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REPORT

from :	Permanent Representatives' Committee
dated :	2 June 1999
to :	Council

No. prev. doc.:	8371/99 PECHE 101
No. Cion prop.:	13605/98 PECHE 413

Subject :	Proposal for a Council Regulation laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector
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BACKGROUND

1. The Commission submitted the Proposal for a Council Regulation (EC) laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector to Council on 21 December 1998. (Commissioner Bonino gave an initial oral presentation of the Proposal to the Council at its session on 17/18 December 1998.).The Proposal has been discussed by the Working Party on Internal Fisheries Policy on numerous occasions ; initially on the basis of a Presidency Working Paper and subsequently on the basis of two Draft Presidency Compromises. The Proposal was also the subject of a policy debate at Council on 30 March 1999.

2. Original Articles 7, 10 and 11 of the Commission Proposal, all of which contain measures relating to the fleet, were the subject of bilateral discussions between the Presidency and the Fisheries Directors General from the Member States, in the presence of the Commission on 11-12 April 1999.
3. The non-fleet related Articles were last discussed by the Working Party on Internal Fisheries Policy on 6 May 1999 ; the fleet-related Articles were last discussed in the same forum on 20 May 1999. In the light of these discussions, the Presidency drew up a Second Revised Draft Presidency Compromise (REV 2) (Doc. 8371/99 PECHE 101) for presentation to the Committee of Permanent Representatives. The fleet-related Articles in this Compromise were discussed by Coreper on 28 May 1999; these Articles and the other Articles in the Compromise were discussed by the Fisheries Attachés on 31 May 1999 and again by Coreper on 2 June 1999 (in the latter case on the basis of an annotated REV 2 set out in SN 3180/99 (PECHE) of 1 June 1999). **In the light of these debates the text of REV 2 remains unchanged except for Article 10.**
4. The **opinion of the European Parliament** on the Commission Proposal was made available on 6 May 1999. The **opinion of the Economic and Social Committee** was delivered on 26 May 1999.

GENERAL RESERVATIONS

5. Both the Commission and Member States hold general reservations on REV 2. The Danish delegation and the United Kingdom delegation entered Parliamentary scrutiny reservations.

KEY TO THIS REPORT

6. This Report is divided into two parts: **Part I** contains a summary of the **positions of principle** adopted by the Commission and Member States on the **fleet-related measures** set out in Articles 6, 9 and 10 of REV 2, these Articles containing what are considered to be the key issues of the Compromise; **Part II** contains the **entire text of REV 2** showing in **footnotes the comments of the Commission and Member States on all Articles where appropriate**. The Commission is prepared to make Declarations on a number of issues in this Compromise; these **draft Declarations** are set out in **Appendix I** to this Report. A list of the **written contributions** from Member States is set out in an **Appendix II** to this report.
7. The basis for REV 2 is the Revised Draft Presidency Compromise set out in document SN 2971/99. The only changes to REV 2 are in Article 10 where the text has been amended: ~~strikeout~~ indicates old text deleted; **bold** indicates new text inserted.

PART I

FLEET-RELATED MEASURES (Articles 6, 9 and 10)

Introduction

8. These Articles were last discussed by Coreper on 2 June 1999 on the basis of a Second Revised Draft Presidency Compromise (REV 2). The Commission and Member States hold **general reservations** on Articles 6, 9 and 10 pending the global outcome on this Compromise. The Commission, however, considered the new Compromise text a good working basis, although it had specific reservations on Article 9 (paragraph 9.1(a)).
9. **The positions of principle** adopted by Member States on fleet measures, and their **general reactions** to the fleet-related Articles as they now stand in the present Compromise (REV 2) are summarised below. Detailed comments are in the footnotes accompanying the Articles.

Positions of principle

10. Certain delegations, notably the United Kingdom, Denmark and Austria, considered that structural assistance should be viewed against the principal objectives of the **Common Fisheries Policy** and in particular with regard to the **conservation of resources**. These delegations took the view that the **priority** of structural assistance should be to **reduce fishing capacity** in line with the objectives of the multiannual guidance programmes (MAGPs). The remaining delegations, and notably the Netherlands delegation, however, considered the structural assistance Regulation as primarily a financial Regulation designed to accompany the fleet measures outlined in the MAGPs, and not to reinforce them or to add to them.

11. These two views of the structures Regulation imply conflicting positions on the fleet-related measures in the Proposal : the first set of delegations supporting the Commission's view that the implementation of the present MAGP is inadequate and requires tightening up, particularly in the domain of fleet measures and, if necessary, by means of the structures Regulation; the second set of delegations opposing this view on the basis that the Council Decision on the MAGPs effectively sets the objectives of these programmes, that it would require another Council Decision to modify them in any way, and that the Commission Proposal goes beyond the objectives set by MAGP IV, indeed anticipating an MAGP V.
12. In the light of these two opposing positions, and with a view to working constructively towards a compromise on this dossier, Member States adopted the following general positions on the fleet-related Articles.

Article 6

13. The Commission could **accept** the text of Article 6.
14. The Danish delegation could **accept** this Article as part of an overall Compromise. The French, Netherlands, and Portuguese delegations entered **general reservations** on this Article.
15. The Swedish delegation believed that the measures should not be limited to capacity reduction but should also, in accordance with the present MAGP, include **effort reduction**.
16. The Danish and United Kingdom delegations were concerned that **paragraph 6.2(b)** could effectively provide a **loophole** in the general provisions of this Article and lead to serious increases in capacity. The latter delegation also considered that any proposed improvements to vessels under this paragraph should be implemented in a **transparent, uniform and controllable manner**, through Management Committee procedure, and that this should be made explicit, preferably in the body of the text or if not, in a Commission Declaration.

17. The Portuguese delegation took the view that while the MAGP objectives had to be met, Member States should not be obliged to **demonstrate** how they had been met.
18. The Netherlands delegation was dissatisfied with the exclusion of Member States who had **not met their MAGP objectives** from the provisions under 6.2(b).
19. The Netherlands delegation entered a reservation on the text of paragraph 6.2(b) on the basis that it seemed more restrictive than the text of MAGP IV. It argued that, under the latter, there was no reference to annual objectives where increases in capacity for safety were concerned; in particular **Article 4.2 of MAGP IV** allowed for the **extension of MAGP objectives** on the grounds of safety. The French and Italian delegations endorsed this position.
20. The French delegation considered that the Commission should monitor measures for fleet renewal and modernisation but that the **Management Committee** should not be involved.
21. The Irish delegation took the view that Article 6 added nothing to the MAGP IV Decision and should be deleted.
22. The Commission representative (endorsed by the Danish, Swedish and United Kingdom delegations) **opposed the French suggestion** on the grounds of transparency. He acknowledged that paragraph 6.2(b) could lead to increases in capacity but confirmed that the **Management Committee** would monitor all cases which fell under the provisions in 6.2(a) and in 6.2(b). He insisted on the **need for Member States both to meet their MAGP objectives and to indicate the measures taken to meet these objectives** under the provisions of this Article.
23. He explained that Member States could continue to request **extensions of MAGP objectives** and these requests would be examined by the Commission, particularly in the light of **safety** considerations. He also pointed out that Article 9.1(b) (first derogation) allowed for flexibility in increasing capacity for safety reasons.

24. Other issues raised during discussion on this Article are set out in the footnotes to this Article.

Article 9

25. It was generally agreed that Article 9 was the **key Article** in the fleet measures and was also the most **problematic**.
26. The Commission representative entered a reservation on paragraph 9.1(a) on the basis that he did not wish to support a text which **permitted increases in capacity with public aid**. The Danish and United Kingdom delegations supported this view.
27. The Commission representative also pointed out that the reference to **final objectives** might lead to difficulties if these objectives were changed in the future. Finally, he wished to examine the **link between paragraph 9.1(a) and 9.1(b)**.
28. The Italian and Netherlands delegations entered **political reservations** on this Article principally on the grounds that Member States who do not meet their MAGP objectives are not eligible for public aid.
29. The Italian delegation could not accept a Compromise which made it even more difficult for Italy to meet its MAGP objectives. It wished to be **assisted in meeting its MAGP objectives**, not penalised.
30. The Netherlands delegation pointed out that the Netherlands would continue to make efforts to meet the MAGP objectives but needed **assistance from the structural funds** in addition to its national funds to do so. It added that it was not exceeding its quotas and therefore causes no environmental damage.

31. The Portuguese delegation considered the conditions of Article 9 **paragraph 9.1(a)** to be unclear and **inconsistent with Article 6 paragraph 6.2(a)**, in particular where the evaluation of the MAGP objectives was concerned.
32. The Italian delegation entered a **reservation on paragraph 9(a)** pending the emergence of a global Compromise on the dossier. It underlined the importance of not increasing capacity in the **Mediterranean** given the detrimental effect this would have on the stocks in that area.
33. The French, Spanish, Irish, Netherlands and Swedish delegations considered that the requirement to meet the final MAGP objectives in **paragraph 9.1(a)** should be replaced by a requirement to meet **annual objectives only**. The Danish delegation opposed these positions.
34. The Irish delegation considered that paragraph 9.1(a), in addition to being amended to require the meeting of **annual objectives only**, should also be expanded to cover segments where fishing **effort reductions** are employed to meet their targets. It pointed out that these two amendments to the text would effectively allow the first sub-paragraph of Article 9.1(b) to be deleted. The French, Netherlands and Swedish delegations endorsed the suggested inclusion of **effort reduction**.
35. The French delegation believed that the multiannual approach of the MAGPs had to be respected. In this context, where the **annual** objectives were respected in the segment and overall, public aid should be made available for the addition of **new capacity**; where the annual objective was met overall but not in the segment, replacement of **identical capacity** only should be permitted. Some derogation to allow entry of new capacity was of the utmost importance in order to encourage young fishermen.
36. The Netherlands delegation considered the distinction by segment only as too restrictive and requested that an **inter-segmental approach** be adopted.

37. The Irish, Finnish and Danish delegations pointed out that the **MAGPs were founded on a segment approach** and considered that structural assistance should follow that model.
38. The Spanish, French, Italian, Portuguese and Swedish delegations had problems with the provisions in **paragraph 9.1(b)**, specifically the requirement to **withdraw 130%** of old capacity which they considered an unwelcome addition to MAGP IV. In their view, this provision constituted a **penalty** on Member States who meet their MAGP objectives and an unreasonable restriction on the granting of public aid. The majority of these delegations sought a 100%:100% ratio entry/exit regime where the MAGP objectives were being met. The Swedish delegation believed that a 1:1 withdrawal ratio should apply where the **annual** MAGP objectives for the segment and the overall fleet were being met. The French delegation considered that a 1:1 withdrawal ratio should apply where the overall annual objective only (and not also the segment objective) was met.
39. The Danish and United Kingdom delegations supported the 130% provision; indeed the latter delegation considered that a **higher percentage** was desirable.
40. The Italian and Netherlands delegations considered that Article 9 should be amended to afford some eligibility for public aid to **Member States which have not yet complied with the objectives of their MAGPs**.
41. The Italian delegation could accept some **penalty** in the entry/exit system for Member States who did not meet their objectives, say, withdrawal of old capacity at **15% to 20% higher** than the general rule.
42. The Netherlands delegation suggested that the following text be inserted after paragraph 9.1(b) as a **new paragraph 9.1(c)**:

"public aid for a conversion scheme may also be granted on the condition that the Member States demonstrate that the converted capacity is more sustainable in terms of selectivity of fishing gear and/or fishing-method, and on the condition that the Member States ensure that the entry of new capacity with public aid is compensated by the withdrawal of capacity without public aid which is 30% greater than the capacity added in the segment concerned".

43. The Swedish delegation considered that **no public aid** should be granted to Member States who did not meet these objectives.
44. The French delegation could accept that Member States who do not meet their MAGP objectives be afforded some **flexibility** regarding eligibility for public aid, provided that this was counterbalanced by such Member States bearing a **greater burden in the entry/exit system** than that applying to Member States who respect the MAGP objectives. It could support a suggestion along the lines of that of the Italian delegation.
45. The Italian, Spanish, Portuguese and Finnish delegations were in favour in paragraph 9.1(b) of the first **derogation** on flexibility in the entry/exit system, particularly for **hygiene**, safety etc., and of the second derogation for small scale fishing vessels. The Spanish and Portuguese delegations considered that the derogation for hygiene, safety etc., could be improved and in particular should be extended to cover **new vessels**.
46. The Italian and Portuguese delegations took the view that the derogation on **small scale fishing vessels** was inadequate as it stood and that these vessels should be treated more favourably. The Italian delegation maintained that this should be the case even where Member States had not respected their MAGPs.

47. The Swedish delegation supported the second derogation (**small scale vessels**) but requested clarification on the first, particularly as to how a Member State might provide proof that no increase in the exploitation rate of the resources had taken place. The Irish delegation considered that in the second derogation, the words "the segment containing" should be deleted from the first line of this sub-paragraph to **ensure that all vessels less than 12 metres are treated equally**.
48. The Danish and United Kingdom delegations **opposed both derogations** on the basis that increases in capacity, in whatever form they might take, should not be financed with public aid. The Danish delegation, however, was willing to discuss **special arrangements**, e.g. to encourage safety or product quality, provided that such arrangements would not have a bad effect on conservation of resources.
49. The United Kingdom delegation insisted that if the first derogation allowing flexibility in the entry/exit system were to be accepted in a final text, it should be accompanied by a requirement that its implementation be **transparent, uniform and controllable**.
50. The German delegation enquired as to the **cut off point** to be used for measuring capacity withdrawn without public aid in order to establish what headroom remains for increase in capacity.
51. The Commission representative responded that the requirement to **withdraw 130%** of old capacity did not constitute a penalty as such but was an attempt to offset the increased capacity to fish which was the inevitable result of **advances in technology**. This was estimated as a minimum of 2% over the lifetime of a vessel (15 years) which amounted to 30%.
52. He pointed out that the logic of a segment approach was to adapt fishing effort to the fisheries resources in the segment and that therefore individual **segment objectives** as well as annual objectives had to be respected.

53. He explained that under the **first derogation** in paragraph 9.1(b) Member States could provide proof, in a Management Committee context, that the rate of exploitation of resources would not increase and thereby reduce the 100%:130% ratio to 100%:100% ratio, but not below. If capacity was increased for **hygiene, safety** etc., this would be treated as new capacity. He noted Member States' concerns regarding this derogation.
54. He pointed out that the **small scale fisheries** sector had received special consideration under the MAGPs and the FIFG in the past. For these reasons Member States were not required to provide proof of a non-increase in the exploitation of resources for increases in capacity in this sector. The Management Committee would determine how this derogation would apply.
55. As regards the date which might be considered a **cut off point** for the measurement of headroom for new capacity, either 1 January 1992 or 1 January 1994 could be considered. However, reliable entry/exit data for Member States was available only from 1996, so Member States would have to provide data prior to that date.
56. Finally, he explained that **public aid for scrapping** remained available for all Member States irrespective of whether they met their MAGP objectives. However, the provision of public aid to construct or renew vessels could not be justified for Member States who had not yet met these objectives. Special cases for Member States wishing to meet their MAGP objectives could be examined by the Commission, but this fell outside the scope of this Article.

Article 10

57. The Commission representative could **accept** this Article. He also pointed out that it was supported by the European Parliament.
58. The Danish and United Kingdom delegations **endorsed** the Commission position.

59. The Netherlands delegation entered a reservation on this Article.
60. The Spanish and Portuguese delegations had **reservations of substance** on this Article particularly on paragraph 10.2(b) which they considered **discriminatory** against a particular segment of the Community fleet. The Portuguese delegation considered that for paragraph 10.2(b) to be equitable, **reciprocal agreements** would have to be included here.
61. The Spanish delegation questioned the **legality of the measures** set out in paragraph 2 according to the principles of responsibility/liability, proportionality and legal security. It took the view that Community legislation had to be fully secure and requested an opinion from the Council Legal Service on these measures.
62. The representative of the Council Legal Service gave the following **opinion**.
63. The **principle that Community legislation may contain sanctions** against Member States is legally permissible provided such sanctions are proportionate and dissuasive. In addition, the legal basis for the sanctions must be clear and unambiguous.
64. It is also legally permissible for the Council to **delegate the competence** to administer such sanctions to the Commission provided the scope of the powers given to the Commission is clear and unambiguous in the Council Act in which they are enshrined. (Delegation of this competence is particularly justified in this case given the Commission's role in the day to day management of the fleet.)
65. Paragraph 10.1 sets out three conditions, the third **(10.1(c))** of which appears to leave a lot of interpretation to the Commission; in particular, it is **unclear** what is meant by the term "necessary".

66. Paragraph **10.2(a)** contains a reference to "information" which is **ambiguous or unclear**. Paragraph **10.2(b)** affords considerable discretion to the Commission in the actions open to it. These provisions could **conflict with the Court's ruling on sanctions** and the general conditions of legal security, as those who are subject to the law should not be placed in a position of uncertainty regarding their rights and obligations.
67. The **principle of 10.2(a)** may be sound but the manner in which it is drafted **gives too much scope to the Commission** as to how far it can go and on what basis. Some modalities or criteria would have to be included to ensure that the Commission's powers were clear and unambiguous.
68. However, **problems of principle arise in 10.2(b)** as this measure sanctions a legal person, i.e. the individual fisherman, who is not guilty of any infringement, whereas under 10.1 it is the Member State who is at fault in not providing the necessary information. The principle of **legal security is at stake** here. There may also be a **repercussive effect** on relations with a third country as if licence applications are suspended and if nobody is fishing in the third country waters, the question arises as to whether the Community should continue to pay financial compensation to that third country: if the Community does not continue to pay it may be in breach of the agreement with the third country in question; if it does continue to pay, this would appear to constitute bad management of the agreement.
69. The Commission representative entered a **reservation on this opinion** and reserved the right to reply. He also considered that the comments of the Council Legal Service might ultimately be accommodated by **modification** of this text rather than by deletion, given the necessity for effective control of the MAGPs.
70. The Irish delegation maintained its **reservation on paragraph 10.1** on the basis that the issue of **licences** was a matter for Member State competence. In the light of the Council Legal Service's opinion on paragraph 10.2(b) it requested an opinion on 10.1.

71. The Council Legal Service gave the following **opinion**.
72. Paragraph 10.1 appears to be imposing a **sanction on an individual fisherman**, with serious economic consequences as the sanction denies the right to fish, without providing the necessary link with the infringement, which is in fact committed by the Member State.
73. The Commission representative pointed out that under paragraph 10.4, the text should be modified to provide for reimbursement of public aid when a vessel is deleted from the fishing vessel register **including in the case of shipwreck**.

Other important issues

74. In addition to the fleet-related Articles which are of central importance to the majority of Member States, a number of other issues in the Compromise which are of particular importance to individual Member States remain to be addressed. Member States themselves have indicated their **priorities** as listed below. **Detailed comments are set out in the footnotes to the Articles.**

Article 3 (paragraph 3, need to demonstrate that without public aid the fleet could not be renewed)

F, NL / DK, UK (Page 22 of Report)

Article 7 (paragraph 2, age limit of 15 years for stopping of vessels' fishing activities permanently) **NL** (Page 26 of the Report)

Article 7 (paragraph 5(c), restriction on tonnage for permanent transfer to a third country)
F (Page 28 of the Report)

Article 8 (joint enterprises) **ES / UK.** (Page 30 of Report)

Article 12 (paragraph 1, need to include inland fishing) **A, S** (Page 39 of the Report)

Article 12 (paragraph 5, nationally financed accompanying social measures for temporary cessation) **I.** (Page 41 of the Report)

Article 13 (need to include inland fisheries) **S** (Page 42 of the Report)

Article 13 (restocking) **DK** (Page 42 of the Report)

Article 15 (paragraph 1(b)(i), amount of aid for members of the trade) **F** (Page 45 of the Report)

Article 16 (temporary cessation) **UK** (Page 47 of the Report)

Article 20 (notification procedures) **DK** (Page 51 of the Report)

Annex III (Section 1.1(a), number of days at sea) **UK** (Page 58 of the Report)

Annex III (Section 1.2, joint enterprises) **ES, UK** (Page 59 to 61 of the Report, and related Article 8)

Annex IV (scales and rates of assistance) **UK** (Page 68 of the Report)

PART II

SECOND REVISED DRAFT PRESIDENCY COMPROMISE – (REV 2)

Proposal for Council Regulation (EC) No/..., of ...

laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

(1) Whereas Council Regulation (EC) No .../.. of laying down general provisions on the Structural Funds⁴ defines the general objectives and tasks of the Structural Funds and the financial instrument for fisheries guidance, hereinafter called the ‘FIFG’, their organisation, the assistance methods, the programming and general organisation of the aid provided by the Funds and the general financial arrangements;

¹ OJ C ..., ..., p. .

² OJ C ..., ..., p. .

³ OJ C ..., ..., p. .

⁴ OJ L ..., ..., p. .

- (2) Whereas Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture⁵ lays down the objectives and general rules of the common fisheries policy; whereas the development of the Community fishing fleet must in particular be regulated according to the decisions that the Council is called upon to take by virtue of Article 11; whereas it is for the Commission to translate these decisions into precise measures at the level of each Member State; whereas, furthermore, Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁶ must be complied with;
- (3) Whereas Council Regulation (EC) No .../..of on the financial instrument for fisheries guidance⁷ defines the specific purpose of structural measures in the sector, as it is defined in Article 1 of the said Regulation; whereas under Article 4 the Council must decide, no later than ..., on the terms and conditions of the contribution of the FIFG to the restructuring of the sector in order to ensure that this restructuring achieves its intended objectives;
- (4) Whereas the provisions concerning the programming should be fixed;
- (5) Whereas the multiannual guidance programmes for the fishing fleets for the period from 1 January 1997 to 31 December 2001 are to remain in force until they expire; whereas appropriate provisions should be laid down for the period commencing on 1 January 2002;
- (6) Whereas the provisions for the monitoring and implementation of the multiannual guidance programmes should be specified, in particular concerning the mechanism of fleet entries and exits as well as the delimitation of public aid for the renewal of the fleet, the modernisation of vessels and the establishment of joint enterprises;
- (7) Whereas small scale coastal fishing has a special status in terms of the objectives for fishing effort adjustments; whereas it is important that this specificity is translated into concrete measures at the level of the present regulation;

⁵ OJ L 389, 31.12.1992, p. 1. Regulation last amended by Regulation (EC) No 1181/98 (OJ L164, 9.6.1998, p. 1).

⁶ OJ L 261, 20.10.1993, p. 1. Regulation last amended by Regulation (EC) No 686/97 (OJ L 102, 19.4.1997, p. 1).

⁷ OJ L ..., ..., p..

- (8) Whereas socio-economic accompanying measures will be needed to implement the restructuring of the fishing fleets;
- (9) Whereas the detailed rules should be fixed for the granting of aid for the protection and development of the aquatic resources, for aquaculture, for equipment in fishing ports, for processing, for marketing and for the promotion of fisheries and aquaculture products;
- (10) Whereas certain measures having a structural character in benefit of producers organisations currently being implemented under Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products⁸ should be included among the structural measures , and that such inclusion should not jeopardise the regulatory role of the producers organisations as defined in Regulation (EEC) No. 3759/92; whereas it is also convenient to include other measures of collective interest undertaken by the professionals;
- (11) Whereas detailed rules should be fixed for the granting of indemnities and financial compensation to fishermen and vessel owners, in cases of temporary cessation of activity or of technical restrictions applied to certain equipment on board or fishing methods;
- (12) Whereas the programmes must envisage the means necessary for the execution of innovative actions and technical assistance;
- (13) Whereas achieving a lasting balance between marine resources and their exploitation and environmental impact represent important interest for the fisheries sector it is as important, therefore, to provide for appropriate measures to preserve the trophic chain as it is to provide for aquaculture and the fish processing industry;
- (14) Whereas, in so far as such measures are not limited to the granting of Community aid, it is appropriate in particular to regulate State aid schemes in this sector, without prejudice to Articles 87 to 89 of the Treaty, and to integrate the programming of the restructuring of Community fishing fleets in a coherent manner in the context of structural assistance as a whole,

⁸ OJ L 388, 31.12.1992, p. 1. Regulation last amended by Regulation (EC) No 3318/94 (OJ L 350, 31.12.1994, p. 15).

(15) Whereas Council Regulation (EC) No 2468/98 of 3 November 1998 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products⁹ as well as other provisions should be repealed; whereas at the same time, for the proper execution of the aid, actions and projects approved up until 31 December 1999 the repealed provisions should remain applicable to this effect;

HAS ADOPTED THIS REGULATION:

Article 1

Objectives

1. This Regulation provides a framework for all structural measures in the sector carried out in the territory of a Member State, without prejudice to regional particularities with a view to achieving the objectives set out in Article 1(1) of Regulation (EC) No. ... / ... [on FIFG] and the objectives of the Common Fisheries Policy, in particular conservation and long term sustainability of resources..
2. Structural policy in this sector, aims at guiding and facilitating restructuring. Restructuring shall comprise actions and measures with a lasting effect that contribute to achieving the tasks defined in Article 1(2) of Regulation (EC) No .../.. [on FIFG].

Article 2

Means

The FIFG may, under the conditions laid down in this Regulation, provide assistance for the measures defined in titles II, III and IV within the fields of application covered by the common fisheries policy as defined in Article 1 of Regulation (EEC) No 3760/92.

⁹ OJ L 312, 20.11.1998, p.1

TITLE I

PROGRAMMING

Article 3

Common provisions

1. Programming, defined in Article 9 Paragraph (a) of Regulation (EC) No.(general Funds Regulation), shall be in accordance with the objectives of the common fisheries policy and with the provisions of the multiannual guidance programmes for the fishing fleets referred to in Article 4. To this end, it may be revised as necessary and in particular at the end of each period of application of the multiannual guidance programmes.

Programming shall cover all the fields referred to in Titles II, III and IV.

2. Programming of measures part-financed by the FIFG in Objective 1 Regions shall be in accordance with article 2(2) first sub-paragraph of Regulation (EC) No .../.... [on FIFG].

Programming of measures part-financed by the FIFG outside Objective 1 Regions shall be in accordance with Article 2(2) second sub-paragraph of Regulation (EC) No .../... [on FIFG].

Articles 14, 15(2), 15(3) first sub-paragraph, 15(5), 15(6), 15(7), 19(3) and 19(4) of Regulation No... [general Funds Regulation] shall be applicable.

3. The plans, defined in Article 9 Paragraph (b) of Regulation (EC) No. ... (general Funds Regulation), shall demonstrate that public aid is necessary with regard to the objectives pursued, and in particular that without public aid the fishing fleets concerned could not be renewed or modernised and that the planned measures will not jeopardise the long-term equilibrium of fishery resources¹⁰.

The contents of the plans shall be as set out in Annex I.

4. For the remainder of the programming period not yet covered by a multiannual guidance programme approved by the Commission, the programming information shall be purely indicative; it shall be specified by Member States when the new multiannual guidance programme is approved, in accordance with its objectives.

Article 4

Multiannual guidance programmes for fishing fleets

1. The Council, under Article 11 of Regulation (EEC) No 3760/92, lays down the objectives and measures for restructuring the fisheries sector. On the basis of this Council Decision, the Commission shall, acting in accordance with the procedure laid down in Article 18 of that Regulation, adopt the multiannual guidance programmes for individual Member States.

¹⁰ *F, I, NL, P, ES: Reservations, question practicality of requirement that the necessity of public aid be demonstrated; request rewording. NL: Suggest the following text: "The plans ... shall demonstrate that public aid is necessary with regard to the objectives pursued, and in particular that with public aid the fishing fleets concerned could only be renewed or modernised in conformity with the multiannual guidance programmes, and that the planned measures will not jeopardise the long term equilibrium of fishery resources". E: Suggest this paragraph be replaced by French text set out in SN 3177/99. ES and I: Support French text. UK, DK and Commission: maintain Commission text. Justification for public aid is necessary.*

2. The Commission decision referred to in paragraph 1 shall fix, in particular, a series of objectives accompanied by a set of measures for their realisation, allowing for management of fishing effort on an overall, long-term basis.
3. Before 1 May 2001 at the latest, Member States shall supply the Commission with the information specified in Annex II to this Regulation, to be used in drawing up subsequent multiannual guidance programmes¹¹.

Article 5

Monitoring multiannual guidance programmes

1. For the purpose of monitoring the implementation of multiannual guidance programmes, Member States shall transmit to the Commission, before 1 May each year, a document reviewing the progress made with their multiannual guidance programme. Within three months of this deadline the Commission shall forward an annual report to the European Parliament and the Council on the implementation of multiannual guidance programmes throughout the Community.
2. Member States shall transmit to the Commission information on the physical characteristics of fishing vessels and the monitoring of fishing effort by fleet segment and by fishery, particularly as regards the development of capacities and the corresponding fishing activities, in accordance with the procedures laid down in Commission Regulations (EC) No 2090/98 of 30 September 1998 concerning the fishing vessel register of the Community¹² and No 2091/98 of 30 September 1998 concerning the segmentation of the Community fishing fleet and fishing effort in relation to the multiannual guidance programmes¹³.

¹¹ *E: reservation. Request deletion of 4.3 and correlating ref. in Annex II.3..*

¹² OJ L 266, 1.10.1998, p. 27.

¹³ OJ L 266, 1.10.1998, p. 36.

3. On its own initiative or at the request of the Member State concerned, or under provisions laid down in the multiannual guidance programmes, the Commission may re-examine and adapt any multiannual guidance programme, whilst respecting the Council Decision mentioned in Article 4 paragraph 1.
4. The Commission shall decide on the revisions provided for in paragraph 3 in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92.
5. For the implementation of this Article, Member States shall apply the provisions of Article 24 of Regulation (EEC) No 2847/93.

TITLE II

IMPLEMENTATION OF MULTIANNUAL GUIDANCE PROGRAMMES FOR FISHING FLEETS

Article 6¹⁴

Fleet renewal and modernisation of fishing vessels

1. Fleet renewal and the modernisation of fishing vessels shall be organised in accordance with this title.

¹⁴ *B, DK, GR, and S: Scrutiny reservations.*

IRL: General reservation.

I: General reservation. Like to examine link with Article 9. Question logic underlying granting of public aid.

2. Each Member State shall submit to the Commission, for approval in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92, permanent arrangements for monitoring fleet renewal and modernisation¹⁵.
- a) Within the framework of these arrangements Member States shall demonstrate that entries and exits from the fleet will be managed in such a way that the capacity does not exceed the annual objectives fixed in the multiannual guidance programme or, where appropriate, that fishing capacity is gradually reduced to attain these objectives. These arrangements shall in particular take into account that capacity which has been withdrawn with public aid cannot be replaced¹⁶.
- b) These arrangements may include measures to improve safety, navigation at sea, hygiene, product quality and working conditions¹⁷.

¹⁵ *F: Reservation. Cion. should approve permanent arrangements for fleet renewal etc., but the Management Committee should not be involved. UK, DK, S and Cion: Cannot agree French suggestion. Management Committee procedure is necessary for transparency. Cion: Management Committee will operate even where there is no over-shooting of capacity.*

¹⁶ *S: Text should allow for fishing effort reduction as well as capacity reduction. Cion: Referring only to capacity here as greater transparency is required in monitoring effectiveness of measures to achieve MAGP objectives. MS cannot replace capacity which has been withdrawn with public aid under any circumstances, i.e. with or without public aid. IRL: Where a plan for reduction of effort rather than of capacity is being applied on a segment basis, will the provisions in this Article still apply. Cion: Yes, as there will still be a capacity objective even where effort reduction is being employed.*

¹⁷ *UK: These provisions should be transparent, uniform and controllable and this should be stipulated in the text of the Article preferably or in a Cion. declaration. P: General reservation on paragraph 2(b). These measures should be able to lead to an increase in capacity as long as they don't exceed the MAGP objectives. Cion: This is the case under the present text and these measures only apply to MS which meet their MAGP objectives. Should add at end of 2(b) following text "provided MAGP objectives have been achieved" for clarification. NL: Reservation. Text of 2(b) seems more restrictive than text of MAGP IV. Under the latter, there is no reference to annual objectives where increases in capacity for safety are concerned Article 4.2 of MAGP IV allows for the extension of MAGP objectives on the grounds of safety. F and I: Endorse NL position. Cion: Member States may continue to request extensions of MAGP objectives and these requests will be examined by the Cion, particularly in the light of safety considerations. Article 9.1(b) (first derogation) allows for flexibility in increasing capacity for safety reasons.*

3. The indicators relating to the fishing fleet in the plans, as provided for in Annex I (2) point d) must be drawn up in accordance with these arrangements.

Article 7

Adjustment of fishing effort

1. Member States shall take appropriate measures to adjust fishing effort to achieve the objectives of the multiannual guidance programmes referred to in Article 4.

Where necessary, this shall be achieved by stopping vessels' fishing activities permanently or to restrict them or a combination of both measures, in accordance with the applicable provisions of Annex III.

2. Measures to stop vessels' fishing activities permanently may be applied only to vessels 15 years old or more¹⁸.
3. The stopping of vessels' fishing activities permanently may be achieved by :
 - a) the scrapping of the vessel,

¹⁸ *ES, D, F, NL, P, IRL, and UK: Reservation. Request age limit of 10 years. Important for reducing capacity. I: Could accept a general rule of 15 years as long as there was built-in flexibility where Member States have a national plan on management of resources. IRL: Why not state 10 years in the text and allow MS to impose 15 years on a national basis in their plans.
B: Reservation. Prefer 15 years.
Cion: Prefer to reserve aid for vessels of 15 years or older as a matter of sound financial management; these age limits and other conditions do not apply when no public aid is granted.*

- b) permanent transfer of the vessel to a third country, including in the framework of a joint enterprise within the meaning of Article 8, after agreement by the competent authorities of the country concerned, provided all the following criteria are met:
- (i) there exist appropriate guarantees that international law is not likely to be infringed, in particular with respect to the conservation and management of marine resources or other objectives of the common fisheries policy and with respect to working conditions of fishermen;
 - (ii) the third country to which the vessel is to be transferred is not a country which is a candidate for accession ;
 - (iii) the transfer results in a reduction of fishing effort on the resources previously exploited by the vessel transferred ; however, this criterion shall not apply when the vessel transferred has lost fishing possibilities under a fisheries agreement with the Community or under another agreement¹⁹
- c) permanent reassignment of the vessel for purposes other than fishing.

4. The capacity of vessels that are subject to a measure to stop fishing activities permanently within the meaning of paragraph 2 and 3 may under no circumstances be replaced.

Member States shall ensure that the fishing licenses of all vessels withdrawn are cancelled and that the withdrawals of the vessels are communicated to the fishing vessel register of the Community. They shall also ensure that vessels transferred to third countries and declared as deleted from the register are permanently excluded from fishing in Community waters.

¹⁹ UK: Reservation on 3(b)(iii). Seek Cion Declaration to ensure only agreements which are still underway and not failed agreements are covered here.
Cion: Will provide Declaration.

5. Public aid for final-cessation paid to beneficiaries may not exceed the following amounts:

- a) Scrapping premiums
 - i) 15 year old vessels: see Tables 1 and 2 in Annex IV;
 - ii) vessels from 16 to 29 years old: the scales in Tables 1 and 2 decreased by 1.5% per year over 15.
 - iii) vessels of 30 years old or more: the scales in Tables 1 and 2, less 22.5%.
- b) Premiums for permanent transfer within the framework of a joint enterprise : the amounts referred to in Article 8(3); however, no public aid for this purpose can be given for vessels with a tonnage less than 25 GRT or 27 GT, or of 30 years old or more;²⁰
- c) Premiums for other permanent transfer to a third country: the maximum amounts for the scrapping premiums referred to in (a) above, less 50 %. However, no public aid for this purpose can be given for vessels with a tonnage less than 25 GRT or 27 GT, or of 30 years old or more, except under the conditions foreseen in the paragraph 6²⁰²¹ .
- d) Premiums for other cases stopping fishing activities permanently : the maximum amounts for the scrapping premiums referred to in (a) above, less 50 %. However, no public aid for this purpose can be given for vessels with a tonnage less than 25 GRT or 27 GT, except under the conditions foreseen in paragraph 6 ²⁰.

²⁰ *I and P: Reservation. Premiums should apply to whole fleet irrespective of tonnage or age. FIN: delete restriction on small vessels under 5(d).*

²¹ *F and P: delete reference to tonnage for permanent transfer under paragraph 5(c). E: Wish to supply small vessels to developing third countries. Third country concerned should be allowed to decide if vessel is appropriate size.*

Cion: necessary to have an age limit to avoid permanent transfer of very old vessels. Necessary to have reference to tonnage as Community does not want to be accused of exporting its over-capacity or of promoting unfair competition. Transfer of small vessels is not necessarily good for developing countries as it introduces heterogeneity into their fleet and could lead to conflicts.

6. Notwithstanding paragraph 5(c) and (d), where the vessel is definitively assigned for the preservation of historical heritage in the territory of a Member State, or for the fisheries research or training activities of public or semi-public bodies of a Member State, or for the control of fishing activities, in particular by a third country, public aid shall be granted under the conditions given in paragraph 5 (a).
7. Without prejudice to Article 16, measures to restrict fishing activities may include restrictions on the fishing days or days at sea authorised for a specific period. Such measures may not give rise to any public aid.

Article 8

Joint enterprises

1. Member States may take measures to promote the creation of joint enterprises.

For the purpose of this Regulation “joint enterprise” means a commercial enterprise with one or more partners who are nationals of the third country in which the vessel is registered.

2. In addition to the conditions laid down in Article 7 and Annex III for the grant of a premium for permanent transfer, the following conditions shall apply:
 - a) The creation and registration of a commercial enterprise, in accordance with the laws of the third country, or the acquisition of holdings in an enterprise that is already registered, for the purpose of engaging in a commercial activity in the fisheries sector in the waters under the sovereignty or the jurisdiction of the third country. The Community partner must hold a significant proportion, generally between 25% and 75%, of the share capital;

- b) ownership of the permanently transferred vessel must be handed over to the joint enterprise in the third country. For five years the vessel may not be used for fishing activities other than those authorised by the competent authorities of the third country, nor may it be used by other shipowners.
3. The premiums for the creation of joint enterprises shall be granted according to the following rules :
- a) Where a fisheries agreement exists with the third country concerned that already provides for the creation of joint enterprises, the premium may not exceed 80 % of the maximum amount of the premium for scrapping referred to in Article 7 paragraph 5(a)²² ;
 - b) Where there is no fisheries Agreement with the third country concerned or where an existing Agreement does not provide for the creation of joint enterprises, the premium may not exceed 65 % of the maximum amount of the premium for scrapping referred to in Article 7 paragraph 5(a)²³.

The premiums referred to in this paragraph cannot be cumulated with the premiums referred to in Article 7 paragraph 5 (a,c,d).

²² *ES: Reservation of substance. Premium is too low. Should be equal to scrapping premium. UK: General reservation. Shipowners suffer an economic loss of only 50% in joint enterprises while scrapping and permanent transfer entail a loss of 100%. However, acknowledge certain costs involved in setting up joint enterprises so consider figure of 80% should be reduced to 65%.*

²³ *UK: General reservation. Ideally joint enterprises should only be provided within the framework of agreements with third countries where they can be better monitored. In any event no public aid should be made available to joint enterprises outside the framework of fisheries agreements and this paragraph should be deleted. Question the need to provide additional incentives to third countries..*
ES: Reservation of substance. Premium is too low. Should be equal to scrapping premium. ES, I and P: While controls on joint enterprises may need to be improved, they should not be too restrictive in order to allow the necessary flexibility for them to operate efficiently. N.B. See accompanying Annex III, Section 1.2.

4. The management authority shall pay 80 % of the premium to the applicant when the vessel is transferred to the joint enterprise, after the applicant has provided proof that a bank guarantee for an amount equal to 20% of the premium has been lodged.
5. Each year for five consecutive years from the date of constitution of the joint enterprise or the date on which the Community partner acquired holdings in the enterprise, applicants shall submit to the management authority a report on the implementation of the activity plan, including data on catches and markets of fisheries products, in particular products landed in or exported to the Community, with supporting documents, together with the enterprise's balance sheet and a statement of its net worth. The management authority shall forward the report to the Commission for information.

The balance of the premium shall be paid to applicants after two years of activity and after the first two reports have been received.

6. The guarantee shall be released, provided all the conditions are met, once the fifth report has been approved.
7. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Articles 47(3) and 51(2) of Regulation (EC) No .../.. [general Funds regulation].

Article 9²⁴

Public aid for fleet renewal and for vessel modernisation

1. Without prejudice to the conditions laid down in the second subparagraph of Article 3 paragraph 3, public aid for fleet renewal and modernisation shall be granted under one of the alternative conditions set out under a) and b) below and those set out in Article 6 and Annex III:

²⁴ *I and NL: Political reservations on the basis that MS who don't meet their MAGP objectives are not eligible for public aid.*

- a) Public aid for fleet renewal or vessel modernisation entailing an increase in capacity may be granted for segments where the objectives of the MAGP are achieved by reduction of capacity only; and where the overall final objective and the final objective in the concerned fleet segment of the multiannual guidance programme have been respected; and where the measure will not entail an exceeding of this objective again, in terms of tonnage as well as of power²⁵.

²⁵ Cion: General reservation on paragraph 1(a).
I: Reservation, pending global solution. There should be no increase in capacity in the Mediterranean given the detrimental effect this would have on the stocks.
DK and UK: Endorse Cion position on paragraph 1(a). UK: Fundamental reservation. There should be a reduction in capacity if aid is granted.
F and S: Conflict between MAGP reference to effort reduction and reference to capacity reduction only in 9.1(a).
P: General reservation on 9.1(a).
ES, F, IRL, NL and S: Request that reference to final objectives be replaced by reference to annual/intermediate objectives. IRL: Paragraph 9.1(a) should refer to annual segment targets only and should be expanded to cover segments where fishing effort reductions are employed to meet targets. These modifications would allow the deletion of the first subparagraph of 9.1(b).
ES: Provisions of paragraph 9.1(a) appear excessively restrictive.
DK: Must maintain reference to final objectives or no MS will choose option 9.1(b).

- b) Public aid may also be granted if the annual objectives of the MAGP, overall and for the segment concerned, are respected. In this case, Member States must ensure that the entry of new capacity with public aid is compensated by the withdrawal of capacity without public aid which is 30% greater than the capacity added in the segment concerned, taken in aggregate and in terms of both tonnage and power²⁶.

²⁶ *I and NL: Reservation of substance on these Member States being excluded from public aid except in domain of scrapping.*
I: Can accept a penalty of 15% to 20% higher than the general rule but must be allowed to make improvements to our fleet.
NL: After 9.1(b) a new paragraph 9.1(c) should be inserted to read as follows: "public aid for a conversion scheme may also be granted on the condition that the Member States demonstrate that the converted capacity is more sustainable in terms of selectivity of fishing gear and/or fishing-method, and on the condition that the Member States ensure that the entry of new capacity with public aid is compensated by the withdrawal of capacity without public aid which is 30% greater than the capacity added in the segment concerned".
Cion: The granting of public aid to Member States who are not meeting their MAGP objectives for construction or renewal of vessels is unacceptable. Cannot accept NL text. Special cases made by MS for meeting their MAGP objectives could be examined by the Cion, but that falls outside the scope of this Article.
ES: Text of 9.1(b) appears excessively restrictive and unfeasible.
F: Opposed to provision on withdrawal of 130% old capacity. If MS meet overall annual objectives they should be allowed to enter new capacity. This is a problem of social and political importance for France as it is vital to encourage young fishermen starting out. Should delete the additional requirement to meet annual segment objectives.
NL: Not happy with segmentation approach. Need greater flexibility for manoeuvring capacity throughout the fleet.
IRL: Fleet renewal and modernisation should be on a segment basis.
DK and UK: In favour of 130% penalty when MS want to enter new capacity. DK: Not in favour of derogations. Swapping capacity among segments should not be allowed.
FIN: 130% penalty should not always apply; in favour of derogations.
Cion: Penalty of 130% is there to take account of technology and to avoid public aid being used to increase fishing effort. 130% represents the maximum of a sliding scale which goes down to 100%; it is up to MS to demonstrate why they need a derogation from this provision and that it will not increase the rate of exploitation of resources. The MS submissions will be examined by Management Committee to ensure transparency. Sympathise with France on young fishermen but the MS can treat these fishermen more favourably at a national level as long as the MAGP objectives are respected. Logic of segmentation is to ensure that permitted capacity is in conformity with the state of resources. The segment approach is the basis of the MAGP and must be respected. MS must meet both annual and segment objectives. There should, as a general rule, be no swapping capacity among segments.
DK and S: How will exploitation rate of resources be measured; under what criteria.
Cion: The rate of exploitation of resources means the efficiency of the vessel and the pressure it exerts on the stocks.

By derogation from the second sentence of point (b) above, first sub-paragraph, Member States may determine within the framework of the permanent arrangements referred to in Article 6 paragraph 2, the appropriate relation between entries with public aid and the associated capacity to be withdrawn without public aid in order to ensure that the capacity introduced with public aid does not increase the exploitation rate of the resources. Under no circumstances can the capacity introduced with public aid be greater than the associated capacity withdrawn.

For the segment containing vessels less than 12 metres overall length other than trawlers, the entry of new capacity with public aid must be compensated by the withdrawal of capacity without public aid which is at least equal to the capacity added, taken in aggregate and in terms of both tonnage and power²⁷.

²⁷ UK: Reservation. Must reflect on 9.1(b). In particular consideration of the derogations under this paragraph must be transparent, uniform and controllable and monitored by Management Committee procedure; this should be explicit in the text of the Article or in a Commission Declaration.

S: Difficult to prove that the rate of exploitation of resources has not been increased.

Cion: Management Committee procedure will be applied in implementing this Article. Will reflect on need for more explicit text.

P: Derogation for small scale fishing vessels is not sufficient. Measures should provide for modernisation of this fleet allowing more favourable entry and exit conditions, once MAGP objectives are met

I: Small scale fishing vessels merit more favourable treatment, even where the MAGP objectives are not respected.

IRL: In order to treat all vessels less than 12 metres equally the words "the segment containing" should be deleted from the first line of this sub-paragraph.

ES, P: Increases in capacity relating to safety on board and product quality etc. should be treated more favourably, once MAGP objectives are met.

Cion: Note positions of I and P on small scale fisheries.

D: Where is the cut off point for measuring capacity withdrawn without public aid in order to establish what headroom remains for increase in capacity.

Cion: Can go back to 1994 when the present programming period was initiated or at the outside to January 1992 when MAGP III was begun but must have clear figures from MS for any period prior to January 1996.

2. Expenditure eligible for public aid as referred to in paragraph 1 may not exceed the following amounts:
 - a) Construction of fishing vessels: twice the scales in Table 1 in Annex IV
 - b) Modernisation of fishing vessels including, where applicable, the cost of remeasuring tonnage in accordance with Annex I to the 1969 Convention ²⁸: the scales in Table 1 of Annex IV.
3. In conformity with Article 7 paragraph 4, no public aid may be granted for capacity withdrawn in association with the addition of new capacity for which public aid is granted.

Article 10

Common provisions on fishing fleets

1. Public aid for fleet renewal and the modernisation of vessels²⁹ ~~as well as the issue of licences for the addition of new vessels is not~~ **can be permitted only** where, within the time allowed, the Member State³⁰:
 - a) has ~~not~~ submitted the information provided for in Article 5;
 - b) has **complied** ~~not taken the necessary measures to comply~~ with Council Regulation (EEC) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels³¹;

²⁸ International Convention on Tonnage Measurement of Ships, drawn up in London in 1969 under the auspices of the International Maritime Organisation (IMO).

²⁹ *The Cion insists on the addition of the words "as well as the issue of licences for the addition of new vessels and the introduction of licence applications to third countries under fisheries agreements".*

³⁰ *IRL: Issuing of licences is a matter for national competence. DK: In favour of ban on new licences.*
At the request of the Irish delegation, the Council Legal Service provided a opinion on the legality of the ban on the issuing of licences. This opinion is set out in paragraphs 71 to 73 of Part I of this Report.

³¹ OJ L 274, 25.9.1986, p. 1. Regulation last amended by Regulation (EC) No 3259/94 (OJ L 339, 29.12.1994, p. 11).

- c) ~~has not taken the necessary measures~~ **implemented the arrangements referred to in Article 6.2 and complies to comply** with the objectives ~~of specified in~~ the multiannual guidance programmes ~~by introducing and applying the arrangements provided for in Article 6 (1).~~

~~2. In the cases referred to in paragraph 1 the Commission may take the following measures:~~

- a) ~~the adjustment of the capacity objectives in the multiannual guidance programme in the light of the information available to it,~~³²
- b) ~~the suspension of the introduction of licence applications to third countries under fisheries agreements with the said countries that receive a financial contribution from the Community budget.~~³³

3.2. The following provisions shall apply to the cumulation of public aids to the fishing fleet³⁴:

- a) expenditure on modernisation shall not be eligible for aid for five years following the grant of public aid for the construction of the vessel concerned³⁵;

³² *The Cion insists on the addition of a paragraph 2 which would read as follows: "If the obligations referred to in paragraph 1(a) and (b) are not respected the Commission may adjust the capacity objectives in the multiannual guidance programme in the light of the information available to it in accordance with the procedure foreseen in Article 18 of Council Regulation (EEC) No. 3760/92".*

³³ This paragraph appeared in the original Cion. Proposal and provoked the following comments. *ES, D, Gr, IRL, NL : Question the justification of these provisions on the basis that they go beyond the existing Regulation. ES and P : Substantial reservation particularly on 2b) on the basis that it discriminates against a particular segment of the Community fleet. P: Should also include reciprocal Agreements to be equitable. At the request of the Spanish delegation, the Council Legal Service provided an opinion on the legality of these provisions which is set out in paragraphs 62 to 68 of Part I of this Report.*

³⁴ *ES: Oppose restriction on the cumulation of aid for construction and aid for withdrawal. Cion: New paragraph 4 should meet Spanish concerns.*

³⁵ *P: Some equipment does not have a life of 5 years. This provision penalises small-scale fisheries. NL: What about technological or hygiene equipment.*

- b) permanent withdrawal premiums within the meaning of Article 7 (5) and premiums for the creation of joint enterprises within the meaning of Article 8 may not be added to other Community aid granted under this Regulation or Regulations (EEC) No 2908/83³⁶, (EEC) No 4028/86³⁷ and (EC) No 2468/98. These premiums are to be reduced
- (i) by a part of the amount previously received in the case of modernisation aid and/or the allowance for a temporary joint venture; this part is calculated *pro rata temporis* for the five year period preceding the permanent withdrawal or the setting up of the joint enterprise;
- (ii) by the total amount previously received in the case of aid for the temporary cessation of activities within the meaning of Article 16 (1) of this Regulation and under Article 14 of Regulation (EC) No 2468/98 paid during the year preceding permanent withdrawal or the setting up of the joint enterprise³⁸.

4. 3. An aid for construction or for modernisation, under this Regulation shall be reimbursed *pro rata temporis* when the vessel concerned is deleted from the fishing vessel register of the Community,³⁹ within fifteen years from the construction, or within five years from the modernisation works.⁴⁰

³⁶ Council Regulation (EEC) No 2908/83 of 4 October 1983 on a common measure for restructuring, modernising and developing the fishing industry and for developing aquaculture (OJ No L 290, 22.10.1983, p. 1). Regulation last amended by Regulation (EEC) No 3733/85 (OJ L 361, 31.12.1985, p. 78).

³⁷ Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ L 376, 31.12.1986, p. 7). Regulation last amended by Regulation (EEC) No 3946/92 (OJ L 401, 31.12.1992, p.1).

³⁸ *I and P: Temporary cessation is not the same as permanent withdrawal. Delete this paragraph. Cion: reservation on period of one year preceding permanent withdrawal. Prefer two years.*

³⁹ *Cion: Need to insert in the text at this point the words "including in the case of shipwreck".*

⁴⁰ *P and S: Request 10 years instead of 15 as time period to be calculated from the construction of the vessel concerned.*

Article 11

Small-scale coastal fishing

1. For the purposes of this Article, 'small-scale coastal fishing' means fishing carried on by vessels of an overall length of less than 12 metres.^{41 42}
2. Member States may take additional measures as provided for under this Regulation to supplement the measures to improve the conditions in which small-scale coastal fishing is carried on, under the terms laid down in this Article.
3. Where a group of owners of vessels or families of fishermen involved in small-scale coastal fisheries cooperatively implement an integrated collective project to develop or modernise this fishing activity, a lump-sum premium part-financed by the FIFG may be granted to the participants.

The following projects, *inter alia*, may be considered integrated collective projects for the purpose of this paragraph:

- safety equipment on board and improvement of sanitary and working conditions
- technological innovations (more selective fishing techniques)
- organisation of the production, processing and marketing chain (promotion and added value of the products)
- professional requalification or training.

⁴¹ *Cion to provide a draft declaration stating that this definition of small-scale coastal fishing is without prejudice to definitions appearing elsewhere in Community legislation.*

⁴² *IRL, NL and S: Seek length threshold of 15 metres. S: A lot of vessels under 12 metres conduct a trawl fishery and the number of accidents in this fishery demonstrate need for greater length of vessel. UK: Seek length threshold of 10 meters.*

4. The lump-sum premium shall not exceed EUR 150 000 per integrated collective project. The management authority shall determine the amount of the premium actually paid and how it is shared between the beneficiaries according to the scale of the project and the financial commitments made by each participant.

Article 12

Socio-economic measures

1. For the purposes of this Article, 'fisherman' means anyone engaging in his main occupation on board an operational seagoing fishing vessel.⁴³
2. The Member States may take, for fishermen, measures of a socio-economic nature associated with restructuring of the Community fisheries sector within the meaning of Article 11 of Regulation (EEC) No 3760/92.
3. Financial assistance from the FIFG may be granted only for the following measures:
 - a) part-financing of national early-retirement schemes for fishermen, provided that the following conditions are fulfilled:
 - i) at the time of early retirement, the age of the beneficiaries of the measure must be not more than ten years from the legal retirement age within the meaning of the legislation in force in the Member State, or the beneficiaries must be aged at least 55;
 - ii) the beneficiaries can show that they have worked for at least 10 years as fishermen.

⁴³ *A, FIN and S: Reservation. Socio-economic measures (A: in particular early retirement measures) should also apply to inland fishing, so amend paragraphs 1 and 3 accordingly.*

However, contributions to the normal retirement scheme for fishermen during the period of early retirement shall not be eligible for financial assistance from the FIGF.

In each Member State, for the entire programming period the number of beneficiaries may not exceed the number of jobs eliminated on board fishing vessels as a result of those vessels permanently stopping fishing activities within the meaning of Article 7 ;

- b) granting individual compensatory payments to fishermen who can show that they have worked for at least twelve months as fishermen, on the basis of an eligible cost limited to EUR 10 000 per individual beneficiary, provided the vessel on which the beneficiaries were employed has been the object of measures permanently stopping its activities, within the meaning of Article 7;
- c) granting non-renewable individual compensatory payments to fishermen who can show that they have worked for at least five years as fishermen, to help them retrain or diversify their activities outside maritime fisheries under an individual or collective social plan, on the basis of an eligible cost limited to EUR 50 000 per individual beneficiary; the management authority shall determine the individual amount according to the scale of the retraining and diversification project and the financial commitment entered into by the beneficiary.

4. The Member States shall make the necessary arrangements, in particular through appropriate control mechanisms, to ensure:

- a) that the beneficiaries of the measure referred to in paragraph 3(a) permanently give up work as fishermen;
- b) that no one fisherman can benefit from more than one of the measures referred to in paragraph 3;

- c) that the compensation referred to in paragraph 3(b) is refunded on a *pro rata temporis* basis where the beneficiaries return to their work as fishermen within a period of less than one year after being paid the compensation;
 - d) that the compensation referred to in paragraph 3(c) is refunded on a *pro rata temporis* basis where the beneficiaries return to their work as fishermen within a period of less than five years after being paid the compensation;
 - e) that the beneficiaries of the measure referred to in paragraph 3(c) actually engage in a new activity.
5. The Member States may introduce nationally financed accompanying social measures for fishermen in order to facilitate temporary cessation of fishing activities in the framework of plans for the protection of aquatic resources.⁴⁴

⁴⁴ *I : Substantial reservation. Could accept present text provided the words "in particular" are inserted after the word "activities" in second line of this paragraph and, provided there is an accompanying Cion Declaration.*

Cion : Substantive reservation on paragraph 5. Article 92 of the Treaty permits a Member State to give social aid at national level ; no need to repeat it here. Cion is prepared to make a declaration in the Minutes to cover this concern.

TITLE III

PROTECTION AND DEVELOPMENT OF AQUATIC RESOURCES, AQUACULTURE, FISHING PORT FACILITIES AND PROCESSING AND MARKETING

Article 13

Scope ⁴⁵

1. Member States may, under the conditions specified in Annex III, take measures to encourage capital investment in the following fields:
 - a) fixed or movable facilities aimed at the protection and development of aquatic resources, except restocking ; ⁴⁶
 - b) aquaculture,
 - c) fishing port facilities,
 - d) processing and marketing of fishery and aquaculture products.

⁴⁵ *S: Restocking which promotes the small scale coastal fishery ought to be eligible for public aid. The measures in the existing Regulation relating to the professional inland fishery should be maintained in this Regulation. This fishery is of vital importance to Sweden and requires active promotion: apart from the direct employment afforded to the professional fishermen involved, there is also down-stream employment in landings and the processing of products. A : Reservation. Want fresh water fishery covered here. Is aquaculture in fresh water limited to nets or does eel release for example fall into aquaculture.*

⁴⁶ *S, DK : General reservation. Want restocking included here particularly where there is an eventual conservation effect on natural resources (e.g. salmon in the Baltic). DK: Can lift reserve if Commission makes a satisfactory Declaration allowing for the continuation and development of certain projects which are running under the present regime of structural assistance, including DK project for delayed release of salmon in the Baltic. Cion : Restocking or even initial stocking is not a structural action and should not be financed by the FIFG although it might be eligible for state aid. However, can reassure delegations that the provisions in the existing Regulation regarding port equipment, marketing, aquaculture etc, will be maintained in the new Regulation, including for lakes. Will make Cion Declaration..*

2. Financial assistance from the FIG may be granted only for projects which:
- a) contribute to lasting economic benefits from the structural improvement in question;
 - b) offer an adequate guarantee of technical and economic viability;
 - c) avoid counterproductive effects, particularly the risk of creating surplus production capacity.

TITLE IV

OTHER MEASURES

Article 14

Measures to find and promote new market outlets

1. Member States may, under the conditions specified in Annex III, take measures to encourage collective operations to find and promote new market outlets for fishery and aquaculture products, in particular:
- a) operations associated with quality certification, product labelling, rationalisation of product names and product standardisation,
 - b) promotion campaigns, including those highlighting quality,
 - c) projects to test consumer and market reactions,
 - d) organisation of and participation in trade fairs and exhibitions,
 - e) organisation of study and sales visits,
 - f) market studies and surveys, including studies relating to the prospects for marketing Community products in third countries,
 - g) campaigns improving marketing conditions,
 - h) sales advice and aids, services provided to wholesalers, retailers, and producer organisations.

2. Priority is to be given to investments:
 - a) to encourage the sale of surplus or under-exploited species,
 - b) implemented by organisations officially recognised within the meaning of Regulation (EEC) No 3759/92,
 - c) jointly implemented by several producer organisations or other organisations of the sector recognised by national authorities ;
 - d) pursuing a quality policy for fishery and aquaculture products,
 - e) to promote products obtained using environmentally friendly methods.
3. The measures must not be based around commercial brands nor make reference to particular countries or geographic zone, except in specific cases where official recognition of origin with reference to a specified geographical zone for a product or process is granted pursuant to Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁴⁷. The reference may be used only from the date on which the name has been entered in the register provided for in Article 6(3) of Regulation (EEC) No 2081/92.

Article 15

Operations by members of the trade

1. The Member States may encourage the creation and facilitate the operation of producer organisations recognised under Regulation (EEC) No 3759/92:

⁴⁷ OJ L 208, 27.7.1992, p. 1. Regulation last amended by Regulation (EC) No 1068/97 (OJ L 156, 13.6.1997).

- a) Aid can be granted to producer organisations created after 1 January 2000 for three years following the date of recognition. This aid for the first, second and third years must be within both the following limits:
- i) 3%, 2% and 1% respectively of the value of the products marketed by the producer organisation; ⁴⁸
 - ii) 60%, 40% and 20% respectively of the administrative costs of the producer organisation;
- b) Without prejudice to the aid referred to at (a), aid may be granted to producer organisations that have been specifically recognised under Article 7a(1) of Regulation (EEC) No 3759/92 during the three years following the date of the specific recognition to facilitate the implementation of their plans to improve quality and marketing. The amount of this aid, for the first, second and third years must be within both the following limits:
- i) 3%, 2% and 1% respectively of the value of the products covered by the plan and marketed by the beneficiary producer organisation; ⁴⁹
 - ii) 60%, 50% and 40% respectively of the costs incurred by the organisation in implementing the plan;
- c) The aid referred to at (a) and (b) shall be paid to the final beneficiaries during the year following that for which it was granted, and not later than 31 December 2008.

⁴⁸ *ES: Delete this provision which is dissuasive to investment; in the past aid was not drawn on even when the need existed.*

⁴⁹ *F and ES: Delete this provision which is dissuasive to investment; in the past aid was not drawn on even when the need existed.*

Cion : Maintain this text under 1(a)(i); but will provide new text on 1(b)(i).

UK and DK: Maintain present text on 1(a)(i) and 1(b)(i).

2. The Member States may encourage short-term operations of collective interest with a broader scope than operations normally undertaken by private businesses, carried out with the active contribution of members of the trade themselves or carried out by organisations acting on behalf of the producers or by other organisations having been recognised by the management authority, and serving to attain the objectives of the common fisheries policy.
3. Eligible operations shall relate in particular to the following themes:
 - a) management and control of conditions for access to certain fishing zones and quota management;
 - b) management of fishing effort;
 - c) promotion of gear or methods recognised by the management authority as being more selective;
 - d) promotion of technical measures for the conservation of resources;
 - e) promotion of measures improving the working conditions and the sanitary conditions concerning the products, on board and landed;
 - f) collective aquaculture facilities, restructuring or improvement of aquaculture sites, collective treatment of aquaculture effluent;
 - g) eradication of the pathological risks of fish farming or parasites in catchment areas or coastal ecosystems;
 - h) collection of basic data and/or preparation of environmental management models for fisheries and aquaculture with a view to drawing up integrated management plans for coastal areas;
 - i) organisation of electronic trade and other information technologies to disseminate technical and commercial information;
 - j) creation of business incubators in the sector and/or centres for the collection of fishery and aquaculture products⁵⁰;
 - k) access to training, particularly in quality, and organisation of transmission of know-how on board vessels and on land;

⁵⁰ A: Reservation. Prefer "breeding and production centres" instead of "business incubators".

- l) design and application of systems to improve and control quality, traceability, health conditions, statistical instruments and environmental impact ;
- m) creation of added value in products (*inter alia*, through experimentation, innovation, the addition of value to by-products and co-products) ;
- n) improvement of knowledge and transparency in production and in the market.

Expenditure incurred in the normal production process in firms shall not be eligible under this paragraph.

- 4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Articles 47(3) and 51(2) of Regulation (EC) No .../.. [general Funds regulation].

Article 16

Temporary cessation of activities and other financial compensation ⁵¹

- 1. The Member States may grant compensation to fishermen and owners of vessels for the temporary cessation of activities in the following circumstances:
 - a) in the event of unforeseeable circumstances, particularly those caused by biological factors; the granting of compensation may last for no more than two months per year or six months over the entire period from 2000-2006. The management authority shall forward suitable scientific proof to the Commission in advance; ⁵²
 - b) where a fisheries agreement is not renewed, or where it is suspended, for the Community fleets dependent on the agreement; the granting of compensation may not last longer than six months; it may be extended by a further six months provided a conversion plan approved by the Commission is implemented for the fleet concerned;

⁵¹ *UK : General reservation. Request case by case examination under Council procedures or at least Management Committee procedure.*

⁵² *Cion : Scrutiny reservation. Uncertain as to precise implications of addition of “6 months over the entire period”.*

c) where a plan is introduced for the recovery of a resource threatened with exhaustion, decided by the Commission or by one or some Member States; the granting of compensation may last for no more than two years and may be extended by a further year. Compensation may also be granted, subject to the same restrictions as to duration, to the processing industry where it depends for its supply on a resource covered by a recovery plan and where imports cannot compensate for the reduced supply. Before the recovery plan is put into place the management authority shall forward to the Commission suitable scientific and economic justification. . The Commission shall request without delay the opinion of the Committee provided for in Article 16 of Regulation (EEC) No 3760/92.

2. The Member States may grant financial compensation to fishermen and owners of vessels where a Council Decision imposes technical restrictions on the use of certain gear or fishing methods; this aid is intended to cover the technical adjustment and may not be paid for more than six months. ⁵³
3. The financial contribution from the FIFG to the measures referred to in paragraphs 1 and 2 per Member State for the entire period from 2000-2006 may not exceed the higher of the following two thresholds: EUR 1 million or 4% of the Community financial assistance allocated to the sector in the Member State concerned. ⁵⁴

The management authority shall determine the amount of compensation as provided for in paragraphs 1 and 2 to be paid in individual cases taking account of relevant parameters such as the real losses suffered, the scale of the conversion effort, recovery plan or technical adjustment effort.

⁵³ *IRL : Can agree to Cion Declaration on this point if the explanatory words in brackets (ban on drift-nets) were to be deleted.*

Cion : Can agree to Irish request.

⁵⁴ *ES and P : 4 % is too low. Consider case of Morocco. Cion and UK: In paragraph 3, 4 % is more than adequate; has already been increased by 1 %.*

4. The measures taken under this Article may under no circumstances be invoked as contributing to the attainment of the objectives of the multiannual guidance programme referred to in Article 5, nor can they be justified by a recurrent seasonal suspension of activity as part of the ongoing management of fisheries. ⁵⁵

Article 17

Innovative measures and technical assistance

1. The Member States shall envisage in the plans referred to in Articles 3 (3) and defined in Article 9 paragraph (b) of Regulation (EC) No.... (general Funds Regulation) the means necessary to undertake studies, pilot projects, demonstration projects, training measures, technical assistance, the exchange of experience and publicity connected with the preparation, implementation, monitoring, evaluation or adjustment of the operational programmes and the single programming documents.
2. 'Pilot project' means a project carried out by an economic operator, a scientific or technical body or another competent body to test, in conditions approaching actual conditions in the industry, the technical reliability and/or financial viability of an innovative technology with a view to acquiring and disseminating (technical and/or financial) knowledge of the technology being tested. Pilot projects shall always comprise scientific monitoring of sufficient intensity and duration to obtain significant results; they must be the subject of scientific reports forwarded to the management authority. The latter shall immediately forward such reports to the Commission for information.

Experimental fishing projects shall be eligible as pilot projects provided their aim is the conservation of fishery resources and they implement more selective techniques. ⁵⁶

⁵⁵ *D : Our concerns on temporary laying up are not accommodated here.*

⁵⁶ *ES, IRL, NL : Should have reference to exploring new fishing grounds*

3. The measures referred to in paragraph 1 may, in particular, concern the themes referred to in Article 15(2), provided they are implemented on the initiative of public or semi-public bodies or other bodies designated to that end by the management authority.

They may also include the construction or transformation of vessels provided that these vessels are destined exclusively for fisheries research and training activities, undertaken by public or semi-public bodies, under the flag of a Member State.

4. In addition, the measures referred to in paragraph 1 may include the promotion of equal employment opportunities between men and women working in the sector.

TITLE V

GENERAL AND FINANCIAL PROVISIONS

Article 18

Compliance with the conditions governing assistance

The management authority shall ensure that the special conditions governing assistance listed in Annex III are complied with.

It shall also satisfy itself as to the technical capacity of beneficiaries and the financial viability of firms before granting aid.

Article 19

Notification of aid schemes

1. The Member States shall notify the Commission of the aid schemes provided for in the plans referred to in Articles 3 (3) and defined in Article 9 paragraph (b) of Regulation (EC) No ... (general Funds Regulation), in accordance with Articles 87 to 89 of the Treaty.⁵⁷
2. Within the scope of this Regulation, Member States may introduce supplementary aid measures subject to conditions or rules other than those laid down in this Regulation, or covering a sum in excess of the maximum amounts referred to in Annex IV , provided they comply with Articles 87 to 89 of the Treaty.

Article 20

Monetary Conversion

For Member States which are not in the Euro zone, the amounts in Euros set by this Regulation shall be converted into national currency at the rate published in the C series of the Official Journal of the European Communities.

The conversion shall be made at the rate applicable on 1 January of the year of the Member State's decision to grant the premium or aid.

⁵⁷ *DK, I, UK : Reservation. Need to speed up notification procedures. Request Cion. to make declaration to this effect.*

Article 21

Implementing rules

The form of the expenditure statements and annual implementation reports shall be adopted by the Commission in accordance with the procedure laid down in Articles 47(3) and 51(2) of Regulation (EC) No .../.. [general Funds regulation].

Article 22

Transitional provisions

The following are repealed with effect from 1 January 2000 :

- Regulation (EC) No 2468/98
- Articles 7, paragraphs 1, 2 and 3, and 7b of Regulation (EEC) No 3759/92,
- Regulation (EEC) No 3140/82⁵⁸ .

However, the repealed provisions shall remain applicable for aid, measures and projects approved before 31 December 1999.

References to the repealed regulations and articles shall be understood as references to this Regulation.

⁵⁸ Council Regulation (EEC) N° 3140/82 of 22 November 1982 on granting and financing aid granted by Member States to producers' organisations in the fishery products sector (OJ L 331, 26.11.1982, p. 7).

Article 23

Entry into force

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

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

Done at,

For the Council

The President

CONTENTS OF THE PLANS

- 1. Quantified description of the actual situation for each of the fields referred to in Titles II, III and IV**
 - a) Strengths and weaknesses;
 - b) Summary of operations undertaken and impact of funds used in previous years;
 - c) Requirements of the sector, particularly with regard to the constraints of the multiannual guidance programme for the fishing fleet.

- 2. Strategy for restructuring the sector**
 - a) Results of consultations and measures to involve the competent authorities and bodies and socio-economic partners at the appropriate levels;
 - b) Objectives:
 - i) general objectives under the common fisheries policy;
 - ii) priorities;
 - iii) objectives specific to each area of assistance, quantified if possible.
 - c) Demonstration that the public aids are necessary to attain the objectives sought; steps taken to prevent counterproductive effects, particularly as regards the creation of surplus capacity;
 - d) With regard to the fleet:
 - i) indicators concerning the development of the fleet in relation to the objectives of the multiannual guidance programme;
 - ii) fishing techniques and gear to be encouraged in the event of redeployment of fishing activities;
 - e) anticipated impact (on employment, production, etc.).

3. Means to attain the objectives

- a) The measures (legal, financial or other) planned in each field to implement the plans, particularly aid schemes;
- b) Indicative financing schedule covering the entire programming period and listing the regional, national, Community or other resources provided for each area of assistance.
- c) The requirements in terms of studies, pilot projects, demonstration projects, training, technical assistance and publicity measures connected with the preparation, implementation, monitoring, evaluation or adjustment of the measures concerned.

4. Implementation

- a) Management authority designated by the Member State;
- b) Steps taken to ensure efficient and effective implementation, including monitoring and evaluation; definition of the quantified indicators;
- c) Provisions relating to checks, penalties and publicity measures;
- d) With regard to the fleet:
 - i) The methods for monitoring trends in fishery resources, particularly vulnerable resources;
 - ii) For static gear, the arrangements for monitoring fishing effort, including trends in the number and size of gear.

**MINIMUM CONTENT OF SUBSEQUENT MULTIANNUAL GUIDANCE
PROGRAMMES FOR THE FISHING FLEET**

1. Updating of the description of the situation provided for in Annex I

This consists in describing the change in the situation regarding fisheries, the fleet and related employment since the date of submission of the programming documents referred to in Article 3.

2. Results from the previous programme

- a) Member States shall by 1 May 2001 identify and comment on the progress achieved and means used in attaining the objectives set for the 1997-2001 programme.
- b) Analyse the general administrative and socio-economic context in which it was implemented and in particular, where appropriate, in which measures to reduce fishing activity were implemented.
- c) Specify and comment on the Community, national and regional financial resources committed in attaining the results achieved, for each fleet segment.

3. New guidelines

On the basis of the replies given to points 1 and 2 indicate the guidelines which should be given to the various fleet segments for the subsequent MAGPs, in particular in relation to the following two operations:

- a) Fleet renewal: criteria for joining and leaving the fleet, for each segment and associated funding. Legal or administrative provisions enabling the Member State to monitor vessels joining and leaving its fleet. Measures taken by the Member State per fleet segment to ensure that public aid granted for fleet renewal and adjustment of fishing effort does not have contradictory effects where the pursuit of the objectives of the programmes is concerned;
 - b) Adjustment of fishing effort: desirable evolution of fishing effort per segment until the end of the subsequent MAGP, expressed in relation to the objectives set for each segment for 31 December 2001. Associated laws, regulations or administrative provisions. Systems for managing fishing activity. Extent of administrative and financial resources to be used to attain the new objectives thus set.
-

SPECIAL CONDITIONS AND CRITERIA FOR ASSISTANCE

1. Implementation of multiannual guidance programmes (Title II)

1.0 Age of vessels

For the purposes of this Regulation, the age of a vessel is a whole number defined as the difference between the year of the management authority's decision to grant a premium or aid and the year in which the vessel was built (or, if this is not known, the year of commissioning).

1.1 Permanent withdrawal (Article 7 (3))

- a) Permanent withdrawal may concern only vessels which have carried out a fishing activity for at least 75 days at sea in each of the two periods of 12 months preceding the date of the application for permanent withdrawal or, as the case may be, a fishing activity for at least 80% of the number of days at sea permitted by current national regulations for the vessel concerned.⁵⁹

In the Baltic Sea the number of 75 days shall be reduced to

- 60 for vessels registered in ports situated north of parallel 59°30' N;
- 40 for vessels registered in ports situated north of parallel 59°30'N and fishing for salmon;

- b) The following conditions must be met:

- i) prior to its permanent withdrawal, the vessel must be registered in the fishing vessel register of the Community;
- ii) the vessel must be operational at the time the decision is taken to grant the premium;

⁵⁹ UK: Reduce requirement for 75 days at sea to 40 days or possibly reduce figure of 80% to 50%. Will consult with capital as regards effects of this latter possibility.

- iii) after permanent withdrawal, the fishing licence must be cancelled and the vessel declared permanently deleted from the fishing vessel register of the Community ;
 - iv) in the event of permanent transfer to a third country, the vessel must be registered in the register of the third country without delay and may never return to Community waters.
- c) If a vessel is lost between the date of the decision to grant the premium and the actual date of permanent withdrawal, the management authority shall make a financial correction for the amount of the compensation paid by the insurance.
- d) No public aid within the meaning of Article 7 may be paid for a vessel transferred to a third country to replace a lost vessel belonging to a joint enterprise within the meaning of Article 8.

1.2 *Joint enterprises* (Article 8)⁶⁰

- a) In addition to the conditions for the permanent transfer of a vessel to a third country within the meaning of Article 7 (3)(b) and point 1.1 of this Annex, vessels, transferred in the framework of joint enterprises, must meet the following conditions:
- i) they must have been operating for at least the last five years, under the flag of a Member State of the Community :
 - in Community waters
 - and/or in the waters of a third-country either within a fisheries agreement with the Community or within another agreement
 - and/or in international waters where fisheries is ruled by an international Convention ;

⁶⁰ *ES: Reservation of substance on Section 1.2.*

- ii) they must, within six months of the date of the decision to grant the premium, be fitted out with the technical equipment needed to operate in the waters of the third country under the terms of the fishing authorisation issued by the authorities of the third country; they must comply with the Community safety regulations and be adequately insured as decided by the management authority; costs associated with such a fitting, if any, are not eligible for a Community aid ;
- b) When the application for the premium for joint enterprises is lodged, beneficiaries must provide the management authority with the following information:
 - i) a description of the vessel, including, in particular, the internal number, registration number, tonnage, power and year of entry into service ;
 - ii) during the last five years: service and activity of the vessel (and conditions under which the activity was carried on); indication of fishing zones (Community waters/other); any previous Community, national or regional aid received;
 - iii) proof of the project's financial viability, including, in particular:
 - a financing plan showing the contributions of the different shareholders in cash and in kind; level of contribution of Community/third country partners; proportion of the premium provided for in article 7.5 (b), which is to be invested in cash in the capital of the joint enterprise ;
 - an activity plan covering at least five years, showing, in particular, fishing zones, places of landing and final destination of catches;
 - iv) a copy of the insurance contract.

- c) The following conditions must be met by the beneficiary during a period of five years from the transfer of ownership of the vessel to the joint enterprise:
- i) any change in the conditions under which the vessel is operated (particularly change of partner, change in the share capital of the joint enterprise, change of flag, change of fishing zone), within the limits of the conditions referred to in Article 8(2), shall be subject to prior authorisation by the management authority;
 - ii) A vessel lost through shipwreck must be replaced by an equivalent vessel within one year of the shipwreck⁶¹.
- d) If the conditions at (a) and (b) are not fulfilled when the application for the premium for joint enterprises is lodged, the public aid shall be restricted to the premium for permanent transfer referred to in Article 7 (5)(c).
- e) Without prejudice to Articles 29(4) and 38 of Regulation (EC) No/. [general Funds regulation], the management authority shall carry out a financial correction on the difference between the premium for joint enterprise and the premium for permanent transfer of the same vessel (hereinafter called “difference”), in the following cases:

⁶¹ *ES: Reservation.*

At the request of the Spanish delegation the Council Legal Service gave the following preliminary opinion on the legality of this provision. The question at stake is whether it is proportionate (in the sense of appropriate and necessary in the circumstances) to impose the obligation to replace a shipwrecked vessel within one year of the shipwreck on the beneficiaries of public aid. Given that the owner of the vessel is presumably not at fault, this provision seems somewhat harsh and inappropriate given the circumstances surrounding the loss of the vessel.

Cion: Wish to avoid the situation where the vessel is lost and the vessel owner claims and keeps the insurance money, which should be used for replacing the vessel. Vessel must be replaced or else the public aid must be reimbursed..

Council Legal Service: In this case a link between the insurance provision and the replacement of the vessel provision is necessary.

Cion: Cion original Proposal had such a link

ES: Replacement of the vessel is not always possible. E.g. the Moroccan authorities do not permit replacement of vessels so this requirement would be impossible to fulfil. Insert words "where feasible" after the word "shipwreck".

UK: Text may need redrafting to accommodate the Council Legal Service opinion but we must have the replacement requirement in order to protect the Community taxpayer's money.

- i) if the beneficiary notifies to the management authority a change in operating conditions that lead to the non respect of the conditions referred to in Article 8 (2) of this Regulation, including the sale of the vessel, the transfer of holding by the Community partner or the retirement of the Community shipowner in the joint enterprise the financial correction shall be equal to part of the amount of the difference ; this part shall be calculated *pro rata temporis* over the period of five years;
- ii) if during a control it is found that the conditions provided for in Article 8 (2) of this Regulation and point (c) of this paragraph are not complied with, the financial correction shall be equal to the difference;
- iii) if the beneficiary fails to provide the activity reports provided for in Article 8 (5) of this Regulation after having been served notice by the management authority, the financial correction shall be equal to part of the amount of the difference; this part shall be calculated *pro rata temporis* over the period of five years;
- iv) if the vessel is lost and not replaced, the financial correction shall be equal to part of the amount of the difference; this part shall be calculated *pro rata temporis* over the period of five years.

1.3 *Fleet renewal* (Articles 6 and 9)

- a) Vessels must be built to comply with the regulations and directives governing hygiene safety, health, product quality and working conditions and the Community provisions concerning the measurement of vessels and the monitoring of fishing activities. They shall be entered in the appropriate segment of the Community register.
- b) Without prejudice to Articles 7 and 8, the transfer of ownership of a fishing vessel shall not give rise to Community aid.

1.4 *Vessel modernisation* (Articles 6 and 9)

- a) Vessels must be registered in the fishing vessels register of the Community. Changes in vessel characteristics must be communicated to this register and the vessels must be measured in accordance with Community provisions, when they are modernised.
- b) Investments should relate to:
- i) the rationalisation of fishing operations, in particular by the use of more selective fishing technologies and methods on board in order to avoid undesirable by-catches,
 - and/or
 - ii) improvement of the quality of products caught and preserved on board, the use of better fishing and preserving techniques and the implementation of legal and regulatory provisions regarding health,
 - and/or
 - iii) improvement of working and safety conditions.
- Without prejudice to Article 16 (2), the replacement of fishing gear shall not be considered eligible expenditure.
- c) Operations may cover only vessels less than 30 years old. This age limit shall not apply to the investments referred to in paragraph (b) (iii)⁶².

⁶² *F, FIN, NL, P and S: Reservation on restriction of "less than 30 years old". S: A considerable part of the Swedish fleet is older than 30 years but the vessels have traditionally been maintained in good condition; their exclusion from public aid would adversely affect the operations of the fleet.*
Cion: Bad use of public money to modernise vessels older than 30 years. Member States are free to modernise such vessels with the aid of national finance but not with Community funding. DK and UK: Support Cion.

2. Investment in the areas referred to in Title III

2.0. General provisions

- a) Projects in undertakings may involve capital investment in production and management (construction, enlargement, equipping and modernisation of facilities).
- b) Capital investment to improve conditions of hygiene or human or animal health, to improve product quality or reduce pollution of the environment and, where relevant, to increase production itself, shall be eligible for assistance.
- c) The transfer of ownership of property linked to productive activities may not give rise to the grant of Community aid.

2.1 Protection and development of aquatic resources

Expenditure eligible for assistance from the FIFG may concern only the installation of fixed or movable facilities to protect and develop aquatic resources and the scientific monitoring of projects. Such projects must: ⁶³

- a) be of collective interest,
- b) be implemented by public or semi-public bodies, recognised professional organisations or other bodies designated to that end by the management authority,
- c) not have a negative impact on the aquatic environment.

⁶³ *ES: Should say “in particular”. Scrutiny reservation.
Cion : Will consider in relation to Article 13.*

Each project must include scientific monitoring for at least five years, comprising in particular the evaluation and monitoring of the development of marine resources in the waters concerned. The management authority shall forward the scientific monitoring reports to the Commission every year for information. ⁶⁴

2.2 Aquaculture

- a) For the purposes of this Regulation, 'aquaculture' means the rearing or culture of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment; the organisms remain the property of a natural or legal person throughout the rearing or culture stage, up to and including harvesting.
- b) The promoters of intensive fish-farming projects shall forward the information provided for in Annex IV to Directive 85/337/EEC⁶⁵ to the management authority together with their application for public aid. The management authority shall decide whether the project must be submitted for assessment under Articles 5 to 10 of that Directive. Where the public aid is granted the cost of collecting information on environmental impact and any assessment costs shall be eligible for assistance from the FIFG.
- c) Investments in works concerning the installation or improvement of water circulation in aquaculture enterprises and on service vessels shall be eligible.
- d) Notwithstanding group 3 in Table 3 in paragraph 2 of Annex IV, where investments concern the use of techniques that substantially reduce environmental impact, the contribution of private beneficiaries (C) may be restricted to 30% of eligible expenditure in Objective 1 regions and 50% in other areas, instead of 40% and 60% respectively.

⁶⁴ *ES, P : Reservations. Reporting twice over a whole programming period should be sufficient. Cion : Maintain position. Annual reporting is a necessity.*

⁶⁵ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40). Directive :last amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

2.3 *Fishing port facilities*

Priority shall be given to investments of collective interest to fishermen using a port and contributing to the general development of the port and to the improvement of services offered to fishermen. Investments shall relate in particular to installations and equipment intended:

- a) to improve the conditions under which fishery products are landed, treated and stored in ports,
- b) to support fishing vessel activities (provision of fuel, ice and water, maintenance and repair of vessels),
- c) to improve jetties with a view to improving safety during the landing or loading of products.

2.4 Processing and marketing

- a) For the purposes of this Regulation, 'processing and marketing of fishery and aquaculture products' means all operations, including handling, treatment, production and distribution, between the time of landing or harvesting and the end-product stage.
- b) Investments shall not be eligible for assistance where they concern:
 - i) fishery and aquaculture products intended to be used and processed for purposes other than human consumption, with the exception of investments exclusively for the treatment, processing and marketing of fishery and aquaculture product wastes,
 - ii) the retail trade.

Notwithstanding group 3 in Table 3 in paragraph 2 of Annex IV, where investments concern the use of collective facilities or techniques that substantially reduce environmental impact, the contribution of private beneficiaries (C) may be restricted to 30% of eligible expenditure in Objective 1 regions and 50% in other areas, instead of 40% and 60% respectively.

3. Measures to find and promote new market outlets (Article 14)

a) Eligible expenditure shall cover in particular:

- i) the costs of advertising agencies and other service providers involved in the preparation and implementation of promotion campaigns,
- ii) the purchase or hire of advertising space and the creation of slogans and labels for the duration of promotion campaigns,
- iii) expenditure on publishing, external staff, premises and vehicles required for the campaigns.

b) The beneficiary's operating costs (staff, equipment, vehicles, etc.) shall not be eligible.

ANNEX IV

SCALES AND RATES OF ASSISTANCE

1. Scales of assistance relating to fishing fleets (Title II)⁶⁶

TABLE 1

Category of vessel by tonnage (GT)	Euros
0 < 10	11 000/GT + 2 000
10 < 25	5 000/GT + 62 000
25 < 100	4 200/GT + 82 000
100 < 300	2 700/GT + 232 000
300 < 500	2 200/GT + 382 000
500 and above	1 200/GT + 882 000

TABLE 2

Category of vessel by gross registered tonnes (GRT)	Euros
0 < 25	8 200/grt
25 < 50	6 000/grt + 55 000
50 < 100	5 400/grt + 85 000
100 < 250	2 600/grt + 365 000

From 1 January 2000, for vessels longer than 24 metres between perpendiculars, and from 1 January 2004, for all vessels, only Table 1 shall apply.

⁶⁶ *UK: Need two separate sets of Tables here: the first relating to construction of vessels and focusing on small vessels; the second relating to decommissioning of vessels and focusing on larger vessels.*

2. Rates of financial participation

For all the operations referred to in Titles II, III and IV, the limits on Community financial participation (A), total State financial participation (national, regional and other) by the Member State concerned (B) and, where applicable, financial participation by private beneficiaries (C) shall be as follows, expressed as a percentage of eligible costs:

Group 1: Permanent withdrawal premiums (Article 7), premiums for the creation of joint enterprises (Article 8), small-scale coastal fishing (Article 11), socio-economic measures (Article 12), protection and development of aquatic resources (Article 13 paragraph 1a), fishing port facilities with no financial participation by private beneficiaries (Article 13 paragraph 1c), measures to find and promote new market outlets with no financial participation by private beneficiaries (Article 14), operations by members of the trade with no financial participation by private beneficiaries (Article 15), temporary cessation premiums and other financial compensation (Article 16), innovative measures and technical assistance including pilot projects carried out by public bodies (Article 17)

Group 2: Fleet renewal and modernisation of fishing vessels (Article 9)

Group 3: Aquaculture (Article 13 paragraph 1b), fishing port facilities with financial participation by private beneficiaries (Article 13 paragraph 1c), processing and marketing (Article 13 paragraph 1d), measures to find and promote new market outlets with financial participation by private beneficiaries (Article 14), operations by members of the trade with financial participation by private beneficiaries (Article 15 paragraph 2)

Group 4: pilot projects other than carried out by public bodies (Article 17)

TABLE 3⁶⁷

	Group 1	Group 2	Group 3	Group 4
Objective No 1 Regions ^(*)	$50\% \leq A \leq 75\%$ $B \geq 25\%$	$A \leq 35\%$ $B \geq 5\%$ $C \geq 60\%$	$A \leq 35\%$ $B \geq 5\%$ $C \geq 40\%$	$A \leq 75\%$ $B \geq 5\%$ $C \geq 20\%$
Other areas	$25\% \leq A \leq 50\%$ $B \geq 50\%$	$A \leq 15\%$ $B \geq 5\%$ $C \geq 60\%$	$A \leq 15\%$ $B \geq 5\%$ $C \geq 60\%$	$A \leq 50\%$ $B \geq 5\%$ $C \geq 30\%$

(*) including those referred to in Article 6(1) of Regulation (EC) No. ... / ... [general Funds Regulation]. .

⁶⁷ *NL and UK: Anomalous to give higher rate to fleet based in one part of the country than to fleet based in another part; both fleets could operate on the same stocks, same area and same production conditions: fleet measures should be the same across the board to avoid distorting competition. F and DK: Endorse NL in that the difference between Objective 1 and other areas is too great which creates a problem for fleet and land-based industries. F: Community participation for non-Objective 1 areas should be increased from 15% to 25%. I: In group 3 for aquaculture the rate of participation should be reduced from 40% to 30%. GR: In groups 2 and 3 the C amount should not be different. Group 2 should be deleted and the C figure in Group 3 be 40%. P: General Funds Regulation should allow for reduction for private participation while remaining within its overall parameters. A and B in groups 2 and 3 could make up 50%. Cion: Cannot deviate from General Funds Regulation, particularly as regards aquaculture aid and investment aid to enterprises. A separate sub-group 2 was created for the fleet to allow Member States to make up for the fact that the FIFG funding would be less.*

In Group 1, where appropriate, the management authority may require a financial contribution from the private sector, particularly in the case of the protection of aquatic resources. Eligible expenditure shall be reduced accordingly.

In the case of investments in small and medium-sized businesses within the meaning of Commission Recommendation 96/280/EC⁶⁸ the (A) rates for groups 2 and 3 may be increased by an amount for forms of finance other than direct assistance, provided that this increase does not exceed 10 % of the total eligible cost. The contribution of the private beneficiary shall be reduced accordingly⁶⁹.

⁶⁸ Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (96/280/EC)(OJ L 107, 30.4.1996, p. 4).

⁶⁹ *Cion: Have provided text of a Declaration to meet concerns of DK on private and public financial participation. In addition, the following clarifications should be added to Group 1 and Group 3 respectively:*
(Group 1) "with no financial participation by private beneficiaries (Article 13, paragraph 1(a))"
(Group 3) "with financial participation by private beneficiaries (Article 13, paragraph 1(a))"
Consequently, the first paragraph of text after Table 3 in Annex IV (the penultimate paragraph) should be deleted.
DK: Request Cion to confirm Declaration at Council.

**(draft) Commission statements to be inserted in the minutes
of the "Fisheries" Council meeting, 10 June 1999**

article 11 (small scale coastal fishing)

The measures for small scale coastal fishing covered by article 11 are without prejudice to the definition of the small scale coastal segment used for the purposes of the multiannual guidance programmes for the fishing fleets. In this respect the Commission points out that article 3 of Council Decision 97/413/EC, which fixed the guidelines for the multiannual guidance programmes, explicitly excluded trawlers from the small scale coastal segment.

article 12 (socio-economic measures)

The Commission recalls that the definition of a "fisherman" given at paragraph 1 applies in particular to the "fishermen" referred to under paragraph 5. Under these conditions, vessels owners which do not meet such a definition of a "fisherman" cannot benefit from the social measures under paragraph 5. Moreover the Commission recalls that general national measures aimed at supplying minimum income to workmen is not deemed to be a state aid.

article 16 (temporary cessation of activities and other financial compensations)

Article 16(2) does not preclude the possibility for Member States to grant, during the programming period 2000-2006 and under to the conditions of Article 16, projects resulting from Article 11a of Council Regulation (EC) No 894/97 of 29 April 1997 as modified by Council Regulation (EC) No 1239/98 of 8 June 1998 ("ban of drift-nets") under which technical adjustment is possible until 31 December 2001.

annex IV-2 (rates of financial participation)

With respect to operations concerning the protection and development of aquatic resources (Article 13 paragraph 1a), fishing port facilities (Article 13 paragraph 1c), measures to find and promote new market outlets (Article 14) and operations by members of the trade (Article 15), the Commission considers that the management Authority should determine whether they fall under Group 1 or Group 3 of Annex IV-2, in particular on the basis of following considerations:

- collective vs. individual interest;
- collective vs. individual beneficiary (Producers' Organisations, organisations representing the trade);
- public access to the results of the operation vs. private ownership and control;
- financial participation by collective bodies, research institutions.

List of Member States' Submissions

SN 1867/99 – 16.2.99

Italian delegation's suggestions re Article 11

SN 1868/99 – 16.2.99

German delegation's suggestions on Annex IV

SN 1932/99 – 26.2.99

Spanish suggestions on Articles 14 and 16 and Annex III

SN 2068/99 – 29.3.99

Austrian delegation's comments on the inclusion of inland fisheries

SN 2556/99 – 13.4.99

French observations on the Proposal as a whole

SN 2973/99 – 19 May 1999

Portuguese comments on Annex IV

SN 2819/99 – 27.4.99

Portuguese comments on Articles 7, 9, 10, 11, 13, 17, Annex IV

SN 2772/99 – 6.5.99

Italian comments on Articles 8, 10, 11, 12, 13, 17, Annex III, Annex IV

SN 3106/99 – 26.5.99

French proposal on Articles 5, 7, 10 and 11

SN 3107/99 – 26.5.99

UK comments on Annex III

SN 3108/99 – 26.5.99

Spanish position on Joint Enterprises

SN 3109/99 – 26.5.99

Note from Irish delegation on Presidency Working Paper SN 2467/99 on Articles 7, 10, 11 and 17

SN 3110/99 – 26.5.99

Danish comments on Presidency Working Paper SN 2467/99 on Articles 7, 10, 11 and Annex IV

SN 3111/99 – 26.5.99

Proposed Spanish amendments on Joint Enterprises

SN 3112/99 – 26.5.99

Proposed Spanish amendments to Annex III

SN 3177/99 - 27.5.99

Proposed French amendments to Article 3.3
