

ΕΒΡΟΠΕΪΣΚΑ ΣΜΕΤΗΑ ΠΑΛΑΤΑ  
TRIBUNAL DE CUENTAS EUROPEO  
EVROPSKÝ ÚČETNÍ DVŮR  
DEN EUROPÆISKE REVISIONSRET  
EUROPÄISCHER RECHNUNGSHOF  
EUROOPA KONTROLLIKODA  
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INIÚCHÓIRÍ NA HEORPA



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## Special Report No 7/2007

(pursuant to Article 248(4) second paragraph, EC)  
on the control, inspection and sanction systems relating to the rules on  
conservation of Community fisheries resources

together with the Commission's replies

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**INDEX OF ABBREVIATIONS**

CFP:	common fisheries policy
DG FISH:	Directorate-General for Fisheries and Maritime Affairs
EEZ:	exclusive economic zone
EFF:	European Fisheries Fund
EU:	European Union
GT:	gross tonne, unit for measuring vessel capacity
ICES:	International Council for the Exploration of the Sea
ISO:	International Organization for Standardization
kW:	kilowatt, unit for measuring vessel engine power
MAGP:	multiannual guidance programme
STECF:	Scientific, Technical and Economic Committee for Fisheries
TAC:	total allowable catch
VMS:	Vessel Monitoring System – system whereby vessels transmit their positions to the control authorities at regular intervals

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## **EXECUTIVE SUMMARY**

I. The Common Fisheries Policy was instituted in 1983 with the objective of sustainable exploitation of living aquatic resources. Setting total allowable catches (TAC) and national quotas in order to limit catch volumes is the cornerstone of this policy. The existence of complete and reliable data and the application of effective inspection and penalty systems are essential to the success of such an approach.

II. The audit covered these three elements, and the results of testing at the Commission and in the six principal Member States<sup>1</sup> in fisheries terms led the Court to conclude that:

- catch data are neither complete nor reliable, and the real level of catches is thus unknown. As a consequence this prevents proper application of the TAC and quota systems. In the Member States, the regulatory framework and the procedures in force guarantee neither that the data collected are complete, nor that inconsistencies are detected when it is validated. For its part, the Commission is not in a position to identify satisfactorily errors and misstatements in the data forwarded by the Member States and to take the timely decisions necessary to protect the resource (paragraphs 18 to 51);
- the inspection systems do not provide assurance that infringements are effectively prevented and detected; the absence of general control standards is an impediment to adequate control pressure and optimisation of inspection activities in the Member States. Moreover, in actual fact it restricts the extent and scope of the Commission's work of evaluating national arrangements and consequently limits the latter's ability to give an opinion of the overall effectiveness of national systems (paragraphs 52 to 87);
- the procedures for dealing with reported infringements do not support the assertion that every infringement is followed up and still less that infringements

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<sup>1</sup> Denmark, Spain, France, the Netherlands, Italy and the United Kingdom (England and Wales).

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attract penalties; even when penalties are imposed their deterrent effect is, on the whole, limited. As regards infringements of Community legislation by a Member State, the only instrument of proven effectiveness available to the Commission is an action before the Court of Justice for failure to fulfil an obligation; however, some of the inherent characteristics of such actions limit the utility of such actions and make this an insufficiently responsive instrument (paragraphs 88 to 106);

- overcapacity detracts from the profitability of the fishing industry and in a context of decreasing authorised catches is an incitement to non-compliance with these restrictions. It also affects the quality of the data forwarded. After the failure of the programmes for adapting fishing capacity, the current approach, which is essentially based on reducing the fishing effort, is unlikely to resolve the problem of overcapacity (paragraphs 107 to 120).

If this situation continues, it will bring grave consequences not only for the natural resource, but also for the future of the fishing industry and the areas associated with it.

III. If the political authorities want the CFP to achieve its objective of sustainable exploitation of the fisheries resources, the present control, inspection and sanction systems must be strengthened considerably, in particular by implementing the following recommendations:

- the Member States should improve the quality of their catch data by carrying out systematic compliance checks on all operations, including checks on operations across national boundaries. They should also have their data certified by an independent body;
  - the Commission should ensure that the electronic system for recording and reporting fishing activity data is implemented as quickly and widely as possible and should strengthen controls on the data forwarded to it, notably by extending the analyses that it performs on individual data;
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- the Member States should develop analytical, programming and follow-up tools for their inspection activities to enable them to ensure that there is adequate overall control pressure and optimal deployment of resources
  - the Member States should remind the competent authorities of the need to impose deterrent sanctions;
  - the Community legislator should specify in the regulations the various elements essential to an effective inspection and sanction system;
  - the Community legislator should reinforce the Commission's ability to put pressure on defaulting Member States;
  - the Commission and Member States should adopt active measures to reduce structural overcapacity in the fishing industry.
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## **INTRODUCTION**

### ***Objective and main characteristics of the management of the Community fisheries resources***

1. Each year more than 4,4 million tonnes of fish and crustaceans with a total value of 6 100 million euros are landed in Community ports.<sup>2</sup> The fishing industry accounts for 230 000 jobs in the European Union (EU) and in certain coastal regions plays a major role for which there is no easy substitute.
2. The Community fishery resources<sup>3</sup> are part of our common heritage. The objective of the common fisheries policy (CFP) is to "ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions"<sup>4</sup>. Even though the formulation was different, the concept of sustainable fishing has existed since the CFP was instituted in 1983<sup>5</sup>.
3. Almost twenty years later the Commission could not avoid a negative assessment of the CFP, recognising that the policy had not attained its target and had "not delivered sustainable exploitation of fisheries resources"<sup>6</sup>. It stated that

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<sup>2</sup> Source: Eurostat, Facts and figures on the FCP, 2006 edition.

<sup>3</sup> Under international law coastal states have sovereign rights to all natural resources in their "exclusive economic zone"(EEZ), i.e. in the waters inside a 200 nautical mile limit of their shores. In the Mediterranean, however, there are no exclusive economic zones and the waters under national sovereignty are limited to the territorial sea, i.e. the 12 nautical mile zone. At Community level management of the fishery resources contained within each Member State's territorial waters or EEZ is the exclusive responsibility of the European Union. Resources outside these waters are governed by international agreements.

<sup>4</sup> Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Article 2(1) (OJ L 358, 31.12.2002).

<sup>5</sup> Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, Article 1 (OJ L 24, 27.1.1983).

<sup>6</sup> Green paper on the future of the common fisheries policy, COM(2001) 135 final, 20.3.2001.

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the failure was environmental, "many stocks are at present outside safe biological limits", as well as economic and social, "The fisheries sector is characterised by economic fragility resulting from over-investment, rapidly rising costs and a shrinking resource base: this is reflected in poor profitability and steadily declining employment".

4. This diagnosis is confirmed by the latest figures available. Scientists at the International Council for the Exploration of the Sea (ICES), which is responsible for biological appraisal, have studied the exploitation rate for a number of stocks in the north-eastern Atlantic, the area where most of the Community fisheries resources are concentrated<sup>7</sup>. Their work showed that 81 % of the stocks evaluated were over-exploited<sup>8</sup>. From the economic viewpoint, the diagnosis of failure is supported by the Eurostat figures which showed a steady decrease in the volume of Community catches in the north-eastern Atlantic. Over the period 1995-2005 the overall decrease was 30 %.

5. Moreover at the Johannesburg Earth Summit on sustainable development in 2002 the European Union subscribed to an action plan whose objectives included restoring all fish stocks to levels that can produce the maximum sustainable yield by 2015 at the latest.

### ***Main policies and measures***

6. Fish is a renewable natural resource that is not easily quantifiable, and the reproduction and movement factors are not directly controllable. Catch limitation is therefore the only way of influencing stocks and "conservation, control and enforcement" activity thus plays a key role in that its aim is, firstly, to define the

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<sup>7</sup> In 2005 the north-eastern Atlantic accounted for 76 % of the 5,6 million tonnes caught in all regions of the world by the Community fleet. Source: Eurostat, Statistics in focus 10/2007, 15.1.2007.

<sup>8</sup> Commission, Memo /06/268, 5 July 2006.

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arrangements for conserving and managing resources and, secondly, to ensure that the corresponding regulations are properly implemented.

7. The European Union's main resource management measure is limiting catch volumes by setting total allowable catches (TAC) for the main species and dividing them between the various Member States in the form of quotas. The TAC are adopted annually by the Council on the basis of Commission proposals which, in turn, are based on scientific opinions<sup>9</sup>. The latter provide an indication of the quantity of fish that can be taken without jeopardising the renewal of stocks. The data used by the scientists are the results of their own work, together with the catch quantities declared by the fishing industry.

8. In the past, limitation of authorised catches was accompanied by a compulsory policy of reducing fishing fleet capacity. However, this policy was abandoned as self-defeating in the 2002 CFP reform. Today's Community measures simply set an upper limit on capacity and influence the fishing effort, i.e. the activity of the fishing fleet. The last element of the system is the "technical measures". Basically, these "measures" specify the characteristics of fishing gear and/or set minimum sizes for particular species.

9. Although the various policies are defined at Community level, it is the Member States<sup>10</sup> who have general responsibility for ensuring effective control, inspection and enforcement of the CFP rules<sup>11</sup>. This means they have total freedom with regard to arrangements for administering their quotas, organising inspections and the nature of sanctions to be applied in cases of infringement. For its part, the

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<sup>9</sup> Scientific opinions delivered by the International Council for the Exploration of the Sea (ICES), and submitted by the Commission to the Scientific, Technical and Economic Committee for Fisheries (STECF), comprising national experts, representatives of the fisheries sector and other stakeholders, including environmental NGOs.

<sup>10</sup> Each Member State controls the activities carried out in its territory or in waters under its sovereignty or jurisdiction.

<sup>11</sup> Regulation (EC) No 2371/2002, Article 23(1).

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Commission is responsible for evaluating and controlling the application of CFP rules by the Member States and for facilitating coordination and cooperation between them.

### ***Volume of finance involved***

10. The Community contribution to "control and enforcement" activity is limited to 46 million euro if only the appropriations directly allocated<sup>12</sup> to it are considered. The financial issues are far more substantial if one takes into account all the activities designed to deal, if only partially, with the consequences of the serious shortcomings of the resource management policy, especially the structural assistance for fisheries (837 million euro) and the international fisheries agreements (156 million euro).

11. Moreover fish stocks are an asset which is the direct concern of the European Union in that the EU is responsible for managing them. The difficulties of evaluating that asset in monetary terms must not obscure the reality and significance of it.

### ***Main regulations***

12. The base regulation is the Council Regulation on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>13</sup>. Chapter V specifies the objectives and the different Community means of action for achieving them.

13. The provisions on the control system<sup>14</sup>, on the one hand, and the collection of catch data<sup>15</sup> on the other hand, form part of older specific regulations. Other

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<sup>12</sup> All figures relating to appropriations are 2007 payment appropriations.

<sup>13</sup> Council Regulation (EC) No 2371/2002.

<sup>14</sup> Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ L 261, 20.10.1993).

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obligations relating to control are included in annexes to the annual "TAC and quota" regulations<sup>16</sup> and in the regulations establishing recovery measures or multiannual plans for the sustainable exploitation of specific stocks<sup>17</sup>.

## **AUDIT CHARACTERISTICS**

### ***Audit subject and questions***

14. Limitation of catch volumes, by setting TAC and quotas, is the cornerstone of the Community policy for the management of the fisheries resources. The existence of complete and reliable data and the application of effective inspection and penalty systems are essential to the success of such an approach. The Court therefore deemed it appropriate to perform an audit that aimed to answer the following question:

"Are the Commission and the Member States taking the necessary steps for an effective system of control, inspection and sanctions for the conservation of fisheries resources?"

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<sup>15</sup> Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish (OJ L 276, 10.10.1983).

<sup>16</sup> Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ L 12, 14.1.2005).

<sup>17</sup> Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks;  
Council Regulation (EC) No 811/2004 of 21 April 2004 establishing measures for the recovery of the Northern hake stock;  
Council Regulation (EC) No 2166/2005 of 20 December 2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula;  
Council Regulation (EC) No 388/2006 of 23 February 2006 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Bay of Biscay.

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Four specific audit objectives were investigated:

- a) Are catch data reliable and monitored effectively? (without stating an opinion as to the quality of individual declarations)
- b) Are the inspection systems as effective as is possible?
- c) Are the systems for following up infringements appropriate and effective?
- d) How far is the inherent risk constituted by overcapacity in the fishing industry dealt with in reality?

### ***Audit approach and methodology***

15. The audit work focused mainly on analysis of data collection, inspection and sanction systems, and was carried out at Commission headquarters and in the Member States. Audit evidence was collected and examined by means of interviews and analysis of documents and data. In order to supplement, test and cross-check their knowledge of the system the auditors carried out a series of tests of control on catch records, on the one hand, and inspection reports on the other. In the absence of specific regulatory requirements the criteria adopted were the standards recognised by international organisations and generally applicable to this area<sup>18</sup>.

16. The basis on which these six Member States were selected for the audit was the size of catch volumes and the value of their landings. The Member States in question were Denmark, Spain, France, Italy, the Netherlands and the United

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<sup>18</sup> The sources of such standards were: General criteria for the operation of various types of bodies performing inspection (ISO/IEC 17020:1998); COSO Enterprise Risk Management -integrated framework (2004); Office of the Auditor General Norway "Study on the management of the fisheries resources"; ECA Opinion on the single audit model (OJ C 107, 30.4.2004); COM(2003)130 final: Communication from the Commission to the Council and the European Parliament - Towards uniform and effective implementation of the CFP; EU Commission Internal Control Standards numbers 11, Risk analysis and management, 17, Supervision, 7, Objective setting, 10, Monitoring performance and 9, Annual management plan.

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Kingdom, which together account for almost 70 % of catch volumes and more than 80 % of the value of landings<sup>19</sup>. On-the-spot visits took place between April and November 2006.

17. This report is being published almost five years after the publication of the last general regulation on the CFP, at a time when the Commission is preparing to begin the recasting of the "control" regulation with a view to presenting the text of a proposal to the Council in 2008.

## **OBSERVATIONS**

### ***Quota uptake data unreliable and monitoring rudimentary***

18. The basis for the TAC and quota system is catch quantity limitation. The quality of its implementation depends on the existence of, firstly, a recording and validation system (see **Annex 1**) that provides complete and reliable data, and secondly, an effective system for monitoring that data, in order to avoid quota overruns. However, neither of the systems mentioned, taken as a whole, met these criteria.

### **National catch recording systems have many shortcomings**

19. The national systems for collecting, validating and compiling catch data are affected by numerous shortcomings, some of them serious, so that the quality of the data forwarded to the Commission is unreliable.

### **Declaration data incomplete and collection systems that are not proof against infringements**

20. Quota uptake monitoring relies on a declaration system fed via three main types of document completed by fishermen or first buyers: logbooks<sup>20</sup>, landing

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<sup>19</sup> 2003 catch figures and 2002 landing figures published by Eurostat.

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declarations<sup>21</sup> and sales notes<sup>22</sup>. These documents, or copies of them, as appropriate, must be forwarded to the authorities of the flag Member State and/or Member State of landing and/or of first sale: up to three Member States may thus be involved. The Member State of landing is always the one responsible for forwarding the catch data to the Commission and may, therefore, be a different State from the one that holds the quota from which the catches will be deducted (the flag Member State).

*An over-flexible regulatory framework decided by the Council*

21. The conditions for establishing the declaration data, as laid down by Community regulations, are the first weak point in the system. They do not, in fact, ensure that the data obtained are as accurate and precise as possible:

- a) in the current regulations, the time allowed for forwarding logbooks is 48 hours from completion of landing<sup>23</sup>, even though all the information that is entered should be entered before landing starts. Under these circumstances it is very often possible that at the point where he is finalising the catch declarations a fisherman knows whether there will be an inspection, and this may impact on the quality of the figures declared. The Commission's work

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<sup>20</sup> The logbook is the document in which the master of the vessel keeps a daily record for each species with an estimate of the quantities caught and stored on board, as well as the date and position of the catches; a copy must be forwarded to the authorities of the flag Member State; Regulation (EEC) No 2807/83, Annex IV, section 4.

<sup>21</sup> The landing declaration is the document in which the master specifies for each species the exact quantities landed; one copy must be forwarded to the authorities in the flag Member State and another to the authorities in the Member State of landing, if they are not one and the same; Regulation (EEC) No 2807/83, Annex IV, section 4.

<sup>22</sup> The sales note is the document made out by auction centres or first buyers specifying for each species the weight and the geographical zone of origin; it must be forwarded to the authorities of the Member State in which the fish are first placed on the market; Regulation (EEC) No 2847/93, Article 9.

<sup>23</sup> Regulation (EEC) No 2807/83, Annex IV, section 4.2.

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showed that, all things being equal, the quantities declared are higher if there is a landing inspection<sup>24</sup>;

- b) weighing the quantities landed is not a general Community obligation. In some cases the quantities entered on landing declarations are only estimates, more or less correct and more or less precise;
- c) the tolerance margin for quantity estimates declared in logbooks is set at a level of 20 %. This does not allow the imposition of penalties for practices that result in under-declarations that may be as high as 36 % in the absence of landing inspections<sup>25</sup>;
- d) as regards sales notes, the differences of interest between buyers and sellers should guarantee the quality of the information entered in the notes, but this was not always seen in practice. In certain types of fishery some operators actually control both fishing activity and processing or distribution activity.

22. The Commission was aware of these weaknesses and for some specific fisheries undertook to introduce special provisions, with the aim of remedying some of the shortcomings. For example, within the framework of recovery plans, the tolerance margin was reduced to 8 %, and weighing at auction and submission of the logbook copy immediately on entering port were made obligatory. Some Member States went further and extended or generalised this type of provision.

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<sup>24</sup> The difference reached 48,7 % in the case of landings of cod in Poland; Source DG Fish, Evaluation Report Catch Registration Baltic Sea 2005 to 2006.

<sup>25</sup> Taking an exact catch quantity of 1 000kg, a declaration of 800kg in the logbook will lie within the 20 % tolerance if there is a landing inspection; if there is no inspection, a declaration of 640kg on the landing declaration will show a difference of 20 % from the logbook, and if the difference between the two declarations is discovered no penalties can be applied, even though the total under-declaration is 36 %.

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23. In addition, a Regulation published in December 2006<sup>26</sup> provides that paper declarations are, in part, gradually to be replaced by an electronic declaration system. This should save time and produce gains in terms of reliability and cost. Furthermore the obligatory transmission of logbook data before entering port will eliminate the control weakness associated with the period of 48 hours allowed for lodging the paper document. However, this obligation will only begin to be effective 24 months after the implementing procedures enter into force – and they still have to be drafted and approved.

24. One country outside the EU, namely Norway, has instituted procedures that control sales operations more strictly and provide improved safeguards. Once the last catch has been taken, the fisherman forwards a detailed cargo list to a sales organisation. The cargo is then sold in an electronic auction the same day<sup>27</sup>, before landing and compulsory weighing; the sales note is made out and signed by the buyer and the fisherman before the ship leaves the quay. The presence of the sale proceeds and the corresponding supporting document in the same place at the same time makes the inspectors' work easier.

*Catches unrecorded in the data collection system: discards*

25. Quantities of fish, most of them already dead, are thrown overboard for either statutory<sup>28</sup> or economic<sup>29</sup> reasons. This phenomenon, estimated at 13 % for the

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<sup>26</sup> Council Regulation (EC) No 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing (OJ L 409, 30.12.2006).

<sup>27</sup> The auction here is not in a physical environment – it is simply a fully automated system in which the sales organisation forwards information about catches still at sea to buyers who make remote bids without viewing the goods.

<sup>28</sup> Fishermen are not allowed to land fish that are below minimum size or of unauthorised species (quota used up, no licence, etc).

<sup>29</sup> Fishermen may prefer not to keep low-value species on board – they must be processed and take up space in the hold, or, in the case of quota species, the individual fish have relatively low value because of their size.

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North-East Atlantic zone<sup>30</sup>, is not only a significant waste of the resource, but also entails a reduction in the quality of the information used by the scientists responsible for evaluating the state of fish stocks.

26. In Norway, on the other hand, if a fisherman catches fish that he is not authorised to take, he is not allowed to throw them overboard. In order to make this obligation as economically neutral as possible for fishermen, the latter receive a small proportion of the proceeds of the sale of these "illegal" fish to cover their costs and the remainder is transferred to public funds.

*Late or incomplete data collection*

27. Firstly, in some Member States some fishing activities were completely outside the catch declaration data collection system:

- a) in Spain none of the catches by vessels under 10 metres in length were taken into account by quota monitoring, even though such vessels account for a substantial part of the national fleet<sup>31</sup>;
- b) in France activities in the Mediterranean and the overseas departments (DOM) were not monitored in any way by the national statistics processing system.

28. Secondly, some Member States had not yet integrated collection of one or other of the three key declaration documents into their information systems, even though this has sometimes been obligatory for more than 20 years:

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<sup>30</sup> *Discards in the world's marine fisheries An update*, FAO, 2005.

<sup>31</sup> Vessels less than 10 metres in length account for 67 % of the fleet in terms of the number of ships and 11 % and 3 % respectively in terms of capacity expressed in kW and GT.

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- a) in France landing declarations have been required by the national authorities only since 2005 and were not always taken into account by the national catch data monitoring system in 2006;
- b) in Italy and in Spain monitoring of quota uptake was based on one type of document only;
- c) in Spain and in France the sales notes for frozen produce were not recorded, even though the quantities they represented were very substantial<sup>32</sup>;
- d) in the United Kingdom the recording of sales notes was only made obligatory in 2006.

29. Furthermore, the collection systems in place in the Member States did not always allow missing documents to be identified and requested:

- a) in France, according to the department responsible for centralising catch data, no catch data were recorded for the year 2005 for 5 % of vessels over 10 metres in length;
- b) in the United Kingdom there was no mechanism for verifying the completeness of sales notes submitted in respect of vessels under 10 metres, even though these documents are the only source of information for monitoring catches by this part of the fleet;
- c) in Spain, France, Italy and the United Kingdom there were no systems for checking the serial numbers of declaration documents in order to ensure that the series was complete;

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<sup>32</sup> In Spain, according to the subdirectorato-general for marketing at the Ministry of Agriculture, Fisheries and Food 298 000 t in 2005; in France according to INSEE data they accounted for 40 % of the quantities landed in 2005.

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- d) in Denmark, France, Italy, the Netherlands and the United Kingdom there were no systematic cross-checks on the consistency of VMS data<sup>33</sup> with the data in declaration documents; in four out of these five countries where it tested this aspect, the Court identified apparent anomalies for which the responsible authorities were unable to account satisfactorily.

30. Lastly, delays in the collection and validation of data may also adversely affect its completeness. This applies where catches are not validated before the final date for forwarding final figures for the previous year to the Commission. Several anomalies of this type were discovered:

- a) in the United Kingdom, the effect of corrections made after the final date of 15 February 2006<sup>34</sup> was to reveal that 2005 quotas had been exceeded in the case of three stocks and to increase the overruns already recorded for three others;
- b) in Italy, the department responsible for quota monitoring received eight additional declarations for bluefin tuna, after the cut-off date for final figures; the declarations were submitted to it by a fisherman who was surprised when the authorities reduced his individual quota for the new year because the catch volume declared in 2005 had been low: when the additional quantities were taken into account, an overrun of the national quota appeared.

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<sup>33</sup> System by which vessels transmit their positions to the inspecting authorities at regular intervals.

<sup>34</sup> Partly due to delays in recording and partly due to national inspectors finding undeclared landings.

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Validation checks limited in scope and not always effective

*None of the Member States visited were able to identify all the anomalies in declarations*

31. The Community regulations<sup>35</sup> require Member States to establish a validation system that includes cross-checks and validation of the data obtained from the various obligatory declarations and VMS data. The regulations also provide that each Member State is to create a database in order to facilitate these checks, but they specify neither the nature nor the scope of the validation checks to be carried out.

32. No Member State had a fully integrated validation system, i.e. that allowed all declaration data of a similar type to be checked automatically and systematically:

- a) in none of the Member States visited were there any automatic and systematic cross-checks between the data in the three main declaration documents and the corresponding VMS data;
- b) in France landing declarations were not taken into account and the validation system consisted of supplementing incomplete<sup>36</sup> and sometimes irrelevant<sup>37</sup> sales data with estimated logbook figures;
- c) in Italy the use of a single declaration document to monitor the only quota species made cross-checks of data impossible; moreover, the model in use in 2005, and still partly in use in 2006, did not comply with the Community regulations;

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<sup>35</sup> Regulation (EEC) No 2847/93, Article 19.

<sup>36</sup> Only auction sale figures taken into account, although a very substantial proportion of sales (more than 20 % of quantities landed) were not auction sales.

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d) in Denmark and Spain the landing declaration and sales note data were cross-checked only if there was a physical inspection.

33. Moreover, in all the Member States visited, with the exception of the Netherlands, any figures obtained from counts carried out during physical inspections were not included in the system for validating catch declarations, even though they are, *a priori*, more reliable than those in the declarations.

*Not all the anomalies identified by the Member States are the subject of appropriate follow-up*

34. In all the countries visited, cross-checks were insufficiently documented for it to be possible to verify whether they were actually carried out, and whether anomalies identified had been the subject of appropriate follow-up.

35. In France the validation system is weakened by legal considerations. There is an ongoing debate within the national administration about the statistical nature (or otherwise) of declaration data. Also, in the absence of legal certainty, inspectors are not systematically notified when deviations in excess of the tolerance margin are detected by the departments responsible for processing catch data.

36. Finally, in all the Member States visited, shortcomings in the validation systems made it possible for the Court to discover declaration anomalies<sup>38</sup> that had not been detected or dealt with.

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<sup>37</sup> The auction data include sales of produce landed in another Member State which must therefore be reported to the Commission by that Member State, and not by France.

<sup>38</sup> In particular, the existence of differences in excess of the tolerance laid down in the regulations between the quantities mentioned in the landing declarations and/or sales notes and those shown in the logbooks.

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### Lack of integration and harmonisation at Community level

*Very limited inter-operability between the systems of the different Member States adversely affects the completeness of controls*

37. The lack of inter-operability and inter-connection between the different national systems for collecting catch data reduces the opportunities for checking, and thus limits the extent of the validation systems' effectiveness. For example, in the case of first sale in a country other than the flag state or country of landing, it is not possible to perform an automatic control by cross-checking the sales note data, on the one hand, against the data in the logbook and the landing declaration on the other hand<sup>39</sup>.

*National conversion factors imprecise and inconsistent*

38. TAC and quotas are set in tonnes expressed as live-weight equivalent (LWE), i.e. whole fish at the time of catch. On the other hand, in the declaration documents used as reference material for monitoring catches<sup>40</sup>, it is the net weight that is used. The difference between the two units is mainly due to the fish being cut up on board ship. Conversion factors are available for converting from one set of units to the other. They are based on long established data<sup>41</sup> which were never rigorously validated, and often differed from one Member State to another. The result is lack of precision in validated catch figures and unjustified, and sometimes significant, differences between the tonnages used to monitor

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<sup>39</sup> Regulation (EEC) No 2847/93 provides that copies of the logbook and landing declaration are to be sent both to the authorities of the State where landing takes place and to the flag state, but the sales note is to be sent only to the competent authorities of the Member State in whose territory the first marketing takes place.

<sup>40</sup> Landing declarations and sales notes.

<sup>41</sup> Before the Community TAC and quota system was put in place.

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quotas, depending on whether landing took place in one country rather than another<sup>42</sup>.

### Serious traceability problems

39. The traceability of data was not assured in two of the countries visited, that is to say, it was not possible to verify whether the consolidated data forwarded to the Commission actually corresponded to the sum of the individual validated data. This is a major anomaly, since it is not possible to make the link between the data used for quota monitoring and the data appearing in individual declarations:

- a) in France, for the six species analysed, the totals in the detailed statement drawn up by the national authorities showed significant differences from the final figures forwarded to the Commission<sup>43</sup>; the French authorities provided explanations for the possible origin of these differences, but were not able to provide a reconciliation;
- b) in Spain, for 2005, the data declared to the Directorate-General for Fisheries and Maritime Affairs (DG Fish) for landings by Spanish ships in Spain are approximately 40 %<sup>44</sup> less than the data recorded in the national databases;

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<sup>42</sup> 100 kg of gutted fresh cod will correspond to quota uptake of 124 kg if landed in France, and 111kg in Lithuania;  
100 kg of gutted/headed fresh anglerfish will correspond to a quota uptake of 250 kg if landed in Sweden and 325 kg in Germany.

<sup>43</sup>

	Species ( tonnes)					
	ANF (Anglerfish)	BFT (Bluefin tuna)	COD (Cod)	HKE (Hake)	SRX (Skate)	WHG (Whiting)
Total on detailed statement provided to auditors	19 910,5	1 683,1	5 537,7	13 167,4	56,9	13 391,4
Data forwarded to DG FISH	15 981,9	1 864,4	6 528,9	7 425,1	48,5	12 914,4
Difference (in tonnes)	3 928,6	-181,3	-991,2	5 742,3	8,4	477,0
Difference %	24,6 %	-9,7 %	-15,2 %	77,3 %	17,3 %	3,7 %

<sup>44</sup> 262,9 against 431,9 thousand tonnes, a difference of 169,0 thousand tonnes.

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the Spanish authorities have acknowledged the omissions in declarations to DG Fish as around 148 500 tonnes relating to species not subject to quota, and were unable to provide explanations for the other 20 500 tonnes to make up the difference;

- c) in Italy, a document drawn up by central departments recorded landings of 97,5 tonnes of bluefin tuna in 2005 in the Salerno district. During the on-the-spot visit the responsible control authorities maintained that there had been no landing of this species in the year in question. Of the seven catch declarations that provided evidence of the quantities landed, two showed a port in another region. Analysis of VMS signals did not provide any information about the exact location of the vessels in question on the landing date shown<sup>45</sup>.

#### Quota monitoring data ultimately unreliable

##### *No comprehensive system of audit or certification by the Member States*

40. None of the Member States visited had carried out a comprehensive audit of the catch data collection and validation systems to evaluate the quality of the IT applications. Similarly the data produced by the systems and forwarded to the Commission had never been subject to a procedure involving certification by an independent body.

41. In the original version of the Regulation on control<sup>46</sup>, however, it was stipulated that in the year following the entry into force of the Regulation, each Member State was to submit to the Commission a report describing the way in which data

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<sup>45</sup> In fact, two of the vessels were not equipped with this system, and in the case of the five others no signal was received on the day of the landing (in one case the vessel had not emitted any signals for more than three years before the landing date shown, and in another case for more than two years).

<sup>46</sup> Regulation (EEC) No 2847/93, Article 19(5).

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are collected and verified, and specifying the reliability of such data. This obligation was not retained in later versions of the text<sup>47</sup>.

*The Commission is aware of this situation*

42. The Commission is aware of the unreliable quality of the data that it receives<sup>48</sup>, and it has already said so publicly.

43. Nevertheless it is these data of unreliable quality that are being used by the Commission in trying to prevent and, where appropriate, penalise quota overruns.

### **Insufficient Commission monitoring**

44. As the Member States have primary responsibility for managing and monitoring their quotas, it is they who must take the necessary steps to avoid quota overruns, if necessary by closing the fisheries concerned. It is for the Commission, for its part, to verify that the Member States fulfil their obligations. For this purpose it has the possibility of halting fishing for a particular stock on its own initiative<sup>49</sup>.

### Information system unsatisfactory

45. There are a number of shortcomings in the information system through which the Commission receives monthly the catch data prepared by the Member States. Firstly, as stated above, the quality of the information forwarded is unreliable.

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<sup>47</sup> Regulation (EC) No 2846/98, Article 1(13)(c).

<sup>48</sup> The Compliance Scoreboard 2005, p. 12, states, "The data forwarded by Member States to the Commission is based on the declarations of catches and landings made by vessel owners or agents. The Commission believes that this data may not always reflect reality. Scientific reports have repeatedly emphasised the possibility that misreporting or underreporting of catches or landings may negatively impact the accuracy of vital stock assessments, and this suspicion is supported by the observations made by Commission inspectors over a number of years."  
[http://ec.europa.eu/fisheries/cfp/control\\_enforcement/scoreboard/archives/scoreboard2005/management\\_en.htm](http://ec.europa.eu/fisheries/cfp/control_enforcement/scoreboard/archives/scoreboard2005/management_en.htm)

<sup>49</sup> Regulation (EEC) No 2847/93, Article 21(3).

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Secondly, not all Member States systematically forward their reports within the specified deadlines, thereby reducing the Commission's scope for reaction. Moreover, since the information is cumulative over the year, it is possible neither to test the consistency of data from one year to the next over specified periods, nor to identify processing delays. Lastly, in the absence of some simple logical tests it is not possible to identify even gross misstatements in declarations immediately<sup>50</sup>.

#### Absence of data quality evaluation

46. Data are forwarded to DG Fish as part of fisheries policy implementation, but the Commission does not cross-check them against similar data received through Eurostat<sup>51</sup>, which in some cases are significantly different.

**Table 1 - Examples of differences between DG Fish data and Eurostat data**

2005 bluefin tuna (BFT)		(tonnes)			
Member State	Quota	DG FISH data	Eurostat Data	Difference	
				tonnes	%
France	6 983	8 936	9 726	-791	-8,8 %
Italy	4 888	4 879	4 272	607	12,4 %
Spain	5 857	5 850	5 650	200	3,4 %

47. Since 1999 the Commission has had a right of access to duplicates of national IT files<sup>52</sup>. This facility should enable it to evaluate the quality of the data forwarded to it. It was not until 2007, however, that it sent its first request on the subject of catch data to the Member States. The Commission attributes the low utilisation of

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<sup>50</sup> In 2005 the Italian authorities were thus able to declare catches of bluefin tuna, a quota species, under the heading of non-quota species.

<sup>51</sup> Council Regulation (EEC) No 1382/91 of 21 May 1991 on the submission of data on the landings of fishery products in Member States (OJ L 133, 28.5.1991, p.1).

<sup>52</sup> Council Regulation (EC) No 2846/98 of 17 December 1998 amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy (OJ L 358, 31.12.1998, p. 5).

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this facility to the fact that its control and inspection units do not have sufficient staff with real data analysis, processing and control skills.

#### Limited monitoring

48. For each of the stocks subject to quota<sup>53</sup> the early warning and monitoring system established by the Commission consists of automatic comparison of quota totals and reported catches. When the uptake level reaches a predefined limit, a warning notice is sent to the Member State concerned, inviting it to forward information about the action that it intends to take.

49. The delays affecting catch declarations and the monitoring of quota trading between Member States, together with the complexity engendered by the existence of special conditions<sup>54</sup>, possibilities for compensation, carryovers or proportionate deductions the following year and under various conditions, as well as the low volume of human resources assigned to this procedure, all combine to weaken the effectiveness of this procedure. In 2005, the system did not prevent 26 quotas from being officially exceeded, 11 of them significantly so<sup>55</sup>.

#### Limited scope for action

50. The Commission has the right to close a fishery on its own initiative<sup>56</sup>. In practice, because of the necessity of assembling sufficient evidence to provide assurance that a quota has been used up, the scope of this provision is confined

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<sup>53</sup> 229 in 2005.

<sup>54</sup> For example, it is sometimes possible to charge to certain quotas catches taken in a different zone during a certain period of the year and within a particular limit, or for some species additional catches of certain species are in part incorporated in the authorised quantities of the target species.

<sup>55</sup> Significant excess: higher than 5 % of the quota and/or 10 % of the TAC and/or over 100 tonnes; once found each of these 26 excess amounts was deducted from the corresponding 2006 quotas; Regulation (EC) No 742/2006.

<sup>56</sup> Regulation (EEC) No 2847/93, Article 21(3) and Regulation (EC) 2371/2002, Article 26(4).

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to stocks involving a small number of ships and landings. In addition, because of the desire to avoid any legal risk, the Commission sets a very high confidence level as a preliminary to action, thereby deferring the date of its decision and hence reducing the effectiveness of the measure.

51. In conclusion, quota monitoring is deficient because the data on which it is based are of doubtful quality, subject only to limited checks by the Commission and without any real possibility of coercive action. Furthermore, administrative checks, even if they are efficient, do not always guarantee the substance of the information in declarations. They must be supplemented by physical inspections.

### ***Limited effectiveness of national inspections***

52. The success of the policy on the sustainable management of fisheries resources depends on effective application of the various regulatory provisions. That presupposes the existence of effective control and inspection systems capable of preventing and detecting infringements. This requires general reference standards, adequate inspection pressure, and optimisation of inspection activities. None of these three conditions could be substantiated.

### **Absence of general control standards**

#### The absence of general standards...

53. Community legislation places an obligation on Member States to take the necessary measures to implement effective control and inspection of CFP rules<sup>57</sup>. However, no guideline as yet defines these concepts.

54. After the reform of the CFP in 2002, in the recovery plans in particular, the Commission added inspection standards, quantitative control objectives and obligations on the existence of national control programmes to the legislation. However, these are still limited to specific cases, and there is a risk that the

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<sup>57</sup> Regulation (EC) No 2371/2002, Article 23.

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multiplication of such requirements will merely lead to overlapping and confused obligations that cannot easily be administered and adhered to without significantly weakening the level of control on fisheries that are not targeted by these plans.

...leads to divergent and ill-tolerated practices...

55. In the absence of common standards, each Member State has implemented its own system in its area of responsibility, with its own characteristics. These multiple national approaches have resulted in varying procedures and practices. This diversity gives operators the opportunity to criticise practices which they consider discriminatory and to question the relevance of the CFP, thereby making them less inclined to observe the rules.

...and limits the scope of the Commission's evaluations

56. The task of the Commission is to evaluate and monitor the application of the CFP rules by Member States<sup>58</sup> and, in particular, the way in which they discharge their obligations to implement effective control and inspection systems. The results of their work are published in triennial reports<sup>59</sup>.

57. Having no legislative norms at its disposal, and not having developed universally accepted standards, the Commission has not carried out general evaluations of the systems in place in the Member States. Its inspection work has tended to focus on those procedures in the national systems that are the subject of specific legislative norms, as the only way of reaching conclusions that are viable in legal proceedings. However, this approach does not allow it to form an opinion of the overall effectiveness of the inspection and control systems that each Member State is obliged to set up under the terms of Community legislation.

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<sup>58</sup> Regulation (EC) No 2371/2002, Article 26(1).

<sup>59</sup> Pursuant to Regulation (EEC) No 2847/93, Article 35. Last published report: Report from the Commission to the Council and the European Parliament on the monitoring of the Member States' implementation of the common fisheries policy 2003-2005, COM(2007) 167 FINAL, 10.4.2007.

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58. For its part, the Court used the standards applicable to any control system<sup>60</sup> as the basis for its evaluation of the effectiveness of the inspection and control systems of the various Member States visited. These standards fall into two large categories: those which provide adequate overall inspection pressure and those which ensure that inspections are effectively targeted.

### **Inspection pressure is difficult to evaluate and not always adequate**

59. Every control system, in order to be effective, needs a minimum level of physical inspection aimed at checking on the ground that regulations are being observed. This level must be evaluated from the point of view of both quantity and quality. This requires definition of the minimum characteristics of an inspection, monitoring of inspection activity and tests of the reality and quality of inspection operations.

### Absence of general legislative standards for inspections

60. As stated above, the concept of inspection is not defined in Community law. The term "inspection" can, therefore, equally refer to a check on a fishing licence, which takes a few minutes, or to an operation taking place over several days, involving numerous inspectors, and including an exhaustive inspection of cargo, fishing gear and all documentation. Moreover, this situation allows some Member States to include in their control statistics inspections that are not directly related to compliance with the provisions on resource conservation but which concern, for example, health or safety conditions.

61. Not every check has to be exhaustive in order to be useful. To be effective, however, each inspection, depending on its nature, must have certain features. For example, a landing inspection where the inspectors are not present from the start to the finish of the operation and do not check the contents of the hold at the

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<sup>60</sup> See paragraph 15.

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end of their work, cannot be used as the basis for an opinion on the accuracy of the catch quantities declared.

62. Not all Member States have actually defined the criteria necessary for each of the main types of inspection to be effective. It was not until 2007 that the Commission took such a step, by defining the criteria to be met by national inspections if they are to be counted as such in its triennial evaluation reports. However, the weakness of the information systems in place in the Member States could make identification and counting of the inspections that meet these criteria problematic.

#### Poorly documented inspections...

63. Proper documentation of inspections is essential. Firstly, it allows verification of the individual quality and scope of the checks carried out, and it then becomes a vital factor as regards the effectiveness of any action taken in cases of infringement.

64. Community regulations do not provide model inspection forms for use by all inspectorates<sup>61</sup>. In the absence of standardised practice, however, this would provide greater transparency and facilitate cooperation between the various inspection bodies in all the Member States.

65. In the Member States, the Court's audit identified the following weaknesses with regard to the documentation of inspection work:

- a) in Italy, inspections were the subject of a report only if there was a finding of infringement, and only the incriminating evidence was detailed in the report;
- b) in France, Italy, the Netherlands and the United Kingdom it was not possible to ascertain from the inspection reports whether certain essential conditions

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<sup>61</sup> A proposal for standardised inspection reports was drawn up in 1999 by the Commission departments, but did not go beyond that stage.

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for the effectiveness of inspection<sup>62</sup> had been satisfied, or the reports contained conflicting information.

...and not always recorded in centralised databases

66. Centralised recording of all inspection reports in a computerised database is essential. This in itself, by facilitating the process of tracing and using data, allows a global assessment of inspection activity, and of its volume and results in particular.

67. In this area also, Community law has not defined any obligations or standards, leaving each Member State to develop (or not develop) the system of its choice.

68. At the time of the Court's audit visits, Spain, France, Italy and the United Kingdom did not have any centralised systems for recording inspection reports.

Limited quality control

69. An effective control system depends on the existence of a quality control system providing assurance that the work performed complies with the applicable standards on the subject. Although all the countries visited review work that results in proposed sanctions, review of other inspection reports is non-existent, which prevents the identification of certain inspection anomalies and prevents remedial action.

70. In five of the six Member States visited, the Court noted cases where infringements had been found but the follow-up action provided for in the procedures had not been taken, and the reasons for this decision had not been

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<sup>62</sup> A landing inspection, for example: the presence of an inspector from start to finish of the landing operations, the weighing of an adequate sample of the catch; for an inspection at sea, logbook entries matching the actual cargo.

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documented. In the sixth, Italy, this was not a possibility, since inspections are documented only if they result in an infringement being found.

#### Number of inspectors sometimes inadequate

71. The number of inspectors and the proportion of their activity devoted to fisheries policing must be sufficient to provide a satisfactory volume of inspections and constitute a deterrent presence. However, it is not possible to establish universal norms on this aspect, because of variations in local circumstances<sup>63</sup>.

72. Nevertheless, by the end of the audit, the inadequacy of the volume of inspection activity was recognised or recorded in several Member States:

- a) in Spain, work carried out in 2003 by the national authorities assessed the required number of inspectors as 139, whereas in 2006 the figure was 91;
- b) in Denmark and the United Kingdom (in England and Wales), the rate of attendance by inspectors was definitely inadequate; each team of two inspectors was, on average, respectively in charge of 11 and 10 landing places, in use several times a day.

73. In France and Italy, by contrast, it was not possible to form a judgement of the volume of activity devoted to fisheries policing by some inspection units. In fact, these units performed control duties in other fields and lacked an adequate analytical tool and were thus unable to provide precise, verifiable information about their fisheries control activities (see paragraph 83).

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<sup>63</sup> For example, the type of fishing practised, the size and composition of the fleet, length and nature of the coastline, area of waters under jurisdiction, marketing practice, etc.

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### **Failure to optimise inspection activities**

74. In addition to adequate overall inspection pressure, the effectiveness of a control system requires optimum use of the available resources.

#### Restricted access to the data needed for programming and inspection target selection

75. Sound knowledge of the various fishery activities, the actors involved, infringements found and penalties imposed in the past is essential for the establishment of sound risk analysis, the definition of a suitable control strategy and the preparation of a relevant programme.

76. Similarly, at the operational level, the effectiveness of inspections depends on the inspectors' ability to select from different potential control targets the one that is most interesting in view of its characteristics<sup>64</sup>. To achieve this, it is essential to have databases containing the various types of information and data that is reliable, complete and up-to-date. Lastly, each inspector must have immediate direct access to them from the place of inspection.

77. In some cases, Member States did not have any information system for collecting, archiving and retrieving data:

- a) no inspection database in Italy and too limited in France;
- b) a catch registration system that could not provide relevant data; in France, for example, it was not possible to obtain information about landing volumes by port.

78. In other cases the systems were not accessible to all personnel who might need them:

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<sup>64</sup> Fishing licences, fishing rights, catch history, inspection history, history of penalties, turnover, history of VMS movements, etc.

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- a) in Spain, France, Italy and the United Kingdom, the inspectors did not all have direct access to catch and/or VMS data from their operational bases;
- b) in no country did inspectors have direct operational access to the data recorded by other Member States (information on catches landed in another country, VMS positions of foreign vessels before they entered waters in the inspectors' national jurisdiction, etc.).

#### Inadequate strategic programming and tactical targeting

79. Most Member States did not carry out a risk analysis leading to a formal strategy document that identified inspection priorities and could be used as the basis for a rational allocation of resources, particularly as regards the cost/benefit aspect of inspections. Even where general inspection programmes existed, they did not always specify the resources to be deployed and the quantified objectives to be observed.

80. In this situation, it is not possible to ensure a correct balance between the type of resources deployed, the programmed inspection tasks, and the principal inherent risks of the fishing activities carried out in the area for which a particular Member State is responsible. In Spain, in the two regions visited, it was noted that a large part of the inspections concentrated on fishing activities with a relatively low rate of infringement.

81. At the operational level, the absence of relevant targeting of inspections impaired the efficiency of inspections. In the United Kingdom, it was found that the inspectors had increased inspections of vessels where no infringement could be found, while at the same time other, nonetheless active and sizeable vessels had never been inspected.

82. However, conducting integrated inspections incorporating verification of businesses' accounting data, e.g. in joint inspections with the tax administration, was seen to be effective in several countries, such as Denmark, the Netherlands

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and the United Kingdom. These inspections in fact showed up inconsistencies between the data forwarded to the fisheries administrations and management data, particularly in those businesses which combined fisheries activity with that of first buyer. However, in the absence of statutory requirements this approach is still marginal.

...sometimes complicated by multiple inspecting bodies

83. The multiplicity of inspecting bodies may increase the risk of overlap or of an area of activity falling into a "blind spot" when their areas of operations are allocated, and may lead to rigid structures which limit the scope for redeploying inspection resources in the light of changing priorities:

- a) in France, eight government directorates from five ministries were involved in the system of inspection and enforcement without the responsible authority, the Ministry of Fisheries, having any direct means of control over the entities on which it relied and whose activities and resources it was responsible for coordinating;
- b) in Spain there was an overlap of responsibilities for inspection of the fishing activities of vessels operating in both internal<sup>65</sup> and external waters; moreover, cargo landed by a vessel operating in external waters could be inspected twice at the same location and at the same time, by national inspectors as landing operations and by regional inspectors as first sales;
- c) in France and Italy, the national authorities were not in a position to assess precisely the financial, human and material resources devoted to fisheries inspection; ignorance of this information actually limits the scope for reallocating resources.

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<sup>65</sup> In Spain internal waters means, for a given region, the area extending from the coast to an imaginary straight line ("Lineas de Base Recta") between the two furthest coastal points of that region.

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### No performance monitoring as regards inspections

84. Performance measurement is one of the basic components of an effective inspection system. Indicators need to be put in place so that the quality of the overall control system can be evaluated, as well as the validity of the approaches taken in individual areas.

85. Among the Member States studied, only one had developed a true performance indicator, but the quality of the indicator was affected by the weakness of the system for monitoring inspections<sup>66</sup>. In other cases, the evaluation indicators employed only measured overall operational activity<sup>67</sup> and supplied no information about specific regions or fisheries. It was therefore not possible to form an opinion regarding the effectiveness of control and inspection activity.

### The Community Fisheries Control Agency (Vigo), a coordination instrument with limited powers

86. A Community fisheries control agency, with its headquarters in Vigo (Spain), has been created "to organise operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the Common Fisheries Policy in order to ensure its effective and uniform application"<sup>68</sup>. Contrary to what its name might suggest, the Agency has no powers of its own in relation to fisheries control.

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<sup>66</sup> France measures the offending rate (ratio of the number of infringements found / number of inspections); the figure published by the authorities is 6,6 % and the rate calculated on the basis of the data received by the auditors is 12,4 %.

<sup>67</sup> Total number of inspections on land or at sea, total number of hours spent on inspections, etc.

<sup>68</sup> Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy (OJ L 128, 21.5.2005, p.1).

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87. Since the first work programme adopted by the Agency was the programme for 2007, it is still too soon to judge the eventual impact of its activities on the various weaknesses identified during the audit. However, it is already possible to regret that the power of the so-called Community inspectors<sup>69</sup> is limited to action at sea and that cooperation as regards following up and penalising offences lies outside the Agency's sphere of competence.

***Systems for following up infringements and imposing sanctions are often inappropriate***

88. An effective system for following up infringements and imposing penalties presupposes that every presumed offence is dealt with and that when a penalty is imposed, it serves as a deterrent. This applies equally to infringements by operators subject to the jurisdiction of national authorities and Member States whose failings have been identified by the Commission.

**National systems on the whole lack severity**

89. National systems for following up offences and imposing penalties must, according to Community law, ensure that every infringement is subject to appropriate follow-up proceedings leading, if necessary, to a deterrent penalty<sup>70</sup>. Weaknesses at both the procedural level and in the sanctions imposed are a hindrance to the observance of this obligation.

Follow-up actions are sometimes limited for legal or procedural reasons

90. In some cases, the applicable procedures are not implemented because they are deemed too expensive by the responsible authorities, or are not applied for legal reasons, which prevents any convictions:

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<sup>69</sup> In fact, they are national inspectors designated by each Member State to take part in inspections in the context of operations coordinated by the Agency.

<sup>70</sup> Regulation (EC) No 2371/2002, Article 25.

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- a) in the United Kingdom and more specifically in England and Wales, there is no system of administrative sanctions, and decisions to pursue a case are subject to a "public interest" assessment founded, in particular, on whether the ratio between the cost of proceeding and the applicable penalty is considered too high. Hence, 90 %<sup>71</sup> of infringements identified in 2005 were not pursued through the Courts and led only to a warning from the inspectorate;
- b) in France, for legal reasons, anomalies identified in the registration of catch data were not forwarded to the inspectors with a view to possible judicial proceedings (see paragraph 35).

#### Incomplete information about sanctions and previous history

91. In several Member States visited, there is no central computerised repository for all the information relating to fisheries offences and perpetrators of them. For this reason, prosecuting authorities are not able to base their decision on complete knowledge of the previous history. Moreover, due to the lack of information about the penalties awarded for each type of offence it is not possible to evaluate the effectiveness of inspection activities, and that same lack is therefore an impediment to good strategic planning and appropriate targeting of inspections (see paragraph 63). In Spain, France, Italy and the United Kingdom there is no database that contains all sanctions imposed in the area of fisheries. In Denmark, it has only existed since 2004.

#### Lack of integration and harmonisation at Community level

92. The lack of Community integration and harmonisation impairs the effectiveness of sanctions. An initial difficulty is that of effectively applying the

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<sup>71</sup> Out of 202 infringements found during landing inspections (including on-board controls) there were 167 oral warnings, 14 written warnings, 20 cases passed to the judicial authorities and one case pending.

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penalty imposed on a foreign national once he or she is beyond the jurisdiction of the State in which the offence was committed. A second is the difficulty, or even impossibility, of the authorities in one country taking into account infringements recorded by another Member State, whether for reasons of access to information or for legal reasons.

93. A catalogue of measures to be applied by Member States in relation to serious infringements<sup>72</sup> was to be drawn up by the Council, but has not yet been created. To date, the Commission has still not presented the Council with a proposal to this end.

*Penalties, on the whole, insufficient deterrent, according to the Commission*

94. Nevertheless, even without precise tools, the Commission was able to conclude that overall the penalties imposed were not a good deterrent. It stated it publicly in these terms, "the amount paid by the fisheries industry as a consequence of sanctions imposed [...] is roughly equal to 2 thousandths of the [...] landing value. Such an amount entails the risk that the fishing industry may consider penalties imposed for infringements to the CFP rules just as an ordinary running cost for the enterprise and see no real incentive to be compliant"<sup>73</sup>.

**Means of applying pressure on Member States are effective only exceptionally**

95. In order to get Member States to respect their obligations, the Commission may either have recourse to the Court of Justice and the general procedure for failure to fulfil an obligation, or it may use one of the procedures specific to the

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<sup>72</sup> Regulation (EC) No 2371/2002, Article 25(4).

<sup>73</sup> Communication from the Commission to the Council and the European Parliament - Reports from Member States on behaviours which seriously infringed the rules of the Common Fisheries Policy in 2004, COM(2006) 387, 14.7.2006. See also third edition of the Common Fisheries Policy Compliance Scoreboard (page 40).

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CFP. Each of these procedures, however, has features that make it difficult to use and effective only exceptionally.

Proceedings for failure to fulfil an obligation are long, cumbersome and effective only exceptionally....

96. Proceedings for failure to fulfil an obligation are inherently long. In fact, before they reach the Court of Justice the observed failure must be the subject of a formal notice, then of a reasoned opinion. Each of these stages not only requires extensive preparatory work and formal consultation between the relevant departments of DG Fish, but also involves the Commission's legal service. The delays inherent in each of these tasks are compounded by the fact that decisions on infringements are taken by the Commission only once in every quarter. In total, for fisheries as for other areas, proceedings for failure to fulfil an obligation take several years.

97. Furthermore, proceedings for failure in the implementation of control, inspection or sanctions procedures require a significant volume of inspection work on the part of the Commission. Due to the absence of easily verifiable assessment criteria, the Commission has to increase the volume of evidence in order to demonstrate that the failure is both general and permanent. This requires numerous missions, especially as in practice Commission inspectors cannot officially record an infringement without national inspectors being present. All in all, the size of the task in fact makes it difficult to pursue more than one case of this type at a time<sup>74</sup>.

98. And lastly, a judgment of failure to fulfil an obligation<sup>75</sup> is not in itself effective, since the Member State's obligation is confined to taking the measures required to execute the judgment. In order to result in a financial penalty, the first judgment

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<sup>74</sup> The Commission estimated that in 2005 15 % of its inspection unit's resources had to be assigned to work linked to the legal action against France.

<sup>75</sup> Under Article 226 of the Treaty.

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must be followed by a second one<sup>76</sup>, for non-implementation of the provisions of the first one. For that the Commission must bring evidence that the failure has continued without any interruption since the first judgment.

99. In practice, in the area of fisheries, there has only been one case in which a Member State was sentenced to pay a financial penalty<sup>77</sup>. The judgment in question was delivered in 2005 for non-compliance with a 1991 judgment concerning a case in which the first infringements had been recorded in 1984, 21 years earlier.

100. Nevertheless the impact of this one decision was very important. It allowed national authorities to impose within months the introduction and application of numerous procedures that had previously been absent or deficient, despite having been compulsory for many years, not only in the country fined but also in the other Member States against which similar proceedings were in progress.

...and limited specific procedures which are difficult to implement....

101. One of the specific lines of action available to the Commission is the possibility of taking preventive measures<sup>78</sup> where there a risk that fishing activities pose a serious threat to conservation of resources. But the difficulty of gathering the necessary evidence and observing the principle of proportionality have so far dissuaded the Commission from taking such action, especially as the effect of such a decision would be limited, with a maximum application period of six months.

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<sup>76</sup> Under Article 228 of the Treaty.

<sup>77</sup> Case C-304/02 Commission / France; action for failure to fulfil obligations under Article 228 EC; sentenced to pay a lump sum of 20 million euro and a penalty payment of 57,8 million euro for each period of six months (judgment given on 12 July 2005); in fact France paid the lump sum and one penalty payment.

<sup>78</sup> Regulation (EC) No 2371/2002, Article 26(3).

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102. On the other hand, where it is found that previous quotas were exceeded<sup>79</sup>, the Commission has the power to reduce the future fishing opportunities of the offending Member State<sup>80</sup>. This possibility requires the Commission to obtain sufficient evidence that the final catch figures submitted by the Member States are erroneous. In practice it has been possible to implement this provision only once<sup>81</sup>, on the basis of information obtained in national inspections of one of the Member States sanctioned.

103. The Commission does not have the possibility of suspending aid allocated to a Member State under the CFP in case of failure to apply the control rules.

104. Furthermore, it has never assessed the extent to which Member States have implemented the obligation imposed upon them to recover aid granted under the fisheries structural funds from beneficiaries who do not comply with CFP rules<sup>82</sup>.

... allowing serious shortcomings to persist in the Member States

105. Finally, in view of the weaknesses just described in the system of sanctions, it is not surprising that the Court was able to find serious inadequacies in Member States' application of measures aimed at sustainable management of fisheries resources, even though the Commission has been aware of this situation for several years.

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<sup>79</sup> That is to say, other than those relating to the last complete fisheries year for which an administrative mechanism exists, allowing the reattribution, under certain conditions, of excess amounts from one year against the relevant quotas for the following year.

<sup>80</sup> Regulation (EC) No 2371/2002, Article 23(4).

<sup>81</sup> Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

<sup>82</sup> Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, Article 18 (OJ L 337, 30.12.1999, p. 10).

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106. This situation is also linked to the fact that, following its inspection reports, the Commission does not formally ask national authorities to comment on the failings found and, where appropriate, present an action plan to rectify them.

***The control context: fishing overcapacity jeopardises compliance with rules and effectiveness of controls***

107. In addition to the weaknesses described above, the effectiveness of inspection and control systems is impeded by the existence of a very high inherent risk associated with the existence of significant fishing overcapacity. This situation is, in fact, a strong incitement for the fishing industry not to observe the regulations, and, everything else being equal, the only way to achieve effective controls is to step up inspection resources and pressure of controls. Although the situation has been known about for many years, it has not been dealt with effectively.

**Overcapacity, a major risk factor for the failure of Community action**

108. Overcapacity may be defined as a fleet's excess catch capacity relative to the level of catch that would allow the resource to be sustainably exploited. Despite the difficulties in measuring it, the finding of overcapacity in the Community fleet is highlighted in the Green Paper<sup>83</sup>. According to the Commission, "What is clear, in any event, is that the fleet is currently much too large" and "that the necessary reductions of fishing mortality for the prudent management of stocks should be about 40 % and in many cases much higher".

Overcapacity encourages over-fishing

109. Overcapacity is a factor in over-fishing. It influences the behaviour of the industry and the legislator, by reducing the profitability of enterprises in the sector,

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<sup>83</sup> Green paper on the future of the CFP, COM(2001)135, section 3.3.

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which have to bear the costs associated with the overcapacity of their means of production.

110. The fishing industry is exposed to the temptation of exploiting its over-sized vessels to the full and to fish beyond the authorised limits. There is a risk of their underdeclaring their catches or throwing the less profitable part overboard (see paragraph 25).

111. When the Council of Ministers adopts the TAC and quotas it acts as an arbiter between divergent short-term interests, environmental on the one hand, and socio-economic on the other. In doing so it may authorise catch quantities that are higher than those recommended by the scientists (see **Table 2** below), in order to protect the immediate social and economic interests of those employed in the industry. Furthermore, the Council's choices are made without any means of evaluating objectively how the catch levels will impact on any of those interests.

**Table 2** - Examples of differences between scientific opinions and TAC

	Cod North Sea	Herring North Sea	Horse mackerel North Sea	Whiting North Sea
2006 scientific opinion (tonnes)	0	< 425 000	< 18 000	< 17 300
TAC 2006 (tonnes)	23 205	454 751	42 727	23 800
2007 scientific opinion (tonnes)	0	< 245 000	< 18 000	< 15 100
TAC 2007 (tonnes)	19 957	341 063	42 727	23 800

#### Failure of past capacity-reduction policies

112. The first action aimed at reducing the overcapacity in the Community fleet goes back to 1986, the date at which the first Multi-Annual Guidance Programme (MAGP) was put in place. This was followed by three other similar programmes

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setting ceilings for capacity or effort<sup>84</sup> for various segments of the Community fleet. However the combined effects of over-modest objectives, management problems, and the use of structural funds for shipbuilding and modernisation resulted in the failure of these programmes. This led the Commission to abandon this approach in 2003.

### **An approach now based essentially on limiting fishing effort**

113. With the reform of the CFP in 2002, the European Community ceded its powers to the Member States as regards reducing fishing capacity and confined itself to provisions that aimed to control the fishing effort.

#### Abandonment of the Community objective of reducing fishing capacity

114. Capacity reduction objectives have been replaced by the concept of reference ceilings which are expressed in capacity units and constitute maximum levels which national fleets may not exceed. These ceilings were set on the basis of historic levels and are only reduced in cases where vessels are decommissioned from the fleet with Community aid. This system does not oblige, or even encourage, Member States to reduce their overcapacity.

#### Reductions in fishing effort do not necessarily result in capacity reduction

115. Community action is now directed essentially towards limiting the fishing effort. Since this is defined as the product of capacity (in GT or kW) times activity (days at sea), a reduction in it can be obtained by simply decreasing one of these factors, activity. In this case, overcapacity continues to have a direct bearing on the profitability of the fishing industry, which may even be tempted to compensate for its reduced activity by increasing its productivity and investing in technological equipment, such as sonar or more efficient fishing gear, which will *de facto* increase its effective fishing capacity.

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<sup>84</sup> Fishing effort is the product of capacity times duration of fishing activity.

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### Mechanisms which are difficult to check

116. The statutory mechanisms for limiting fishing effort apply to an ever-increasing number of fisheries, making their implementation and control increasingly complex and problematic.

117. Furthermore, measurement of fishing capacity in terms of tonnage (GT) and engine power (kW) has two major weaknesses. One is the inadequacy of the standard units used for evaluating the true catch capacity, and especially the productivity gains associated with advanced technology, which, according to the Commission, may be between 1 and 3 % per year, or even more in some fisheries<sup>85</sup>. The other comes from the difficulty of actually measuring the data corresponding to these two units of measurement<sup>86</sup> consistently and accurately.

118. Each Member State must also send an annual report to the Commission on the efforts it has employed to achieve a sustainable balance between fishing capacity and fishing opportunities<sup>87</sup>. However, only some of them present an evaluation of their situation in terms of overcapacity. Moreover, different States use different methodological approaches. Consequently, the Commission does not have a precise picture of the imbalances that exist and has not, so far, verified the quality of the evaluations provided.

### A risk that Community assistance could lead to increases in capacity

119. The new European Fisheries Fund (EFF) grants aid to renew the engines of fishing vessels, provided that the rating of the new engine is, according to

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<sup>85</sup> Communication from the Commission to the Council and the European Parliament on improving fishing capacity and effort indicators under the common fisheries policy, COM(2007) 39 final of 5.2.2007.

<sup>86</sup> As regards engine power, the use of electronic limiters makes verification of the reality of the declared figures problematic; as regards tonnage, the harmonisation of the unit used has been introduced too recently to allow reliable comparisons with historic data.

<sup>87</sup> Regulation (EC) No 2371/2002, Article 14.

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circumstances, lower than or equal to that of the old one. Knowing the problems of monitoring kilowatts, a provision like this could, in fact, lead to a real increase in fishing capacity.

120. In conclusion, Community policies have not been able to end significant overcapacity in the European fleet<sup>88</sup>. The current system of giving responsibility for managing capacity to the Member States and focusing Community action on fishing effort limitation does not include any measure of constraint which could lead to a reduction in this overcapacity. The problem of overcapacity therefore seems likely to persist in years to come and will continue to have a bearing on compliance with CFP rules in general, and TAC and quotas in particular.

## **CONCLUSIONS AND RECOMMENDATIONS**

121. The incompleteness and unreliability of catch data prevent the TAC and quota system, which is a cornerstone in the management of Community fisheries resources, from functioning properly. The regulatory framework and the procedures in force guarantee neither the exhaustiveness of data collection, nor the detection of inconsistencies during validation. Nor is the Commission in an overall position to identify errors and anomalies in the data forwarded by Member States, and, to take all the timely decisions required to protect the resource (see paragraphs 18 to 51).

122. The inspection systems do not prevent infringements and do not ensure that they are effectively detected. The absence of general standards has resulted in the existence of divergent national systems that neither ensure adequate inspection pressure nor optimise inspection activities. Furthermore, it actually

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<sup>88</sup> The Scientific, Technical and Economic Committee for Fisheries (STECF) stresses that "Not only are the reported reductions rather trivial, compared to the existing imbalance between fishing opportunities and fleet capacity, to achieve such a balance, there is a need to reduce the EU fleet's capacity (ability) to catch fish, and not simply its physical capacity". Opinion on the annual report from the Commission to the Council and the European Parliament on the Member States' efforts during 2005 to achieve a sustainable balance between fishing capacity and fishing opportunities, COM(2006) 872 final of 9 January 2007.

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limits the scope and effect of the Commission's work of evaluating national arrangements, and as a consequence limits the latter's capacity to form an opinion as to the overall effectiveness of the national systems (see paragraphs 52 to 87).

123. The procedures for dealing with infringements found do not support the assertion that every infringement is followed up and even less that it is subject to penalty. Even when penalties are imposed, taken as a whole they prove to have very little deterrent effect. With regard to infringements of Community legislation by a Member State, the only instrument of proven effectiveness available to the Commission is an action before the Court of Justice for failure to fulfil an obligation. This however has certain features which limit its use and make it an insufficiently responsive instrument (see paragraphs 88 to 106).

124. Overcapacity affects the profitability of the fishing industry and, in a context of decreasing authorised catches, is an incitement to non-observance of these restrictions and affects the quality of the data forwarded. After the failure of programmes to adapt fishing capacity, the current approach, based essentially on managing the fishing effort, is unlikely to resolve the problem of overcapacity (see paragraphs 107 to 120).

125. In all, the Court's work has shown that, despite recent improvements, the control, inspection and sanction mechanisms in place are not capable of ensuring that the rules on managing the fisheries resources, and the TAC and quota system in particular, are effectively applied. This situation is all the more problematic in that the existing imbalance between capacity and fishing opportunities creates a context that is unlikely to promote spontaneous compliance with the regulatory provisions. After a significant downturn in landings in recent years, the continuance of this situation will inevitably have serious repercussions not only on the resource itself but also on the future of the fishing industry and the regions associated with it.

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126. If the political authorities want the CFP to achieve its objective of sustainable exploitation of the fisheries resources, the present control, inspection and sanction mechanisms must be strengthened considerably, in particular by implementing the recommendations listed below.

***Quality of catch data***

127. In order to improve the quality of the catch data used for management of fisheries resources the systems for collecting, validating and monitoring catch data should also be improved. This presupposes that the Member States:

- a) ensure that all the declarations provided for by the regulations are actually produced, correctly drawn up and recorded as quickly as possible by the responsible authorities;
- b) use IT tools to systematically verify the consistency of all the data contained in these documents and, where relevant, to check the data against VMS data;
- c) establish interoperability between their respective systems so as to be able to verify the documentary consistency of quantities landed in one country and first sold in another;
- d) attest the reliability of data forwarded to the Commission by providing annual certification by an independent body of the last cumulative monthly reports.

128. This improvement also requires the Commission to:

- a) establish and approve as quickly as possible procedures for implementing the Regulation on electronic recording and reporting of fishing activities and on means of remote sensing<sup>89</sup>, ensuring that as far as possible the conditions for

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<sup>89</sup> Council Regulation (EC) No 1966/2006.

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implementing the tool are impervious to fraud and facilitate the interoperability of national systems;

- b) redefine the format of the reports forwarded by the Member States to facilitate analysis of them and achieve effective controls;
- c) make regular use of its right of access to the duplicates of IT files containing relevant information: access rights should no longer be subject to advance application;
- d) harmonise the conversion factors used in the various Member States for obtaining "equivalent live weight" quantities;
- e) verify the consistency of the data received through Eurostat on the one hand and DG Fish on the other.

### ***Effectiveness of inspection systems***

129. For the effectiveness and consistency of controls and inspections implemented by the Member States, and so that the Commission improves its knowledge and evaluation of them, the Member States must, where they do not yet do so:

- a) define the minimum characteristics of inspections and the basic controls that must be included in them;
  - b) ensure adequate access to all the information needed for planning and targeting controls;
  - c) establish a control strategy based on a risk analysis;
  - d) evaluate their control activities with the help of relevant objectives;
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- e) safeguard the quality of inspection work by supervising controls;
- f) make a record all their inspection work in centralised databases.

130. On the other hand, the Commission should:

- a) propose to the Council that all the recommendations made in the preceding paragraph be put into the legislation, as essential elements of effective regulation;
- b) require Member States to draw up action plans in respect of each major weakness identified.

### ***Application of deterrent penalties***

131. To ensure that penalties have a deterrent effect, Member States should remind the competent authorities that, before imposing a sanction, it is their duty to take into account, in accordance with European law, both the deterrent nature of the penalty in relation to the economic advantage which the operator derives from his offence and the seriousness of the damage that it has caused to the Community resource.

132. In order to avoid the migration of offenders to Member States where infringements are punished less severely, it is desirable for the Council to encourage Member States to compare and harmonise the penalties imposed by, amongst other things, publishing a catalogue of measures applicable by Member States for the most serious infringements, as provided in the legislation<sup>90</sup>.

133. To reinforce the Commission's capacity to put pressure on the Member States, it is desirable that the Community legislator should ensure that the management measures adopted are verifiable; examine whether strengthening

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<sup>90</sup> Council Regulation (EC) No 2371/2002, Article 25(4).

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the powers of the Commission inspectors and broadening the mandate of the Community Fisheries Control Agency would be appropriate; and lastly introduce more responsive instruments of sanction such as, for example, the capacity to suspend payments of Community aid in the fisheries sector if a Member State fails to respect its control obligations.

***Reduction of overcapacity and appropriate accompanying measures***

134. The efforts made by the Member States and the Commission in order to reduce the pressure of excessive fishing must be reinforced by setting ambitious targets for capacity reduction and adopting socio-economic measures to benefit populations which make their living by fishing.

135. Since definition of appropriate measures requires a sound knowledge of the socio-economic realities of the fishing industry and the impact of decisions regarding catch limitation, the Commission must develop its information tools and analytical applications in this area.

136. In addition to the technical improvements recommended for control, inspection and sanctions systems, the success of the CFP and the continuation of this activity can only be achieved through the awareness of all parties and by granting appropriate financial aid to facilitate the development of sources of income that are supplements or alternatives to exploitation of this natural resource.

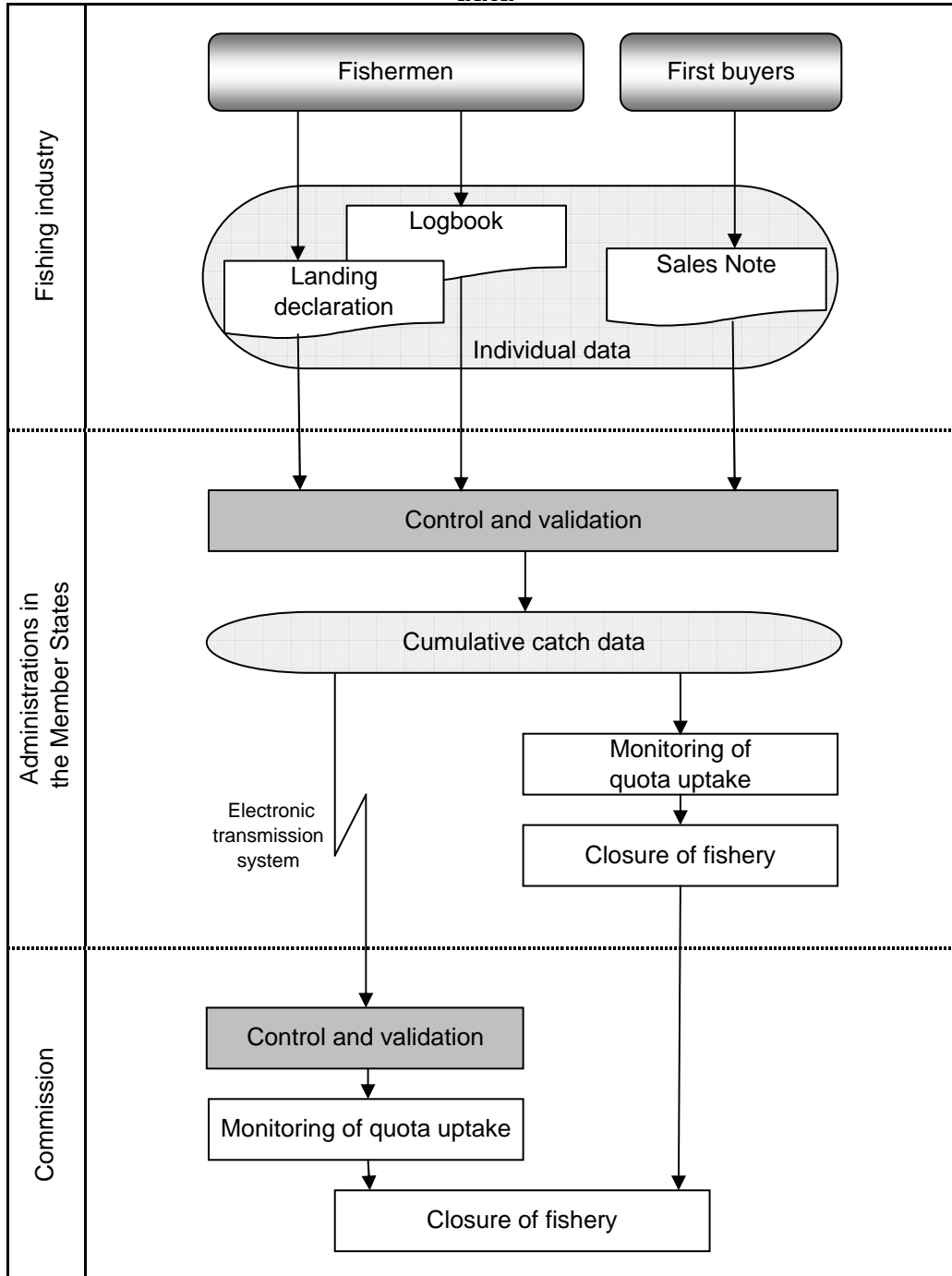
This Report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 25 October 2007.

*For the Court of Auditors*

Hubert Weber  
*President*

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### Simplified flowchart showing collection and monitoring of catch data



**THE COMMISSION REPLIES TO THE SPECIAL REPORT ON THE CONTROL,  
INSPECTION AND SANCTION SYSTEMS RELATING TO THE RULES ON  
CONSERVATION OF THE COMMUNITY FISH RESOURCE**

**EXECUTIVE SUMMARY**

I. The Common Fisheries Policy (CFP) is aimed at the conservation and management of aquatic resources. The Community has a legislative power where the Council decides after consulting Parliament. The application and enforcement of the CFP rules is the responsibility of the Member States.

The Commission considers that the success of the CFP is dependent on the quality of control and inspections and sanctions.

In the area of control and enforcement, Community legislation is intended to harmonise the actions of Member States as well as to prevent policy-failure where Member States have not sufficiently taken up their responsibility.

The Commission shares the conclusions of the Court concerning the shortcomings of the provisions concerning control, inspection and enforcement, which endanger the effectiveness of the CFP.

In the light of that situation, the Commission has already started a reflection in view of an ambitious reform of the European policy for fisheries control.

The recommendations made by the Court with regard to improving the situation, can serve as an effective contribution to the success of this reform.

Nevertheless, over the past years some efforts have already been made to improve the control and enforcement of the rules of the CFP and to better align and harmonise the actions in the Member States. In particular, the 2002 CFP reform and the establishment of the Community Fisheries Control Agency have opened up new possibilities.

For the CFP to be effective, procedures need to be simplified and the Commission's powers and the mandate of the Community Fisheries Control Agency need to be strengthened.

The success of the CFP depends for a large part on the commitment of Member States and their efforts to effectively control and enforce CFP rules. It has proved difficult to get some Commission proposals adopted in Council, in particular, where they address the ambition to limit access to depleted resources, to bring fishing capacity in line with resources, or to increase Commission powers.

II. In order to ensure proper application of the CFP rules, the Commission addresses weaknesses in the national control and enforcement systems, as appropriate, with infringement proceedings and other enforcement actions, active support to improved cooperation between national authorities, new legislation, and direct support to Member States' control authorities. However, these actions have not always been sufficiently effective or successful.

Concerning recording and reporting, Member States need to put in place the necessary systems for recording, cross checking and validating data on fishing activities and to improve the control and enforcement of the reporting obligations.



III. The Commission shares the analysis and conclusions of the Court. These recommendations have already been subject of past Commission proposals and need to be taken on in the context of the foreseen reform of the European policy for fisheries control.

The application of national sanctioning systems is the responsibility of the Member States. Harmonisation of such systems at Community level is decided upon by the Community legislator.

## **INTRODUCTION**

1. -9. The CFP is aimed to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. Based on this, the current CFP legislation contains a framework regulating fishing activities by way of catch limitations, capacity restrictions, effort limitation and technical measures.

The success of this policy depends mainly on the involvement of all parties concerned. Whilst it is the responsibility of the Commission to propose new legislation and to control the application of the rules by the Member States, the commitment from Member States is vital for achieving the CFP objectives. Only the Member States can ensure the formal adoption of CFP rules and take the actions necessary for their proper application.

In order to improve the effectiveness of the system, the reform of 2002 introduced a new approach to fisheries managements, based on in long term management plans, and for more acute situations, recovery plans. In addition, the longstanding system for management of fishing capacity was altered by strengthening the management of fishing effort within the existing limits of fishing capacity.

In accordance with Chapter V of the Basic Regulation<sup>1</sup> and the Control Regulation<sup>2</sup>, Member States are to adopt the measures, allocate the financial and human resources and set up the administrative and technical structure necessary for ensuring effective control, inspection and enforcement of CFP legislation.

The rules are based on the obligation for Member States to achieve an effective control system, where relevant in accordance with detailed rules established by the Commission.

In this regard, the Commission's approach has been to adopt detailed rules on control inspection and enforcement tasks either directed at specific fisheries or areas or, in case common factors exist, more generally applicable and within the limits of the powers attributed and focussing on priority issues for achieving the CFP objectives, the Commission evaluates the application of the CFP rules by the Member States.

In this regard, the Commission undertakes inspection missions in the Member States on the basis of horizontal and specific inspection programs. The shortcomings found during such inspection missions have been addressed by the Commission in whatever way deemed most appropriate and effective, having regard to their gravity as well as to matters of urgency and political sensitivity.

The majority of findings of the Commission inspectors are followed up through contacts with the Member State concerned or by further inspection missions. More severe cases or matters of

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<sup>1</sup> Regulation (EC) No 2371/2002.

<sup>2</sup> Regulation (EC) No 2847/93.

principle are addressed on a political level. In case of serious shortcomings or ongoing shortcomings, infringement procedures are launched against the Member State concerned.

The judgement from the European Court of Justice (ECJ) in case C-304/-02, Commission v. France<sup>3</sup>, has provided the Community with a clear confirmation of the role and obligations of Member States with regard to control and enforcement of CFP rules. Following this ruling, France was ordered to pay a lump sum of €20 million and a periodic six-month penalty of €57.761.250. At the end of the second six-month period, the Commission considered, that the progress made by France to improve the system of controls, prosecutions and penalties could be considered to be generally satisfactory and of such nature that imposing a second fine would be disproportionate. It was however pointed out to France that what mattered for the future was that France would continue its efforts and further consolidate this progress.

Apart from infringement proceedings which take a long time, the Commission assists Member States in their task, by providing information and guidance to Member States, by creating the platform for exchanging best practises and by establishing for some fisheries a list of minimum standards for each type of inspection.

Finally, inspection missions in the Member States, provide the Commission with information needed for its task of evaluating the existing CFP framework, and where relevant, it will present to the Council new legislative proposals to address existing shortcomings and discrepancies.

### **AUDIT CHARACTERISTICS**

17. The comments in this report will be taken into account in the preparation of the review and revision of the Control Regulation.

### **OBSERVATIONS**

18. Evaluation of the catch recording and verification systems in place in the Member States will be completed in 2008 as the issue of unreliable data is the core of the problem. This is being treated in the review and revision of the Control Regulation.

19. The shortcomings in national catch recording systems mentioned by the Court have also been detected by the services of the Directorate-General for Fisheries and Maritime Affairs.

In order to improve the reliability of data, in particular for those stocks subject to international agreements (e.g. Greenland Halibut, Northwest Atlantic Fisheries Organization (NAFO) ), the Commission makes cross checks at its own initiative with the data from third countries and has put in place alert systems.

Moreover, the Commission has launched infringement procedures against some Member States, focussing amongst others on the reliability of catch data (e.g. United Kingdom, Ireland, Spain, Portugal and Poland).

20. In order to improve the communication of data between Member States and the Commission, Council Regulation (EC) No 2371/2002 provides for the obligation for Member States to appoint a single authority responsible for coordinating the collection and verification of information on

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<sup>3</sup> Twelve Member States seconded a French motion that next to a penalty payment no lump sum should be imposed.

fishing activities and for reporting to and cooperating with the Commission. In addition, the system was further strengthened by requiring that first sales shall only take place at registered auctions or through registered buyers.

Moreover, the Commission's proposal for a Regulation laying down detailed implementing rules for electronic reporting will increase the efficiency of the validation systems. For example, it provides for immediate electronic transmission of a copy of the sales note to the flag State and landing State authorities so that it can be cross checked with the landing declaration.

21.

- a) The introduction of the electronic logbook will combat the problems identified by the Court. The obligation to electronically record and transmit logbook, landing declaration and transshipment data on a daily basis will enhance significantly the efficiency and effectiveness of monitoring, control and surveillance operations both at sea and on land.
- b) The Commission has continuously supported the development of a general system to determine the weight of all fish and notes that the obligation to weigh is already present in some specific fisheries such as in the pelagic fishery and, from 2008, in the Baltic Sea.
- c) The Council has already agreed on a lower margin of tolerance for some specific fisheries subject to recovery measures (eg hake, cod, sole). Further, the Commission is reviewing the issue of margins of tolerance in the review and revision of the Control Regulation.
- d) The quality of information in sales notes in the event of convergence of interest between buyers and sellers is one of the issues which is being addressed in the review and revision of the Control Regulation.

23. The regulation concerning the electronic recording and reporting will increase the efficiency of the validation systems, for example by providing for immediate electronic transmission of a copy of the sales note to the flag State and landing State authorities so that it can be cross checked with the landing declaration. After publication of the Council Regulation on 30 December 2006, the Commission immediately prepared the proposal for implementing rules. This proposal has already been discussed with Member States during the first half of 2007 and is expected to be adopted before the end of 2007.

24. The Commission is assessing the possibilities for improving the situation with regard to the data on catches and on sales and the timing of reporting.

Nevertheless, the Norwegian system of monitoring of landings and sales applies solely in a national context and the responsibilities of the Community are of a different nature from those of the Norwegian State, in particular where it concerns the principle of subsidiarity.

25. -26. The Commission considers that the national administrations and the scientists can reliably estimate the quantity of discards. The problem lies however in them not being taken into account in the catch declarations. However, discarded quantities (usually estimates) are taken into account by the scientists (International Council for the Exploration of the Sea) in the assessments of most stocks. In order to attack the problem of discards, the Commission presented a first Action plan<sup>4</sup> in

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<sup>4</sup> COM(2002) 656.

2002. This plan did however not yield the expected results and, therefore, the Commission now proposes a completely new approach in its Communication on "A policy to reduce unwanted by-catches and eliminate discards in European fisheries"<sup>5</sup>. A comprehensive consultation process on this Communication is under way and the Commission intends to come forward with first concrete proposals for the implementation of the new policy on discards in 2008. This new approach is similar to the discard bans in place in some third countries such as Norway.

27. Infringement proceedings are taken where shortcomings in the control and enforcement systems are identified in Member States.

a) The problems in the Spanish catch registration and reporting system are being addressed in the context of ongoing infringement procedures against Spain.

b) As regards fishing activities in the Mediterranean, there is the Mediterranean Regulation, as well as the Regulation concerning Bluefin Tuna<sup>6</sup>, that both foresee the statistical follow up of catches. In addition, the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Indian Ocean Tuna Commission (IOTC), applicable on the Atlantic Ocean and the Indian Ocean, impose obligations regarding catch and effort statistics. In this context France transmits data to the Commission which is forwarded to those Regional Management Fisheries Organisations.

28. In order to improve the situation, the Commission has included the problems of cross checking and verification of data in the ongoing infringement proceedings against the Member States concerned.

b) The shortcomings in the monitoring of quota uptake in Italy and Spain are subject of ongoing infringement proceedings.

c) The Commission is aware of problems concerning the monitoring of catches in Spain and France and has taken the necessary actions.

d) The Commission has identified a number of shortcomings in the United Kingdom's control and enforcement system and has opened an infringement procedure against this Member State to address the situation.

29. As pointed out in the replies to points 27 and 28, the Commission has opened infringement proceedings against Member States for the shortcomings in their control and enforcement system.

c) The Commission considers, as underlined by the Court, that this problem of completeness of declaration documents needs to be addressed in the context of the review of the control policy.

d) The shortcomings in cross checking with vessel monitoring system (VMS) data have also been identified by the Commission. For Italy, France, Greece and the United Kingdom these issues form part of ongoing infringement proceedings. For the Netherlands and Denmark the Commission has not found shortcomings sufficient to justify the opening of an infringement procedure.

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<sup>5</sup> COM(2007) 136.

<sup>6</sup> See Regulations (EC) No 1967/2006 (OJ L 36, 8.2.2007, p. 6) and (EC) No 643/2007 (OJ L 151, 13.6.2007, p. 1).

30. The Commission is aware of the situation. For that reason the Commission relies not only on the data transmitted by the Member States., but also makes use of other relevant data in its possession and has closed fisheries where its own estimations showed that the stock was exhausted.

- a) The amounts over-fished by the United Kingdom in 2005 have been fully deducted from the United Kingdom's 2006 quota.
- b) The Commission is aware of the problems in Italy concerning the catch declarations for bluefin tuna and is preparing further actions to address this situation.

31. Member States have the obligation to set up a system allowing effective verifications and cross checks to be made. The Commission like the Court regrets that the verification and cross checking of data are not applied effectively at this moment.

32. It is due to the findings during the inspection missions in the Member States that the control on cross checking systems in Member States have become one of the priority issues for the Commission and have been taken into account in several infringement proceedings.

The issue of efficiency of validation systems is one of the priorities to be adressed in the review and revision of the Control Regulation.

33. In the framework of the 2006 and 2007 recovery plans for Greenland Halibut from NAFO, the Commission has requested Spain to correct the catch figures of vessels coming from the NAFO zone on the basis of the results of inspections in ports. This, in fact, allowed the Commission to have a real time follow up of the consumption of the Spanish quota.

34. The issue mentioned is subject of ongoing infringement proceedings against several Member States, such as for example the United Kingdom, Ireland, Spain, Portugal and Poland.

35. The shortcomings of the control and enforcement system in France have been addressed by the Commission in the follow up of the judgement from the ECJ in case C 304/02. The Commission remains however attentive to ensure that France continues its actions to further consolidate the progress made.

36. Missions of the Commission inspectors in the Member States have resulted in similar findings, a number of which have been or are being addressed in the context of infringement proceedings.

37. The incompatibility between validation systems in the Member States has been subject to investigations by Commission services.

Moreover, the forthcoming Commission Regulation laying down detailed implementing rules for electronic reporting will increase the efficiency of the validation systems. For example, it proposes immediate electronic transmission of a copy of the sales note to the flag State and landing State authorities so that it can be cross checked with the landing declaration.

38. Community legislation requires that for the calculation of catches onboard fishing vessels the conversion factor used shall be those adopted by the Member State whose flag the vessel is flying.

There is certainly a need to continue the efforts to harmonise conversion factors.

In November 2006, for the first time, conversion factors have been agreed, within ICCAT for bluefin tuna.

The discussions at Community level are ongoing and the Commission considers that the progress achieved within ICCAT can serve as an example in this respect.

The Commission shares the opinion of the Court on the necessity to establish harmonised, precise and coherent coefficients at Community level.

39. With regard to the problems concerning the traceability of catch data, an evaluation of catch recording systems is currently in progress and the results will become available in 2008.

41. The Control Regulation does provide for a report on the way in which data was collected and verified after 12 months from the entry into force of the Regulation. The information provided by the Member States consisted of mainly lengthy general descriptions of the system in place, lacking useful elements for proper assessments thereof.

The introduction of reporting obligations will be one of the issues to be considered in the review and revision of the Control Regulation.

42. The Report from the Commission to the Council and the European Parliament on the Monitoring of the Member States' Implementation of the Common Fisheries Policy 2003-2005<sup>7</sup> highlights the unreliable quality of the data.

The poor quality of data has also been addressed in the 2003, 2004 and 2005 editions of the Compliance Scoreboard.

43. With regard to the uncertainties at hand, the Commission establishes the amount over-fished not only on the basis of the information received from Member States, but also on other data in its possession, such as information derived from findings during inspection missions in the Member States.

45. The forthcoming review and revision of the Control Regulation will be used to improve the presentation and breakdown of data. However the core of the problem can only be detected by inspection missions for analysing the basic data on the spot and physically checking the landings, which is primarily the responsibility of Member States.

46. To address this issue, a Memorandum of Understanding between the Directorate-General for Fisheries and Maritime Affairs, and EUROSTAT was signed in April 2006 to avoid discrepancies between quota monitoring of the Directorate-General for Fisheries and Maritime Affairs and catches/landings statistics of EUROSTAT.

The Commission will moreover examine if and in what way further improvements can be achieved.

49. For the 26 cases of exceeded quota in 2005 the Commission has deducted these amounts fully from the 2006 fishing opportunities for the Member States concerned.

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<sup>7</sup> COM(2007) 167 final.

50. Normally, a Member State will close the fishery provisionally, followed by a decision from the Commission. However, on some occasions, where Member States failed to act, the Commission was forced to close the fishery at its own initiative. These cases have once more underlined the need for increased powers for the Commission inspectors to freely collect evidence in the Member States. However, so far the powers of the Commission inspectors have remained limited. Further efforts in this context are thus necessary and the Commission considers this an issue of priority to be addressed in the review and revision of the Control Regulation.

51. The Commission makes use of all coercive means available including infringement proceedings and fishery closures. Furthermore, the Commission's inspection service has adapted its strategy to focus on the analysis of landing data and reports of physical controls.

In order to strengthen the control of the data by the Commission, the Directorate-General for Fisheries and Maritime Affairs has asked the Joint Research Centre (JRC) to improve the possibilities to detect anomalies in data through more sophisticated data analysis techniques. It is however very difficult to detect fraud in the analysis of a simple aggregated database.

52. Inspections undertaken by the Commission inspectors have actually allowed the Commission to detect the shortcomings subject of this report and they have been the basis for addressing the non-compliance by Member States.

The shortcomings in the national inspection systems are being addressed by way of infringement proceedings or other action.

53. The Commission's approach has been to establish specific detailed rules in the context of management and recovery plans as well as in the context of certain fishing areas and types of fishery.

Where appropriate the Commission has established a list of minimum standards for each type of inspection to be used by Member States and suggested guidelines to follow. Nevertheless, the Commission considers it appropriate to define certain general rules for inspection procedures (format for inspection reports, inspection procedure, vademecum for follow up of infringements), which will effectively contribute to a level playing field. The Community Fisheries Control Agency could contribute to this task in line with its mandate. At the initiative of the Commission, similar provision have already been put in place at the level of certain Regional Fisheries Management Organisations.

55. The current system has been established on the basis of an obligation for Member States to achieve an effective control system.

The Commission considers that the scope for developing common rules is limited given the absence of common factors.

Moreover, as pointed out in reply to point 53, the absence of detailed rules does not diminish Member States' obligation to achieve an effective control system.

57. The inspections undertaken have provided the Commission with a good knowledge on the application of specific provisions and the functioning of the inspection and monitoring systems of Member States and have, in fact, allowed the Commission to detect key weaknesses in Member States.

While the Commission has focussed its resources on high risk cases, general evaluations have also been undertaken through horizontal inspection programmes on catch reporting systems (2005 - 2006), market regulations (2004), third country vessels landings (2005), VMS implementation (2004 - 2006) and deep-sea fisheries in European waters (2005 - 2006).

Moreover, since 2004, the Commission has regularly used a series of questionnaires and evaluation sheets to evaluate the systems of control in Member States, notably in terms of compliance with recently adopted rules and with the quality of individual inspections. Furthermore, indicators of compliance (intensity and quality of inspections) have been defined and used to evaluate Member States compliance with the CFP in the context of infringement proceedings.

59. The Commission has worked on establishing benchmarks and priorities in certain fisheries, which have proved effective.

Further steps in this direction are foreseen in the review and revision of the Control Regulation.

60. It is against this background that the Commission has recently<sup>8</sup> made efforts to establish benchmarks as pointed out in the reply to point 59.

Moreover, it has established guidelines for the Member States for defining, per type of inspection, the minimum standards to be ensured. These efforts have been welcomed by the Member States.

The review and revision of the Control Regulation will be an opportunity to incorporate these standards into the CFP legislation. In addition, it will remain necessary to continue the cooperation between Member States. In particular, the Community Fisheries Control Agency is expected play an important roles in this regard.

61. As regards the desirability of checking fish holds at the end of a landing, the Commission believes that this should be part of a full inspection. This approach is also reflected in legislation covering the pelagic fisheries from 2005 and the Baltic fisheries from 2008. See also the replies to point 60 and 62.

62. The Commission has been systematically attentive to this issue for many years, finally allowing it in 2007 to establish general criteria for effective inspections.

The Commission notes that there are differences between Member States and that some of them have in fact established procedural guides for their inspectors.

In the framework of recovery and multiannual management plans, benchmarks of inspection have been established, inter alia cod recovery programme North Sea, Baltic, Bluefin Tuna and Greenland Halibut.

63. The Commission began discussions on the documentation of individual inspections already in 2005 and continued them in 2006 in the context of case C-304/02 against France.

In view of the establishment of a database integrating all inspection reports, in line with the opinions expressed by the Commission in some of its communications (e.g. the Communication on serious infringements<sup>9</sup>), the Commission launched, in spring 2007, a debate with Member States.

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<sup>8</sup> Meeting with Member States on 7 March 2007.



64. The Commission expects the Community Fisheries Control Agency to play an important role in improving transparency and harmonisation and to coordinate the establishment of comment practices under the scope of the joint deployment plans.

65. The Commission considers that standardized inspection skills and reports would enhance the quality control of the fisheries inspection and intends to address this issue with priority in the review and revision of the Control Regulation.

66. -67. The Commission considers this to be a good example of best practice and intends to address the issue in the review and revision of the Control Regulation.

68. Progress has been made since the Court's visit to the Member States concerned. 2 of the 4 Member States mentioned (United Kingdom and France) have already implemented such a system.

73. Only inspections fulfilling the minimum quality standards should be taken into account when assessing the volume and scope of inspection activities.

77. See the reply to point 63.

78. An increasing number of Member States now provide for their inspectors to have real-time access to such data at their work place. However, the current situation still remains unsatisfactory and the issue of access to VMS data therefore remains a priority for the Commission.

79. -81. An increasing number of Member States have started using risk analysis techniques in order to deploy limited resources in the most effective manner.

82. Cross-checking by Member States of catch data with data collected for other purposes (fiscal, customs and/or other) is indeed important and the Commission is certainly favourable to steps in that direction. Yet, this will have to be done carefully with due regard to the fact that the data in question have been collected for completely different purposes (problem of the comparability of data and data protection requirements).

83. The variety of inspection services can indeed create risks and the Commission has already underlined this problem on several occasions<sup>10</sup>. However, under the EC Treaty, Member States remain free to define the structure of their administration.

84. -85. Early in 2007, the Commission introduced a standard template to be used in reporting statistics of inspection activity. Moreover, indicators could be applied: for assessing the activity, the number of inspectors could be used; the assessment of results could for example be based on the number of gaps in VMS transmissions, the number of reported delays in the data collection system, the coherence between the logbooks, landing declarations and VMS, etc.

86. -87. The Commission considers the establishment of the Community Fisheries Control Agency (CFCA) will improve the situation.

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<sup>9</sup> COM(2007) 448 final.

<sup>10</sup> COM(2004) 849; SEC(2004)1718; COM(2001) 526.

The CFCA is mandated to organise operational cooperation between Member States by the adoption of Joint Deployment Plans giving effect to specific control and inspection plans. It has to assess amongst other things whether sufficient national means of inspection and surveillance are available. Moreover the CFCA has to ensure coordination so as to ensure that these means are used in a rational manner. Finally, it will assist Member States in order to harmonise inspection methodologies and procedures. In this way control and inspection activities should be improved both quantitatively and qualitatively. An enhanced mandate could further improve the situation.

88. In the communication from the Commission to the Council and the European Parliament on reports from Member States on behaviour which seriously infringed the rules of the CFP<sup>11</sup> the Commission called on Member States to ensure a system of sanctions that has a deterrent effect and to amend as appropriate their legislation so that sanctions have a dissuasive effect.

92. Further integration and harmonisation could be of added value for improving the implementation by Member States of an effective sanction system. In that regard, the Commission is currently exploring the possibility to include in the foreseen new initiatives regarding illegal, unregulated and unreported (IUU) fishing harmonised sanctions to be applied for certain specific 'IUU-offences'. In addition, the forthcoming review and revision of the Control Regulation will be an opportunity to address this issue.

93. Further improvement of the homogeneity of information provided by Member States in their reports on serious infringements pursuant to Regulation (EC) No 1447/1999 as well as further study of the relevant serious infringements is needed in order to prepare a proposal concerning the catalogue of sanctions. As pointed out in reply to point 92, the Commission intends to address this issue in the near future.

95. The infringement proceedings have not been without effect. The Commission has opened infringement proceedings against several Member States. After the judgement of the ECJ in case C-304/02, Member States subject to such proceedings have been induced to make serious efforts to improve the compliance with the respective obligations.

Apart from infringement proceedings, Regulation (EC) No 2371/2002 empowers the Commission to take preventive measures, to close the fishery when it deems a Member State has exhausted its quota and to suspend Community financial assistance.

96. -97. Infringement proceedings against Member States are circumscribed by the provisions of Article 226 of the EC Treaty. Modification of both their substantive objectives as well as the procedural steps would require an amendment of the Treaty.

The handling by the Commission of infringement proceedings is shaped by the case law of the ECJ. The Commission has the burden of proof in infringement proceedings, which becomes particularly relevant in cases where the alleged non-compliance by a Member State consists in a particular administrative practice. In such a case, it is actually decisive to demonstrate that the shortcomings are both general and ongoing. This requires a continuous effort on the side of the Commission to assemble the appropriate means of proof.

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<sup>11</sup> COM(2007) 448 final.

99. The case C-304/02 underscored the difficulties of assembling proper means of proof in a situation where an administrative practice of a Member State was at issue and the efforts made have in fact contributed to the imposition of a significantly higher fine than those imposed for any of the other five cases ever decided upon by the ECJ on the basis of Article 228 of the EC Treaty.

101. Preventive measures pursuant to the Article 26 of Regulation (EC) No 2371/2002 can only be provisional in nature and limited in time (up to a maximum of 6 months, as indicated). Consequently, such preventive measures can only come into play in exceptional circumstances.

102. Since 1996, the obligation to deduct amounts from future fishing opportunities, has been implemented yearly by way of applying Regulation (EC) No 847/96, which establishes the conditions for the year-to-year management of total allowable catches (TACs) and quotas. In normal circumstances over-fishing will have been detected in the year of or the one following the over fishing and thus there was never a need for additional action.

In 2007 however, for the first time, following a national investigation, 2 Member States reported to the Commission significant amounts of catches which had been landed in the period from 2001 to 2004 without having been recorded. Given that Regulation (EC) No 847/96 does not envisage deductions for such 'historic overfishing', the Commission had to adopt an ad hoc Regulation. This ad hoc Regulation<sup>12</sup> provided a solution based on an analysis of the biological and socio-economic consequences of this Regulation.

Finally, in response to this situation, the Council, during its meeting on 11 and 12 June 2007, has invited the Commission to develop principles in the forthcoming review of the EU control regulations to be applied in respect of any such over-fishing which comes into light in any EU fishery.

103. The current CFP legislation only allows the Commission to suspend Community funding in case of non-compliance with the rules concerning fishing capacity. The Commission believes that further extension of such measures would be useful and will explore the possibilities for proposals in that direction in the review and revision of the Control Regulation.

104. The control on the compliance by beneficiaries with CFP rules is the responsibility of the Member States. In the process of closing fisheries structural funds programmes (in accordance with Regulation (EC) No 1260/99), the role of the Commission is to control the proper execution of programmes by Member States and, where irregularities are detected, to recover Community funds irregularly paid.

105. There have been real improvements in several Member States, in particular in the control of the pelagic fisheries and port state control of third country landings.

106. Article 27(2) of Regulation (EC) No 2371/2002 requires the Commission to make inspection mission reports available to the Member State concerned and to provide the Member State with the possibility to comment on the mission findings.

In addition, it is envisaged to include, in the transmission of mission reports, a request to the Member State to inform the Commission of the steps it will take to address the shortcomings.

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<sup>12</sup> Regulation (EC) No 147/2007 (OJ L 46, 16.02.2007, p. 10).

107. European fleets fishing capacity are not in balance with the available resources, although substantial differences exist between Member States in this respect. The Commission will reinforce its efforts to improve the assessment of overcapacity by Member States and urge them to bring their capacity in line with fishing opportunities.

111. Progress has been made on assessing the impact of the level of catches with an increasing amount of data and advice on ecological and socio-economic consequences of decisions on TAC levels available. The Commission's efforts in the data collection, and the increasingly important contribution of the Scientific, Technical and Economic Committee for Fisheries (STECF) are contributing to improvements in the situation. In particular, the new Data Collection Regulation will contribute to improve the situation regarding shortcomings in the amount and quality of information due to lack of data from Member States.

113. The general approach towards fishing capacity has changed. Under the current legal framework, fishing capacity is managed by the entry/exit regime which freezes the capacity of Member States' fleets at the level of 1 January 2003 (or date of accession for Member States that joined the Union thereafter). The long term plans and effort limitations are also an incentive to adjust fleet capacity. Capacity reductions are also favoured through aid for scrapping of fishing vessels under the European Fisheries Fund (EFF), which is reinforced in case of recovery plans.

114. Member States remain free to keep their fleet capacity at any level below the level at 1 January 2003 (or, for Member States that joined the Union after that date, their respective the date of accession), but the entry/exit regime has the effect that fishing capacity can only diminish, (fleet capacity has been reduced by 6.27 % in tonnage and 7.28 % in engine power during the period 2003-2005<sup>13</sup>).

115. According to management plans which establish the framework for effort reduction, it is the responsibility of the Member States to decide whether such reduction will be accomplished through:

- a) a reduction of fishing time, without reducing capacity,
- b) a reduction of capacity, without reducing the fishing time, or
- c) a combination of the two.

As regards the increased use of technology, this issue is independent of the problems linked with effort reductions. Optimising the catching efficiency of vessels, in the Commission's view, is a behaviour that occurs always, whatever the effort limitations are.

116. The Commission proposed rather simple and controllable effort regimes, but during discussions in Council the system was made considerably more complicated, due to a high number of derogations. These were introduced on request by Member States and indeed have reduced considerably the controllability of the whole system.

117. The Commission recently adopted a Communication launching a debate on improving fishing capacity and effort indicators for the CFP<sup>14</sup>.

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<sup>13</sup> Annual report 2005, COM(2006) 872.

<sup>14</sup> COM(2007) 39 final.

118. The Commission confirms that not all Member States assess their matching of capacity and available resources and has repeatedly urged those concerned to comply with this obligation.

119. -120. The Commission is aware of the risks concerning the reliability of the current measurement of engine power and is taking action to closely monitor this and to try to improve the situation.

The provision mentioned was not included in the original Commission proposal.

Finally, in order to avoid increases in fishing capacity these measures have been strictly limited and designed to achieve further reduction in capacity both through the requirement of a reduction of 20 % in case of engine replacement for larger vessels, as well as through the financing of scrapping of fishing vessels. At the same time this percentage will be permanently deducted from the authorised fleet capacity ceiling.

## **CONCLUSIONS AND RECOMMENDATIONS**

121. The Commission shares the conclusions of the Court on the shortcomings of the provisions concerning control, inspection and enforcement, which endanger the effectiveness of the Common Fisheries Policy.

In the light of that situation, the Commission already started a reflection in view of an ambitious reform of the European policy for fisheries control.

The recommendations made by the Court with regard to improving the situation, can serve as an effective contribution to the success of this reform.

124. The current approach to capacity management has been the result of a difficult compromise made during the CFP reform in 2002, and it is based on:

- a) an entry-exit regime preventing capacity increase,
- b) cessation of public aid to ship building and modernisation (except for safety reasons and where the capacity to catch fish does not increase),
- c) multi-annual management regimes that include effort management and that provide a mid-to-long term perspective to the fishing industry,
- d) financial incentives for permanent withdrawal of capacity and
- e) a formal obligation for Member States to put measures in place to adapt the capacity of their fleets.

Therefore, effort management, although important, is not the only element of the said regime, and it will be the combined effect of all the elements that will determine the effectiveness of this new policy to address overcapacity. If properly and fully implemented, capacity adjustment will be an inevitable result of the new policy.

127. The Commission will continue to put pressure on Member States to help improve the situation and intends to use the forthcoming review and revision of the Control Regulation as an occasion to, where appropriate, address the issue of reliability of catch data in Community context.

128.

- a) The Committee for Fisheries and Aquaculture is due to vote on the proposed implementing rules for the electronic recording before the end of 2007.
- b) A redefined format for transmission of reports by Member States to facilitate their analysis and control has been successfully tested and will be presented to Member States in the autumn of 2007.
- c) This is an issue being addressed in the review and revision of the Control Regulation.
- d) From 2005 the Commission has made efforts to improve the application of the conversion factors, starting with the compilation of conversion factors in use by Member States in 2005 and the publication of a comprehensive list on the website, by producing 2 non-papers following meetings with Member States and with Norway. A further refinement of the last paper is currently in preparations and will be discussed with Member States before the end of 2007, after which the Commission intends to prepare a legislative proposal on the matter.
- e) To ensure that there is coherence in the data received by both parties, the Commission is working closely with Eurostat on the basis of a Memorandum of Understanding.

129. The issue of effectiveness and coherence of national control systems is being addressed in the review and revision of the Control Regulation.

130.

- a) The recommendations of the Court, mentioned in reply to point 129 are being taken into account in the review and revision of the Control Regulation.
- b) As mentioned in reply to point 106, the Commission will request Member States to present a plan of action to address shortcomings found by the Commission inspectors during their missions in the Member States.

131. The Commission considers that further integration and harmonisation is needed in order to improve the implementation by Member States of an effective sanction system and will explore the possibilities thereto in the review and revision of the Control Regulation.

132. The Commission has proposed in October 2007 a first harmonisation of sanctions in the context of the fight against IUU fishing. In parallel, the possibilities for revising the list of serious infringements as well as establishing a catalogue of all sanctions will be explored in the context of the revision of the Control Regulation.

133. The possibility to introduce cross compliance measures is an issue of priority, and is being addressed in the review and revision of the Control Regulation.

134. The Commission supports efforts to reduce capacity and can propose the respective frameworks in order to ensure a level playing field, but cannot impose specific capacity reduction targets on Member States. The Commission plans to further reflect on how to best measure the balance between capacity and resources so Member States can address their obligations to adjust their fishing capacity under Article 11(1) of Regulation 2371/2002 on a level playing field. It will also think about how to best incentivise and encourage capacity reductions; however, it is not the

intention of the Commission to propose a system at European level that would contain specific capacity targets per fleet segment as had been done in the Multi-Annual guidance programmes (MAGPs) until 2002, since this sort of micro-management system did not provide the desired effects and was clearly rejected by a majority of Member States during the 2002 CFP reform.

135. The Commission has earmarked resources to enhance its impact assessment capability both internally (by creating an Economic Unit within the Directorate-General for Fisheries and Maritime Affairs) and externally (e.g. enhanced role of STECF in delivering socio-economic advice, more frequent use of impact assessment studies by external consultants). In addition, the Commission has invested heavily to improve the EU socio-economic data collection system via the Data Collection Regulation.

136. The European Fisheries Fund (EFF) is designed to provide Member States with a number of possibilities to use the fund for the necessary restructuring of their fishing sector and accompanying measures to mitigate their social impact. In this respect, the Commission is currently examining the National strategic plans that Member States have to draw up under Article 15 of Regulation (EC) No 1198/2006 and subsequently the operational programmes that Member States are required to present to the Commission for approval.

Similarly Axis 4 of the EFF enables Member States to implement local strategies to diversify activities and develop the economic base of areas where fisheries are significant.