)
Article 12	Article 35
Article 13	Article 53 (4)
<b>Regulation (EC) No 2115/2005</b>	<b>Present regulation</b>
Article 7	14 (3)
<b>Regulation (EC) No 388/2006</b>	<b>Present regulation</b>
Article 7	Article 14 (3)
Article 8	Article 53 (1)
Article 10	Article 35
Article 11	Article 53 (4)
<b>Regulation (EC) No 509/2007</b>	<b>Present regulation</b>
Article 6	Article 14 (3)
Article 8	Article 35
Article 9	Article 53 (4)
<b>Regulation (EC) No 676/2007</b>	<b>Present regulation</b>
Article 10	Article 14 (2)
Article 11	Article 14 (3)
Article 12	Article 53 (1)
Article 14	Article 35
Article 15	Article 53 (4)
<b>Regulation (EC) No 1098/2007</b>	<b>Present regulation</b>
Article 15	Article 14 (3)
<b>Regulation (EC) No 847/96</b>	<b>Present regulation</b>
Article 5	Article 97

