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HAVE EU MEASURES CONTRIBUTED
TO ADAPTING THE CAPACITY OF
THE FISHING FLEETS TO AVAILABLE
FISHING OPPORTUNITIES?



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(pursuant to Article 287(4), second subparagraph, TFEU)

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REPLY OF THE COMMISSION



ABBREVIATIONS

ACFA: Advisory Committee on Fisheries and Aquaculture

CFP: common fisheries policy

EEZ: exclusive economic zone

EFF: European Fisheries Fund

FAO: the UN's Food and Agricultural Organisation

FAS: fleet adaptation scheme

FEAP: fishing effort adjustment plan

GT: gross tonnage

ICES: International Council for the Exploration of the Seas

IUU: illegal, unreported and unregulated fishing

kW: kilowatts

MAGP: multiannual guidance programme

MSY: maximum sustainable yield

OECD: Organisation for Economic Cooperation and Development

OP: operational programme

STECF: Scientific, Technical and Economic Committee for Fisheries

TACs: total allowable catches

UNCLOS: United Nations Convention on the Law of the Sea

GLOSSARY

EU-10: The 10 Member States which joined the EU in 2004.

EU-12: The 12 Member States of the EU in 1992.

EU-15: The 15 Member States of the EU in 1995.

Fishing capacity: Fishing capacity is a vessel's gross tonnage (GT) and power in kilowatts (kW), as defined in Articles 4 and 5 of Council Regulation (EEC) No 2930/86¹. 'GT' actually measures a vessel's enclosed volume, and 'kW' measures the maximum engine power available for propulsion.

Fishing effort adjustment plan (FEAP): Public aid for decommissioning fishing vessels is granted under the European Fisheries Fund in the context of FEAPs prepared by Member States. An FEAP justifies measures for decommissioning specific types of fishing vessels — for example — cod recovery plans passed by the Council reduced fishing opportunities for cod, and several Member States' FEAPs referred to these plans when targeting decommissioning schemes on cod fisheries.

Fishing mortality: Fishing mortality is the fraction of a fish stock that is removed each year because of fishing activities.

Fishing opportunity: A 'fishing opportunity' is a quantified legal entitlement to fish, expressed in terms of catch and/or fishing effort.

Fish stock: A fish stock can be considered as the mass of a fishery resource. Such stocks are usually identified by their location. They can be, but are not always, genetically discrete from other stocks.

Maximum sustainable yield (MSY): The maximum yield of a specified fish stock that may be fished year after year without harming the fish stocks. It is characterised by a level of fishing mortality that will, on average, result in a stock size that produces the maximum sustainable yield².

Multiannual guidance programme (MAGP): From the start of the common fisheries policy (CFP) in 1983 until 2002, fishing capacity was managed by a series of MAGPs, with specific targets set by the Council for the reduction by Member States of fishing capacity.

¹ Council Regulation (EEC) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels (OJ L 274, 25.9.1986, p. 1).

² Source: Communication from the Commission to the Council and the European Parliament 'Implementing sustainability in EU fisheries through maximum sustainable yield' (COM(2006) 360 final of 4 July 2006).

Pelagic fish: Pelagic fish live near the water surface, as opposed to demersal fish, which live on or near the bottom.

Safe biological limits: Safe biological limits for a fish stock are defined by a minimum safe stock size and a maximum fishing mortality rate. The stock size is measured in terms of 'spawning stock biomass' (SSB) which represents the total weight of spawning fish each year. If the stock is either below the minimum safe SSB or above the maximum safe fishing mortality rate, the stock is said to be outside safe biological limits³.

Total allowable catch: Total allowable catches (TACs) are catch limits that are set for most significant commercial fish stocks. TACs are proposed by the Commission on the basis of scientific advice on the state of the stocks concerned and decided on annually by the Council of Fisheries Ministers. Member States allocate their share of the TACs as fishing quotas to their fleets.

³ Source: International Council for the Exploration of the Seas.

SUMMARY

I.

The common fisheries policy (CFP) aims to promote sustainable fishing. This implies a balance between fish resources and the fishing fleet in order to avoid overexploitation of fish stocks.

II.

For many years there has been a problem of overcapacity of the fishing fleet. This undermines both the sustainability of fish stocks and the long-term viability of the fishing sector. The reduction of fishing overcapacity has been a recurrent theme in previous reforms of the CFP. Nevertheless measures taken to date to reduce fishing overcapacity by adapting the fishing fleet to fishing resources have been unsuccessful.

III.

The Court examined the framework for the measures to reduce fishing overcapacity and examined how these measures are designed and implemented by the Commission and the Member States.

IV.

The Court found important weaknesses in the framework:

- (a) the existing definitions of fishing capacity did not adequately reflect the ability of vessels to catch fish;
- (b) fleet capacity ceilings had little real effect on adapting fishing capacity of the fleet to fishing opportunities;
- (c) fishing overcapacity had not been defined or quantified;
- (d) the ability to transfer fishing rights had not been considered.

SUMMARY

V.

The Court found important weaknesses in the design and implementation of measures to reduce fishing overcapacity:

- (a) there were delays in implementation of projects and in setting up management and control systems;
- (b) the sound design and correct implementation of Member States' fishing effort adjustment plans was not assured;
- (c) there was insufficient justification for objectives for reducing fishing capacity; this increased the risk that fishing fleet overcapacity was not adequately targeted for reduction;
- (d) investments on board fishing vessels funded by the European Fisheries Fund (EFF) could increase the ability of individual vessels to catch fish;
- (e) the EU fishing fleet register was not correctly updated with details of fishing vessels scrapped with public aid;
- (f) the selection criteria for fishing vessel decommissioning schemes were not always well targeted and resulted in scrapping fishing vessels which had little impact on the targeted fish stocks;
- (g) the public aid rates applied for decommissioning fishing vessels often did not take into account cost effectiveness on the basis of sufficient objective criteria;
- (h) some Member States that applied the 'fuel crisis regulation' had not obtained the required fishing fleet capacity reductions;
- (i) reporting of efforts to reduce fishing overcapacity was inadequate.

VI.

The Court recommends the Commission to take the initiative to develop actions to effectively reduce overcapacity of the fishing fleet, to address the above weaknesses.

VII.

The Court recommends Member States to design and implement measures to adapt their fleet to fishing opportunities to take into account the implementation weaknesses identified at paragraph V above.

INTRODUCTION

THE COMMON FISHERIES POLICY (CFP) AND FISHING FLEET OVERCAPACITY

1. The CFP⁴ aims to promote sustainable fishing. The CFP thus includes measures to avoid overfishing and to limit the size of the fishing fleet. In its April 2009 Green Paper⁵ on the reform of the CFP, the Commission recognised that the 2002 reform had not achieved this objective and attributed this to chronic overcapacity of the fishing fleets.
2. The Court of Auditors' Special Report No 3/1993 showed that fishing overcapacity was already a significant problem 20 years ago. Some of the issues raised by the report are still relevant today⁶.
3. The Court of Auditors' Special Report No 7/2007⁷ concluded that fishing fleet overcapacity was encouraging overfishing and was not being effectively reduced or accurately reported on by Member States. In addition, improvements in fishing technology were increasing the ability of the fleets to catch fish.
4. Fishing is one of the few activities where rights of access are often not formally valued (in contrast to farming or mining, for example). This can encourage fishers to overexploit resources and imperil their sustainability over the long term. In its April 2009 Green Paper, the Commission estimated that 88 % of fish stocks were being fished at unsustainable levels and that of these stocks, 30 % were outside safe biological limits. The UN's Food and Agricultural Organisation (FAO)⁸, the Commission⁹, governmental and scientific sources¹⁰ have frequently referred to the inherent risk of overfishing; and international law requires¹¹ states to manage fisheries sustainably and reduce fishing overcapacity.

⁴ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy (OJ L 358, 31.12.2002, p. 59).

⁵ Green Paper on the reform of the common fisheries policy (COM(2009) 163 final of 22 April 2009).

⁶ For example, the level of overcapacity of the fishing fleet was estimated at 40 % and aid for vessel decommissioning schemes was not sufficiently targeted.

⁷ Following the Court of Auditors' Special Report No 7/2007 a new control regulation came into force in 2010 (Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L 343, 22.12.2009, p. 1)).

⁸ For example, FAO fisheries circular 994 of 2004 'Measuring and appraising capacity in fisheries. Framework, analytical tools and data aggregation'.

⁹ Commission staff working document on rights-based management tools in fisheries (SEC(2007) 247 of 26 February 2007).

¹⁰ For example, M. Sissenwine and D. Symes, 'Reflections on the common fisheries policy', report to the European Commission, July 2007.

¹¹ For example, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) gives signatory coastal states the right to determine fishing rights in their exclusive economic zone (EEZ), which stretches 200 miles from the coast, and requires them to ensure that the maintenance of living resources is not endangered by exploitation: Article 61 of the UN Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 396. The convention entered into force 16 November 1994.

In 1999 the UN's FAO adopted an action plan for the management of fishing capacity which provided that states should efficiently manage fishing capacity by 2005, including the limitation and progressive reduction of capacity in affected fisheries.

5. Recent scientific findings, quoted by the Commission in its consultations¹² on fishing opportunities for 2011, showed improvements in the sustainability of fish stocks, while indicating continuing serious problems. **Box 1** illustrates that despite some recent improvements, the situation of many fish stocks is still critical.

¹² Consultation on fishing opportunities for 2011 (COM(2010) 241 final of 17 May 2010).

BOX 1
INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEAS' (ICES) ADVICE ON FISH STOCKS IN THE NORTH EAST ATLANTIC¹³

	2005	2010
Stocks outside safe biological limits	26	22
Stocks overfished	32	28
Excess of total allowable catches (TACs) over levels needed to sustain catches (i.e. TACs set by Council at levels higher than recommended by official scientific advice)	59 %	34 %
Stocks subject to advice to stop fishing	12	14
Stocks where no scientific advice is available	39	42

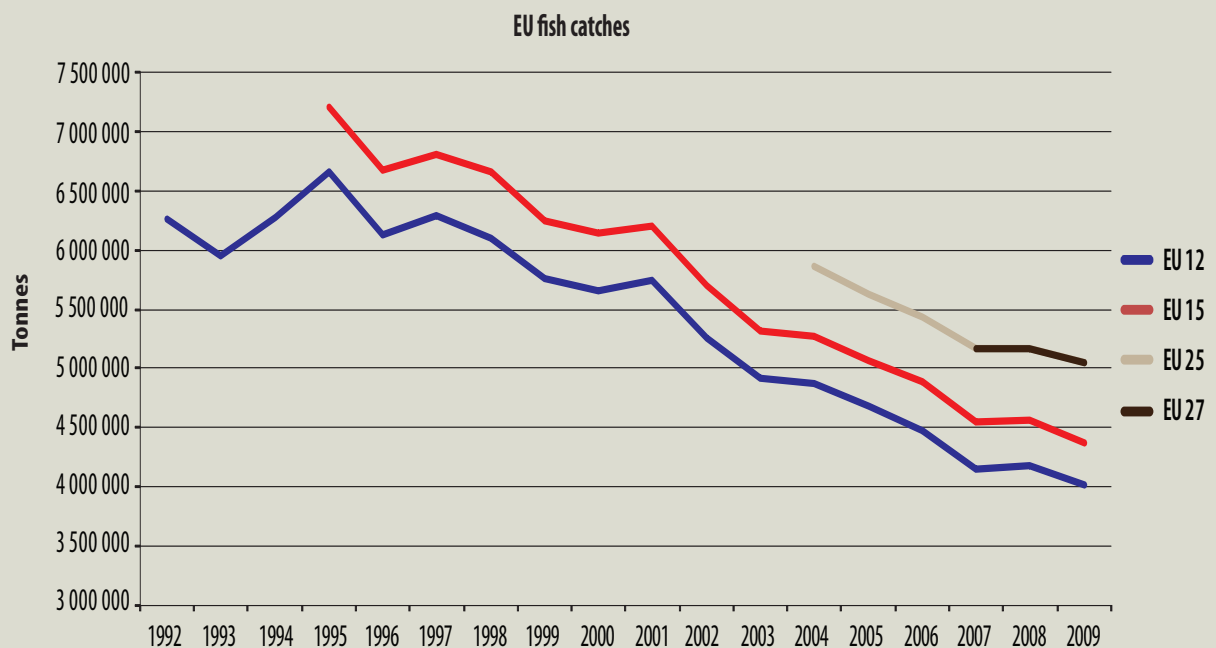
¹³ According to Eurostat, catches from this region represent over 70 % of all catches by EU fishing fleets.

6. The Commission's policy is to achieve fishing at 'maximum sustainable yield' (see **Glossary**) levels by 2015 and it has instructed ICES to provide scientific advice on that basis.
7. Since 1995, there is a declining trend for EU fish catches (reduction¹⁴ from over 7 million tonnes to 5 million tonnes in 2009). According to the Commission's April 2009 Green Paper this decline is largely due to overfishing and forms part of a vicious circle involving fishing overcapacity and low economic performance of the fishing fleets.
8. **Figure 1** underlines a constant trend of declining EU fish catches which threatens the sustainability of the fishing sector.

¹⁴ Source: Eurostat.

FIGURE 1

DECLINING EU FISH CATCHES



Source: Eurostat database 'catches: total all fishing areas'.

EU EFFORTS TO REDUCE FISHING OVERCAPACITY

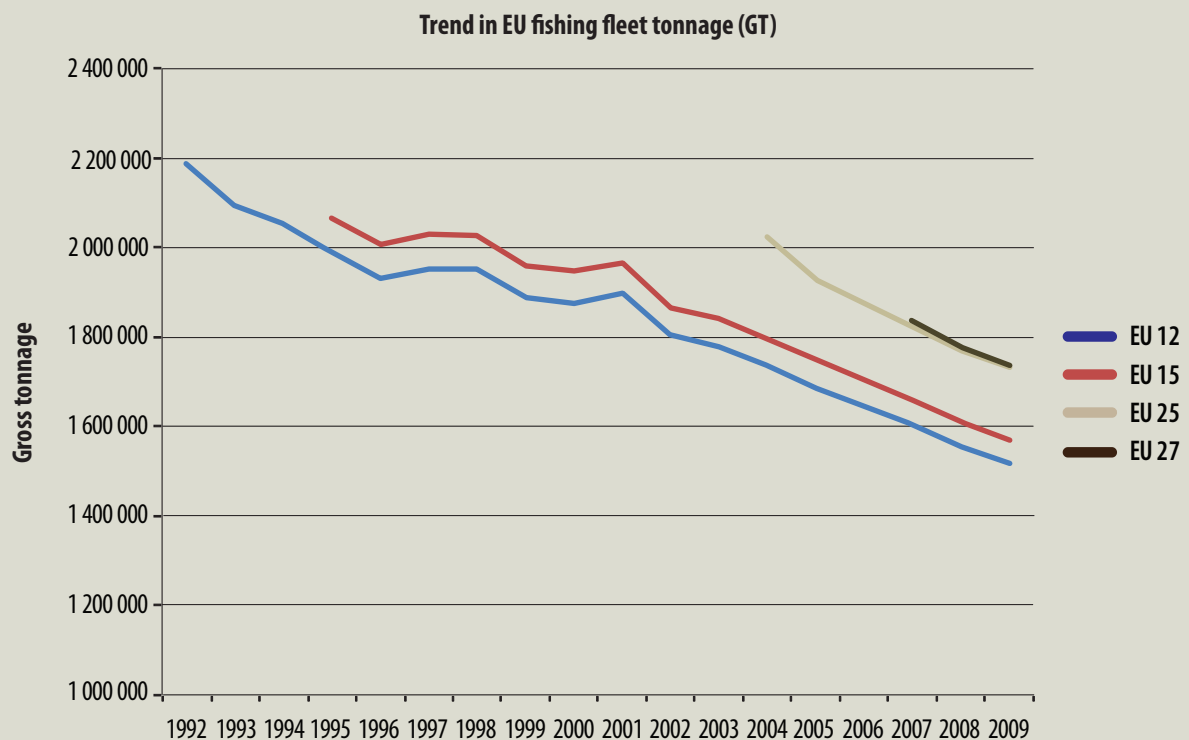
9. The CFP defines¹⁵ fishing capacity in terms of vessel tonnage (gross tonnage (GT)) and power (kilowatts (kW)). A combination of factors including declining resources, fuel price shocks, improvements in technology, the use of decommissioning aid and business mergers and closures is reducing the size of the fishing fleets each year¹⁶. **Figure 2** shows the extent of the decline since 1992.

¹⁵ Article 3(n) of Council Regulation (EC) No 2371/2002.

¹⁶ But see paragraph 21.

FIGURE 2

DECLINING EU FISHING FLEETS



Source: Annual reports by the Commission on efforts to balance capacity with fishing opportunities.

- 10.** From the start of the CFP in 1983 until 2002, fishing capacity was restricted by a system of multiannual guidance programmes (MAGPs), with specific targets for the reduction of fishing capacity. The Commission concluded¹⁷ in 2002 that MAGPs failed to halt effective increases in fishing capacity. MAGPs were discontinued in the reformed CFP in 2002. Since then, Member States are responsible for putting in place measures to adjust the fishing capacity of their fleets in order to achieve a stable and enduring balance between fishing capacity and fishing opportunities¹⁸, respecting an overall maximum fleet capacity reference level and for operating a strict 'entry–exit' regime whereby the entry of new vessels to the fishing fleet must be compensated by the withdrawal of existing vessels of equivalent tonnage and power. Furthermore, Member States' capacity ceilings are reduced by any capacity removed from the fleet with public aid. Member States report annually on their efforts to balance capacity with fishing opportunities to the Commission, which in turn submits a report to the European Parliament and the Council, in addition to a more general report on the implementation of the EFF in the preceding year.
- 11.** The EFF¹⁹ provides 4,3 billion euro for the programming period 2007–13 in support of the CFP. Measures funded by the EFF are set out in operational programmes, which are prepared by Member States and approved by the Commission. Funding available includes 1,2 billion euro to adapt fishing fleets, which includes co-financing vessel decommissioning schemes provided that Member States prepare fishing effort adjustment plans (FEAPs). The FEAPs provide the justification for scrapping specific types of fishing vessels. The Commission had as a mid-term EFF target to reduce the capacity of the fishing fleets by 7 % (140 000 GT) in terms of GT by 2010. The **Annex** gives summary information on implementation of the EFF as at the end of 2010.
- 12.** The EFF also contributes to financing investments on board fishing vessels provided that the ability of the vessels to catch fish is not increased.
- 13.** The significant increases in fuel prices in early 2008 led to Council Regulation (EC) No 744/2008²⁰, which provided temporary measures up to 31 December 2010, to promote restructuring by Member States of their fishing fleets.

¹⁷ Report from the Commission to the Council and the European Parliament on the intermediate results of the multiannual guidance programme for the fishing fleets at 30 June 2002 (COM(2002) 483 final of 3 September 2002).

¹⁸ Chapter III of Council Regulation (EC) No 2371/2002.

¹⁹ Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1).

²⁰ Council Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis (OJ L 202, 31.7.2008, p. 1).

AUDIT SCOPE AND APPROACH

14. The objective of the audit was to examine whether EU measures effectively contributed to adapting the capacity of the fleets to available fishing opportunities.

²¹ The audit covered implementation in England and Scotland.

15. The Court examined the following questions:

(a) Is the framework for the reduction of fleet capacity clear?

(b) Are specific measures well defined and implemented?

²² For example, *Reducing fishing capacity — Best practices for decommissioning schemes*, OECD, 2009.

16. The audit was carried out at the Commission and in seven Member States (Denmark, Spain, France, Italy, Poland, Portugal and the United Kingdom²¹) selected on the basis of the size of their fishing fleets and the resources available for adapting their fishing fleets under the EFF.

²³ Norway was selected as the EU and Norway share some fish stocks, and Norway alone catches around half as much fish as the entire EU fleet.

17. The audit work was performed between May 2010 and November 2010. The audit examined:

(a) the Commission's procedures for approving Member States' operational programmes (OPs) and for supervising their subsequent implementation;

(b) Member States' design and implementation of fishing effort adjustment plans, fishing vessel decommissioning schemes, modernisation schemes and compliance with fishing fleet capacity restrictions. This involved examining 126 projects which received 33,4 million euro financing by the EFF for scrapping and modernising fishing vessels between 2008 and the time of the audit;

(c) Member States' procedures to implement capacity restrictions including the examination of 70 transactions on the EU fishing fleet register and Member States' annual reports on their efforts to balance fishing capacity with fishing opportunities.

18. The criteria used by the Court to assess the management of the policy by the Commission and the Member States were based on the requirements of the basic CFP regulation. The Court also made use of criteria set out in relevant reports²² of the Organisation for Economic Cooperation and Development (OECD). In addition the Court considered practices in Norway²³.

OBSERVATIONS

19. Despite the reduction in capacity of the fleets in terms of GT and kW and the efforts made to date to reduce fishing overcapacity, the Commission regards the remaining fishing fleet as still too big in terms of available fish resources. Member States' fishing fleets can catch significantly higher quantities of fish than are consistent with keeping fish stocks at sustainable levels. As a result:

- (a) fishers have the opportunity to catch more than their allocated quotas or rights with an increased risk of illegal, unreported and unregulated (IUU) fishing²⁴, and/or
- (b) fishers cannot make full use of their expensive fishing vessels;
- (c) this creates pressure on the Council, which often sets annual TAC quotas at levels which are above those proposed by the Commission, or recommended by scientific advice (see **Box 1**);
- (d) monitoring and controlling the complicated rules for quotas and effort restrictions is made more difficult.

UNCLEAR FRAMEWORK

20. Problems with the framework of key definitions, limits and concepts relating to measures to bring fishing capacity into line with available fishing opportunities are set out in paragraphs 21 to 33. These compound problems with the design and implementation of specific measures as set out in paragraphs 34 to 73.

²⁴ IUU fishing activities are estimated to represent 19 % of worldwide catches, or 10 billion euro and constitute a serious threat to sustainable fisheries. The IUU regulation to combat IUU fishing came into force in 2010: Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008, p. 1).

INADEQUATE DEFINITION OF FISHING CAPACITY

- 21.** Fishing capacity as defined by GT and kW is a key concept used to monitor the size of Member States' fishing fleets, and implement fishing effort controls and measures to adapt fishing fleets to fishing opportunities. The relative simplicity of the fishing capacity definition facilitates its use for these purposes. However, in order to match fleet capacity with fishing opportunities, the real ability of the fleets to catch fish is more important than formal measures of capacity. 'GT and kW' are not reliable indicators of the ability of vessels to catch fish, especially considering the advances in fishing technology. Such advances were estimated by the Commission, in its mid-term review of the CFP of 2008, to increase the ability of fishing vessels to catch fish by around 3 % per year. This was estimated by the Court to result in an overall increase of 60 % over the 16-year period 1992 to 2008. While the capacity of the EU-12 fishing fleet in terms of GT and kW decreased by 29 % in the same period, the effective capability taking into account the impact of technological improvements, is estimated to have increased by 14 %²⁵.
- 22.** Furthermore, the Commission considers that the engine power expressed in kW is not being properly measured in many cases²⁶.

²⁵ Estimated by the Court on the basis that older vessels leave the fleet first: Increase in fishing ability of the 1992 fleet remaining in 2008 = $(160 \% \times (100 \% - 29 \%)) - 100 \%$.

²⁶ The rules regarding the measurement of engine power were reinforced by the new control regulation.

FLEET CAPACITY CEILINGS BECOMING INCREASINGLY IRRELEVANT

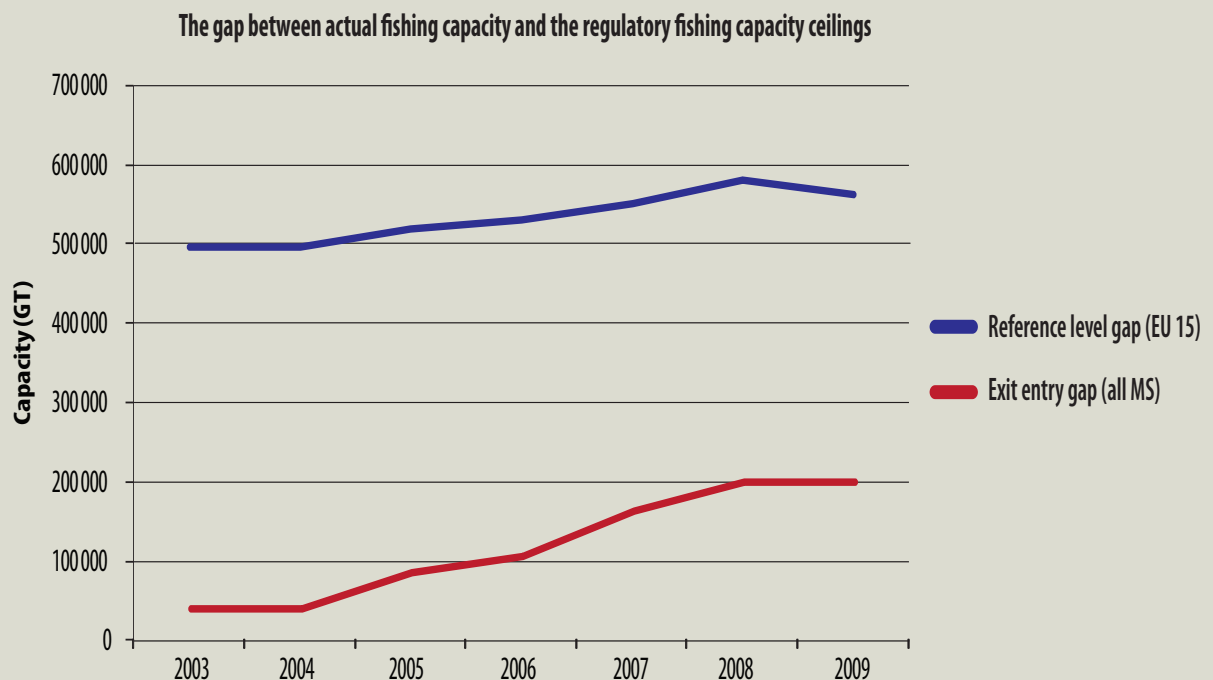
- 23.** As the capacity of the European fishing fleet in terms of GT/kW has actually been decreasing for many years (paragraph 9) the ceilings applying to Member States ('reference levels' and 'exit-entry ceilings') have become irrelevant. By the end of 2009 the fishing fleet capacity in GT in the EU represented 73 % of the reference levels and 90 % of the 'entry-exit' ceiling, representing a gap of 565 000 tonnes and 198 000 tonnes respectively. These gaps have widened as the size of the fleet decreases. The fishing fleet capacity limits therefore no longer have a significant impact in terms of adapting fishing fleet capacity to available fishing opportunities. The limits no longer impose real restrictions on Member States' fleet management policies; the Member States' fishing fleets could be almost 200 000 GT bigger and still comply with the rules (see **Figure 3**).

FISHING OVERCAPACITY HAS NOT BEEN DEFINED AND QUANTIFIED

24. The adaptation by Member States of fishing capacity to fishing opportunities is one of the cornerstones of the CFP and the EFF. However, the concept of fishing overcapacity is not addressed in the CFP and EFF regulations. There has not been a formal assessment of the level of overcapacity of the Member States' fishing fleets since 1995, when it was estimated at 40 %. This lack of definition and of quantification creates general problems in identifying fishing overcapacity, deciding whether or how to reduce it and assessing the performance of those actions.

FIGURE 3

THE REDUCING RELEVANCE OF THE FISHING FLEET CAPACITY CEILINGS



Source: Annual Commission reports on Member States' efforts to balance fleet capacity with fishing opportunities.

25. There are examples of fleets²⁷ which represent exceptions to these general problems, whose capacity in terms of GT and kW greatly exceeds that necessary to harvest the available quota (for example certain large-scale pelagic fisheries in the north-east Atlantic) but which can operate profitably while targeted fish stocks remain within sustainable limits.

INADEQUATE RULES FOR THE TREATMENT OF FISHING RIGHTS WHEN FISHING VESSELS ARE DECOMMISSIONED WITH PUBLIC AID

26. The CFP regulation²⁸ provides for the withdrawal of the fishing licence and 'fishing authorisations as defined in the relevant regulations' when fishing vessels are decommissioned with public aid. In addition the vessel's underlying capacity in terms of GT and kW is reduced from the total fishing capacity ceilings.
27. While the fishing licence and capacity of a specific vessel may be withdrawn, this does not affect the fishing quotas allocated to Member States. These quotas cannot be permanently withdrawn as Member States may reallocate them to individual fishing vessels in the way they decide and Member States may operate transferable quota systems.
28. There is not a clear definition of which fishing rights (authorisations and licences) need to be withdrawn when fishing vessels are decommissioned with public aid. This requirement of the CFP regulation to withdraw fishing rights is contradicted by the annual TAC regulations which allow for reallocation of fishing rights related to such fishing vessels in certain cases²⁹. Some Member States allow certain fishing rights to be transferred to other fishing vessels or other fishers (for example, Denmark and Spain) whereas others cancel them (for example, France and Poland).

²⁷ Source: North Sea Regional Advisory Council.

²⁸ Article 11(3) of Council Regulation (EC) No 2371/2002.

²⁹ For example, Annex IIA, point 10; Annex IIB, point 9; and Annex IIC, point 9 to Council Regulation (EC) No 40/2008 (OJ L 19, 23.1.2008, p. 1); Annexes IIB and IIC to Council Regulation (EC) No 43/2009 (OJ L 22, 26.1.2009, p. 1) and Council Regulation (EU) No 53/2010 (OJ L 21, 26.1.2010, p. 1).

- 29.** Where Member States allow beneficiaries of public aid for fishing vessel decommissioning to transfer associated fishing rights or quotas, this provides the beneficiaries with additional resources to contribute to restructure their remaining fishing activities or to pursue other interests. This is in addition to the public aid co-financed from the EFF for decommissioning their vessel. The EFF regulation does not refer to the possibility of recognising these additional resources, when setting rates of public aid for fishing vessel decommissioning.
- 30.** Other policy instruments can be used to restructure fishing fleets and reduce fishing capacity. The ability to transfer fishing rights can provide an incentive for restructuring fishing fleets and contribute to reductions in fishing overcapacity. For example, the fishing capacity of the Danish fishing fleet was reduced by 27 % between 2003 and 2009³⁰, mostly without the use of public aid for fishing vessel decommissioning. This was encouraged by the introduction of transferable quota systems to most of the fishing fleet. Fishing capacity was reported³¹ to be largely in balance with fishing opportunities.
- 31.** In the United Kingdom the implementing body for Scotland introduced in 2010 a fishing vessel decommissioning scheme with public aid which required beneficiaries to transfer fishing rights to other fishing vessels.
- 32.** The Court noted that fishing licence transfer schemes are used by the Norwegian authorities to adjust fishing capacity to fishing opportunities, rather than the CFP approach of fishing capacity ceilings and public aid for fishing vessel decommissioning.
- 33.** The practices of Denmark, Norway and Scotland relate to specific fisheries which are different from the mixed fisheries which exist in other EU waters and reflect choices made by those states to manage their specific fishing sectors. They nevertheless indicate that fishing rights transfer schemes, which are not expressly included in the CFP, can be used to provide incentives for reducing fishing overcapacity.

³⁰ The reduction in terms of GT was from 107 578 GT in 2003 to 78 821 GT in 2009.

³¹ Annual report for 2009 of the Danish authorities on their efforts to balance fishing capacities with fishing opportunities, April 2010.

POOR DESIGN AND IMPLEMENTATION

- 34.** The fishing capacity of the fishing fleet was reduced by 138 427 GT between 1 January 2007 and 31 December 2009, which already largely achieved the Commission's mid-term EFF target (see paragraph 11). However fish stocks remain at reduced levels, the target of fishing at maximum sustainable yields has not been reached and despite reductions in capacity in terms of GT and kW, real fishing capacity is increasing. Member States have therefore failed to put in place effective measures to match the fishing capacity of their fishing fleets to fishing opportunities as required by the CFP. Under the shared management arrangements which apply in this area, Member States are responsible for implementation and the Commission has little ability to influence the way in which they do so. The Commission's monitoring did not avoid this failure. The following sections outline factors which the Court considers to contribute to this failure.

- 35.** Member States incurred delays in implementing capacity adjustment measures, which were not based on sound performance objectives and plans. Some investments on board increased the fishing ability of individual fishing vessels. Decommissioning schemes were not adequately designed or implemented and there was inadequate reporting of results.

SIGNIFICANT DELAYS IN IMPLEMENTATION OF THE EFF BY THE MEMBER STATES

36. By the end of 2010, implementation of the EFF in terms of expenditure certified by Member States amounted to 645 million euro, or 15 % of the amount available from 2007 to 2013³². Most of this amount was declared in 2010 and 292 million euro was still not paid by the Commission as at 31 December 2010. The delays were mainly caused by a combination of the following factors:

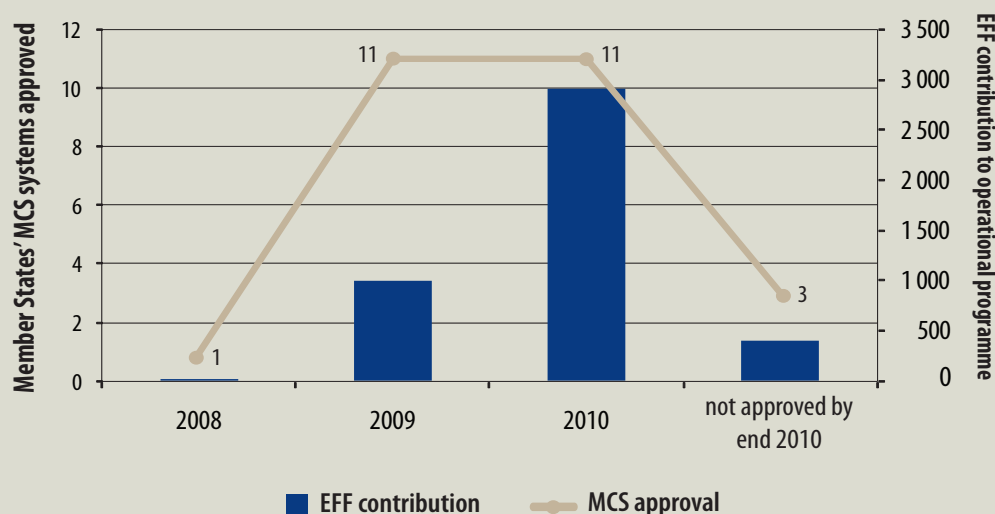
- (a) late issuing of operational programmes;
- (b) priority being given to finalising the Financial Instrument for Fishery Guidance;
- (c) late establishment of management and control systems acceptable to the Commission services, before which interim payments cannot be made. Approval was granted for the management and control systems of 11 Member States only in 2010, including the three Member States (Spain, Poland and Italy) with the highest EFF budgets. By the end of 2010, the systems of Belgium, Romania and the United Kingdom still had to be approved (see **Figure 4**).

³² Implementation of measures to adapt the fishing fleets amounted to 385 million euro, or 31 % of the amount available from 2007 to 2013.

FIGURE 4

DELAYS IN IMPLEMENTATION OF THE EFF

Approval of Member States' EFF management and control systems (MCS)



Source: Commission's database for fund management ('SFC 2007').

- 37.** Significant delays in the implementation of planned measures in Italy (notably the decommissioning of fishing vessels) were attributed by the Italian authorities to the need to implement management and control systems acceptable to the Commission.

³³ EFF vademecum, Commission Document EFFC/10/2007 of 26 March 2007.

WEAK FISHING EFFORT ADJUSTMENT PLANS (FEAPS)

- 38.** FEAPs constitute the main instrument³³ to implement reductions in the fishing effort. They should be justified, notably by reference to recovery plans, fisheries agreements, management plans or national decommissioning schemes. The EFF regulation provides support for the adaptation of the Community fishing fleet and makes available public aid for owners of fishing vessels and fishers affected by Member States' FEAPs. There is no provision that national FEAPs should be reviewed or approved by the Commission.
- 39.** The EFF regulation does not sufficiently define the content of FEAPs in order to ensure that they are adequately targeted and reduce fishing effort. There are no rules for the following key issues:
- (a) whether a single FEAP should be prepared by a Member State, or whether FEAPs are required for each fishery subject to publicly funded decommissioning schemes;
 - (b) whether national decommissioning schemes can be considered as FEAPs;
 - (c) whether recovery plans and management plans already adopted by the Council when the Member State's operational programme was approved need to be included in the FEAP;
 - (d) to what extent FEAPs should result in adapting fishing fleet capacity to fishing opportunities.

40. The lack of provision for Commission review of FEAPs and the insufficient rules on their content increase the risk that actions to balance fishing capacity with fishing opportunities are not adequate. **Box 2** presents weaknesses in the implementation of FEAPs in France, Poland, Spain and the United Kingdom.

³⁴ Article 20(1)(c) of Regulation (EC) No 1198/2006; Annex I, Part A, point 4 to Commission Regulation (EC) No 498/2007 (OJ L 120, 10.5.2007, p. 1).

WEAK PERFORMANCE INDICATORS IN THE OPERATIONAL PROGRAMMES

41. Suitable performance indicators are a basic requirement of any public policy, to focus actions on objectives and to enable an assessment of whether objectives are being met. The EFF regulations³⁴ provide that Member States' operational programmes (OPs) should have indicators making it possible to measure progress, including specific targets at priority axis level. **Box 3** presents the capacity reduction targets of the Member States audited by the Court.

BOX 2

INSUFFICIENT IMPLEMENTATION OF FISHING EFFORT ADJUSTMENT PLANS

- (a) In France, the FEAP was not a published document. Owners of fishing vessels representing 84 % of the fishing capacity of the French metropolitan fishing fleet of 2007 were eligible to apply for public aid for decommissioning. No evaluation of the amount of the overcapacity by targeted fishing fleet segment was provided to justify the increase from the OP to the FEAP (see **Box 3** point (b)).
- (b) In Poland, the increase in the fishing capacity reduction target for the cod fishing fleet from 3 095 GT in the OP to 6 000 GT in the FEAP was not sufficiently explained. The subsequent fishing vessel decommissioning scheme was open to fishing vessels from the Baltic Sea fleet which can catch any kind of fish. The annual report on the Polish fishing fleet for 2009 did not assess cod fishing capacity removed (as opposed to total capacity removed).
- (c) Spain did not publish formal FEAPs. Instead it considered national fishing vessel decommissioning schemes as sufficient justification. However, there was not a formal justification for the fishing vessel decommissioning schemes in terms of linking fishing capacities with available fishing resources, or in identifying required levels of fishing effort.
- (d) In the United Kingdom, the FEAP for England targeted vessels under 10 metres. The FEAP did not assess the imbalance between fishing capacity and fishing opportunities but cannot have a significant impact on this imbalance, as the under 10-metre fleet represents less than 1 % of the quotas for the targeted fish stocks allocated to the English fleet.

BOX 3

FISHING FLEET CAPACITY (GT) REDUCTION TARGETS IN OPERATIONAL PROGRAMMES (OP) 2007–13

Member State	Base capacity	Planned capacity reduction		Target capacity after EFF	Note
		% reduction	GT reduction		
Denmark	87 342	15 %	13 101	74 241	(a)
Spain	480 761	16 %	78 670	402 091	
France	194 000	21 %	40 648	153 352	(b)
Italy	184 493	10 %	17 920	166 573	
Poland	42 510	14 %	6 000	36 510	(c)
Portugal	106 890	9 %	10 030	96 860	
United Kingdom	212 844	10 % to 15 %	21 284 – 31 926	191 560 – 180 918	(d)

- (a) A 15 % reduction in the number of vessels was expected to be attained by fleet restructuring facilitated by licence transfer schemes, without public aid.
- (b) An initial reduction target of 8 %, or 15 520 GT was increased by the FEAP to 40 648 GT. Total public funding for decommissioning was increased from 66 million euro to 150 million euro and the rate of EFF co-financing was reduced from 40 % to 20 %.
- (c) The reduction is targeted on the cod fishing fleet, which had a capacity of 10 316 GT. An initial reduction target of 30 %, or 3 095 GT, was increased by the FEAP to 6 000 GT.
- (d) A reduction in capacity was foreseen, but no target was set.

Source: Member States' operational programmes and fishing effort adjustment plans.

42. **Box 4** presents weaknesses in the establishment of capacity reduction targets in Spain, Poland, Portugal and the United Kingdom.

³⁵ Article 25(2) of Regulation (EC) No 1198/2006.

FUNDING PROJECTS ON BOARD WHICH MAY INCREASE THE ABILITY TO CATCH FISH

43. The EFF regulation³⁵ provides that subsidies to investments on board fishing vessels may concern improvements of safety on board, working conditions, hygiene, product quality, energy efficiency and selectivity, provided that they do not increase the ability of the vessels to catch fish. No public aid shall be granted for the construction of fishing vessels nor for the increase of fish holds.
44. There is a potential contradiction in providing funding for investments on board fishing vessels and at the same time requiring these investments not to increase the ability to catch fish. Moreover the prohibition of subsidies to investments which increase fishing ability is not clearly defined and varies depending on the language version of the EFF regulation. The Commission has not issued sufficient guidance on the interpretation of this regulatory requirement.

BOX 4

INSUFFICIENT JUSTIFICATION FOR TARGETS OF REDUCING FISHING CAPACITY

- (a) See **Box 2** point (b) for Poland.
- (b) In Portugal, the OP did not provide sufficient justification for the target in terms of balancing fishing capacity with available fishing opportunities.
- (c) In Spain, the OP's target of removing 78 670 GT did not systematically take into account the specific situation of different fish stocks. It therefore does not allow an evaluation of whether fishing fleet decommissioning schemes have contributed to reducing overcapacity by fishing fleet segment.
- (d) In the United Kingdom, the OP envisaged a reduction in capacity, but no target was set. This makes it difficult to assess performance.

45. In practice some eligible investments on board a vessel could increase its ability to catch fish. For example, investments in energy-efficient engines and improvements in working and safety conditions can make it faster for fishing vessels to get to fishing grounds and can make fishers more productive. The effect of such EFF-funded investments on any increase in the ability to catch fish is difficult to quantify, due to other relevant factors such as changes in fishing authorisations, changes in weather conditions and other non-funded investments on board.
46. All of the Member States audited checked that on-board investment projects funded by the EFF did not increase fishing capacity in terms of GT and kW. However, as the example in **Box 5** illustrates, the Member States did not adequately check whether these investments increase the ability of the vessels to catch fish.
47. In Portugal and Denmark, applicants for EFF aid for on-board investment projects often indicated that catches would increase, although for the projects examined by the Court in Denmark there was no evidence of such an increase.

BOX 5**INVESTMENTS ON BOARD INCREASING THE ABILITY TO CATCH FISH**

One of the modernisation projects audited in the United Kingdom concerned a project to replace the normal propeller by a nozzle propulsion system, resulting in an increase of the vessel's speed. The skipper informed the auditors that the speed increase had resulted in higher fish catches.

FISHING FLEET REGISTER NOT CORRECTLY UPDATED WITH DETAILS OF FISHING VESSELS SCRAPPED WITH PUBLIC AID

- 48.** The fishing fleet register is a basic reference for the application of the rules of the CFP, including compliance by Member States with fishing fleet capacity reference levels and ceilings. Under-reporting of fishing vessels decommissioned with public aid has the effect of inflating these reference levels and ceilings (notwithstanding the fact that these ceilings are already so high that their effect is limited — see paragraph 23). The Court found errors in the fishing fleet register data recorded by France and the United Kingdom concerning vessels decommissioning with EFF aid.
- 49.** By the time of the audit in 2010, 65 fishing vessels had been decommissioned in the United Kingdom with aid from the EFF. However, three of these 65 vessels still appear as active (i.e. not decommissioned) on the fishing fleet register. The 62 vessels recorded as having exited the fishing fleet were incorrectly shown as not having benefited from public aid (the corresponding tonnage amounted to 452 GT).
- 50.** By the same time, 155 fishing vessels had been decommissioned in France with aid from the EFF. While these vessels were all recorded as decommissioned in the fleet register, 87 were incorrectly shown as not having benefited from public aid (the corresponding tonnage amounted to 5 357 GT).

WEAKNESSES IN DESIGN AND IMPLEMENTATION OF MEMBER STATES' VESSEL DECOMMISSIONING SCHEMES

POOR TARGETING

- 51.** Publicly funded fishing vessel decommissioning schemes need to be well targeted by Member States, using FEAPs, at fisheries where there is evidence of fishing overcapacity. There should be appropriate criteria for selecting the specific fishing vessels for decommissioning, to ensure that they are actively engaged in the fishing activities which are subject to the FEAP and fishing vessel decommissioning scheme. The eligibility criteria used by France and Poland were not well targeted.

- 52.** In France, the main eligibility criterion for most of the fishing vessel decommissioning schemes was the possession of a special fishing permit for the targeted fishery (fishing vessels may possess permits for different fisheries). Data on catches of the species targeted by the fishing vessel decommissioning schemes were not required and fishing vessels that landed very few fish from the targeted species could therefore be decommissioned with public aid. Two of the 10 projects audited concern the general cod fishing decommissioning scheme. One of these projects only landed insignificant quantities of cod before it was decommissioned:

³⁶ These other species were included because Celtic Sea cod is a mixed fishery and other species may be captured in the trawls at the same time as the cod.

DECOMMISSIONED VESSEL IN FRANCE WHICH LANDED LITTLE OF THE TARGETED FISH STOCK

	Total fish landed 2007–08 (kg)	Cod (kg)	%
Vessel 1	562 944	7 935	1,4 %

- 53.** The main eligibility criterion of the Celtic Sea cod fishing decommissioning scheme was that cod, whiting, monkfish and megrim³⁶ should represent at least 25 % of the value of the catches of the vessel in 2006 and 2007. As a result, fishing vessels were eligible for decommissioning even if they landed very little cod. Three of the 10 projects audited concerned this scheme and landed insignificant quantities of cod:

DECOMMISSIONED FISHING VESSELS IN FRANCE WHICH LANDED LITTLE OF THE TARGETED FISH STOCK

	Total fish landed 2006–08 (kg)	Cod (kg)	%
Vessel 1	446 894	512	0,1 %
Vessel 2	173 513	437	0,3 %
Vessel 3	406 201	1 536	0,4 %

- 54.** The only Polish fishing vessel decommissioning scheme aims to adapt the cod fishing fleet to available resources. Most Polish fishing vessels in the Baltic are capable of catching cod, although many target pelagic fish stocks instead. The fishing vessel decommissioning scheme does not have any eligibility criteria relating to fishing gear or fish catches, which means that practically all fishing vessels of the Polish fishing fleet are eligible for vessel decommissioning with public aid, even vessels which have little impact on cod fishing.

GRANTING PUBLIC AID FOR DECOMMISSIONING INACTIVE FISHING VESSELS

- 55.** A significant risk in providing public funds for scrapping fishing vessels is that subsidies are paid for fishing vessels which would cease activity anyway ('deadweight'). This risk can be reduced by careful design of scheme rules by Member States e.g. requiring that eligible fishing vessels have been at sea for a minimum number of days or that the fishing vessel is active before the application. The Court found that this risk was not avoided.
- 56.** In France, one of the eligibility conditions for public aid for fishing vessel decommissioning was that the vessel had to have a valid navigation licence at the time of the public aid decision. This condition was not fulfilled for one of the 10 projects audited (see **Box 6**).

BOX 6

DECOMMISSIONING AN INACTIVE FISHING VESSEL IN FRANCE

The French authorities accepted in June 2008 the application for public aid for decommissioning a fishing vessel with its navigation licence having expired in July 2006. The fishing vessel was inactive throughout 2007, because it would have required major refitting in order to be able to obtain the navigation licence. Decommissioning aid of 1 284 534 euro was paid, of which 513 813 euro was funded by the EFF.

- 57.** In Spain, one of the eligibility conditions for aid for fishing vessel decommissioning was that the fishing vessel must either have been fishing for at least 90 days in each of the two years before the application date or must have been fishing for at least 120 days in the year before the application date. Two of the 10 projects audited concern vessels which were inactive although, in the first case, the above eligibility condition was fulfilled (see **Box 7**).

BOX 7**DECOMMISSIONING INACTIVE FISHING VESSELS IN SPAIN**

- (a) The Spanish authorities accepted an application of June 2008 for the decommissioning of a fishing vessel which was inactive since September 2007 following a severe fire which occurred while the vessel was in South America. The beneficiary provided evidence that the vessel had been fishing for over 120 days in the year before the application date. The fishing vessel was scrapped in Uruguay. Decommissioning aid of 1 611 641 euro was paid, of which 983 101 euro was funded by the EFF.
- (b) The Spanish authorities accepted an application of July 2008 for the decommissioning of a fishing vessel which was inactive since May 2007. The beneficiary provided evidence that the vessel had been fishing for over 120 days in 2006, but did not provide evidence that the vessel was active in 2007, the year before the application date. Decommissioning aid of 780 794 euro was paid, of which 468 477 euro was funded by the EFF.

- 58.** In the United Kingdom, in order to be eligible for the fishing vessel decommissioning scheme operated in England, a fishing vessel had to have a fishing licence and be seaworthy. These conditions were not fulfilled for two of the 10 projects audited (see **Box 8**).

INSUFFICIENT JUSTIFICATION FOR RATES OF PUBLIC AID

- 59.** Establishing the level of public aid for fishing vessel decommissioning schemes is one of the key factors affecting the outcome and cost of the scheme: if rates are set too low, there may be insufficient participants in the scheme; if rates are too high, the public costs may be inflated and the available budget will be absorbed by fewer fishing vessels. The EFF regulation provides that Member States may consider the cost effectiveness of aid rates on the basis of objective criteria, such as the market or insurance value of the fishing vessel, its turnover, its age and fishing capacity.

BOX 8

DECOMMISSIONING INACTIVE FISHING VESSELS IN ENGLAND

- (a) The English authorities received in January 2009 an application for the decommissioning of a fishing vessel, the licence of which had been transferred by the applicant to another of his vessels in July 2008. Following the advice of the English authorities, the vessel was licensed again for 9 days before the licence was finally surrendered. Decommissioning aid of GBP 14 000 (16 588 euro) was paid, of which GBP 5 600 (6 635 euro) was funded by the EFF.
- (b) The English authorities accepted an application of January 2009 for the decommissioning of a fishing vessel which was not seaworthy since August 2008, as its engine needed replacement. Decommissioning aid of GBP 171 865 (203 623 euro) was paid, of which GBP 68 746 (81 452 euro) was funded by the EFF.

- 60.** Most Member States set public aid rates by reference only to the vessel's fishing capacity in terms of GT, with public aid based on a fixed element and a variable element linked to the vessel's GT. Exceptions were the fishing vessel decommissioning scheme for England, where public aid rates were based on a tendering procedure; and Portugal, where sales, quota uptake and the state of targeted fish resources were considered.
- 61.** While for most Member States, the practice of only referring to vessel fishing capacity in terms of GT had the advantage of being transparent and simple to administer, it did not sufficiently take into account specific characteristics of applicants' fishing vessels and in particular their impact on the fish resources targeted by the fishing vessel decommissioning scheme. Furthermore the public aid rates did not specifically take into account the possibility that exists in some Member States for applicants for fishing vessel decommissioning schemes to sell their fishing rights (see paragraph 29).

62. Similar public aid rates were paid by the Member States audited. **Box 9** gives the amounts of public aid payable for sample fishing vessel sizes.

BOX 9

PUBLIC AID RATES FOR FISHING VESSEL DECOMMISSIONING IN SELECTED MEMBER STATES³⁷

Member States	Public aid (000 euro) for sample fishing vessel sizes		
	10 GT	100 GT	500 GT
Denmark	123	553	1 631
Spain	118	527	1 556
France	112	457	1 397
Italy — vessels fishing for red tuna	168	753	2 223
Italy — other vessels	112	502	1 482
Poland	117	529	1 542
Portugal	101	452	1 334
United Kingdom (England)	131	N/A	N/A

³⁷ Source: Member States' operational programmes and decommissioning schemes. The amount for England is an average, as aid rates were based on applicants' tenders. Only a rate for '10 GT' is provided as the largest vessel scrapped with aid in England was 15 GT (no vessels had been scrapped with public aid from the EFF in Scotland by the time of the audit). Exchange rates for Denmark, Poland and the United Kingdom as at 31 December 2010.

LIMITED EFFECT OF THE 'FUEL CRISIS REGULATION'

- 63.** Council Regulation (EC) No 744/2008 'the fuel crisis regulation' introduced temporary rules and higher funding for fishing vessel decommissioning and investments on board to respond to significant increases in fuel prices, for fleet segments where the energy costs represented on average at least 30 % of the production costs. 'Fleet segments' were not defined by the regulation, so that Member States could implement fleet adaptation scheme (FAS) with flexibility to reflect their different fleet structures.
- 64.** In order to benefit from the temporary rules, Member States had to create one or more FASs.
- 65.** In Denmark, one FAS involving several fleet segments was created. The fleet segments could be as small as one vessel.
- 66.** Of 40 original fishing vessels in the Danish FAS, 34 were decommissioned with aid and six were modernised between 2009 and 2010. Beneficiaries were required to invest at least the amount of any public aid received for fishing vessel decommissioning in modernisation or the construction/import of new fishing vessels. The construction of six new fishing vessels and four imported fishing vessels was partially financed in this way. Although direct funding for the construction of fishing vessels is not permitted by the EFF, the effect of these transactions, taken as a whole, was that EFF funding indirectly contributed to the construction of new vessels. This was against the objectives of the EFF regulation. The Danish authorities considered that their FAS achieved a capacity reduction of 43 % in terms of GT, from 11 555 GT to 6 639 GT. The claimed initial capacity of 11 555 GT however consisted of ships with a capacity of 5 742 GT together with 5 813 GT 'capacity rights' (rights that could be used to buy or import vessels). The calculation of 43 % was based on the assumption that, as the fishing capacity rights were used by the beneficiaries to buy or import fishing vessels with the same capacity, the acquired fishing vessels did not actually increase fishing capacity. However as a result of the FAS, the tonnage of the actual vessels increased from 5 742 GT to 6 639 GT.

- 67.** In metropolitan France, two FASs were implemented. Of 36 original fishing vessels with a capacity of 4 407 GT, 18 were decommissioned and 18 were modernised. The French authorities considered that these FAS schemes achieved a capacity reduction of 33 %, or 1 480 GT. However, 10 of the 18 vessels decommissioned, with a capacity of 1 213 GT, had already been accepted under previous EFF-funded fishing vessel decommissioning schemes. The Court considers that the real effect of the FAS in terms of actual vessel fishing capacity was a reduction of 267 GT (1 480 GT – 1 213 GT), which represents a reduction of only 6 % of the total fishing capacity.
- 68.** In the United Kingdom (England), engine improvements were considered eligible when only improving fuel efficiency by 5 %.

INADEQUATE REPORTING BY MEMBER STATES

- 69.** The CFP regulation³⁸ provides that, each year, the Commission shall present to the European Parliament and Council a summary of the results of Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities, accompanied by opinions of the Scientific, Technical and Economic Committee for Fisheries (STECF) and the Advisory Committee on Fisheries and Aquaculture (ACFA). The Commission's summary is based on a yearly report from each Member State. The Commission's implementing³⁹ regulation specifies the minimum information to be included in Member States' annual reports. In March 2008 the Commission services issued guidelines containing technical, biological and economic indicators to be used by Member States in these reports.
- 70.** The annual summary reports prepared by the Commission and opinions of STECF and ACFA, conclude each year that while Member State fleet reports are improving, they remain insufficient. The reports were often not provided within the prescribed deadlines and most of them were not drawn up in accordance with the Commission's guidelines of March 2008. The most recent available summary report⁴⁰ of the Commission for 2008 concluded that the majority of the reports do not give enough information to enable the Commission to analyse the efforts made to achieve a balance between the fishing capacity of the fishing fleet and available fishing opportunities.

³⁸ Article 14(1) of Council Regulation (EC) No 2371/2002.

³⁹ Article 13 of Commission Regulation (EC) No 1438/2003 of 12 August 2003 laying down implementing rules on the Community fleet policy defined in Chapter III of Council Regulation (EC) No 2371/2002 (OJ L 204, 13.8.2003, p. 21).

⁴⁰ Annual report from the Commission to the European Parliament and the Council on Member States' efforts during 2008 to achieve a sustainable balance between fishing capacity and fishing opportunities (COM(2010) 60 final of 25 February 2010).

- 71.** The CFP regulations did not sufficiently specify Member States' annual reporting requirements and Member States which prepared inadequate fleet reports suffered no adverse consequences. By contrast, if Member States submit incomplete annual EFF implementation reports the Commission can interrupt interim payments under Article 83 of the EFF regulation.
- 72.** Although most annual fleet reports of the Member States visited by the Court gave extensive information on Member States' fishing activities and fishing capacity, the reports of France, Poland, Portugal and Spain do not allow a conclusion to be drawn on the balance between the fishing capacity of their fishing fleets and available fishing opportunities. These Member States did not apply the Commission's guidelines of March 2008. The United Kingdom uses other technical indicators to assess the balance between fishing capacity and fishing opportunities, but did not explain how its system of capacity entitlements created rights to capacity⁴¹. Italy and Denmark adequately applied the Commission guidelines and produced annual reports which sufficiently examined the balance between fishing capacity and fishing resources.
- 73.** Because of inadequate reporting by Member States there is no clear overview at EU level on the balance between fishing capacity and fishing opportunities. This complicates the identification of suitable policies to reduce fishing overcapacity and makes it difficult to assess the performance of those policies.

⁴¹ At 4 October 2010, these entitlements represented 81 891 kW and 21 957 GT.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

- 74.** Overcapacity of the fishing fleet continues to be one of the main reasons for the failure of the CFP in assuring a sustainable fishing activity. Although the reduction of fishing overcapacity has been a recurrent theme in previous reforms of the CFP, current measures have failed. This indicates that either a new approach to tackling the problem needs to be adopted, and/or existing measures have to be better enforced.

THE FRAMEWORK FOR THE MEASURES TO BALANCE FISHING CAPACITY WITH AVAILABLE FISHING OPPORTUNITIES IS UNSATISFACTORY

- 75.** The CFP does not have adequate rules for key issues related to overcapacity of the fishing fleet:
- (a) given constant technological developments, the existing definitions of fishing capacity no longer adequately reflect the ability of fishing vessels to catch fish (paragraphs 21 and 22);
 - (b) ceilings do not impose real restrictions on fishing fleet capacity (paragraph 23);
 - (c) although the alignment of fishing capacity to fishing opportunities is one of the cornerstones of the CFP and the EFF, fishing overcapacity has not been defined or quantified. This complicates the design of measures to reduce it and makes it difficult to assess the performance of those measures at Member State level (paragraphs 24 and 25);
 - (d) there are not sufficiently clear rules for the treatment (cancellation/transfer/sale) of fishing rights when fishing vessels are scrapped with public aid. Furthermore, the role of fishing rights in aligning fishing capacity to fishing opportunities is not specified by the regulations (paragraphs 26 to 33).

**THE DESIGN AND IMPLEMENTATION OF MEASURES TO
BALANCE FISHING CAPACITY WITH AVAILABLE FISHING
OPPORTUNITIES IS UNSATISFACTORY**

- 76.** Member States have not fulfilled their obligation under the CFP of putting in place effective measures to match fishing capacity to fishing opportunities, and the Commission's monitoring and supervision of the Member States did not prevent significant implementation problems. The design of some measures is also unsatisfactory.
- (a) There were delays in implementing EFF-funded projects and in setting up management and control systems (paragraphs 36 and 37).
 - (b) Fishing effort adjustment plans did not provide a sound basis to adapt the capacity of fishing fleets to available fishing opportunities (paragraphs 38 to 40).
 - (c) Four of the seven Member States examined in the audit had set inadequate targets for reducing capacity. This increases the risk that fishing fleet overcapacity is not adequately targeted for reduction (paragraphs 41 and 42).
 - (d) Subsidised investment on board fishing vessels may in practice increase their ability to catch fish (paragraphs 43 to 47).
 - (e) The fishing fleet register was not correctly updated with details of fishing vessels scrapped with public aid. This overstated the fishing fleet capacity ceilings (paragraphs 48 to 50).
 - (f) The eligibility and selection criteria for fishing vessel decommissioning schemes were not well targeted. This resulted in scrapping fishing vessels which had little if any impact on the targeted fish stocks (paragraphs 51 to 58).
 - (g) The public aid rates used for decommissioning fishing vessels generally did not take into account their cost effectiveness on the basis of sufficient objective criteria (paragraphs 59 to 62).

- (h) The application of the 'fuel crisis regulation' had not obtained the required fishing fleet capacity reductions (paragraphs 63 to 68).
- (i) The rules under which Member States report on their efforts to balance fishing capacity with fishing opportunities are inadequate and lack clarity. This is one of the reasons for the incomplete and inadequate reporting by most Member States, with the consequence that it is impossible to derive conclusions regarding fishing overcapacity (paragraphs 69 to 73).

RECOMMENDATIONS

77. In order to reduce overcapacity of the fishing fleet and to contribute to the achievement of a sustainable fishing sector, the Court makes the following recommendations.

RECOMMENDATION 1

The **Commission should** take the necessary initiatives, including considering whether amendments to the basic regulations are necessary, in order to:

- (a) better define fishing capacity and overcapacity and consider more relevant robust measures to facilitate actions to balance fishing capacity with fishing opportunities;
- (b) set effective limits for fishing fleet capacity;
- (c) ensure that the design and implementation of FEAPs effectively target required reductions in fishing effort;
- (d) clarify how fishing rights should be treated when decommissioning fishing vessels with public aid;
- (e) clarify whether fishing right transfer schemes have a role in reducing fishing overcapacity;
- (f) establish whether the scheme of public aid for on-board investments needs to be reconsidered in light of the difficulties in avoiding investments which increase fishing ability and, if the scheme is to continue, clarify which investments on board are eligible for public aid and which are not;
- (g) place unambiguous obligations on Member States to ensure that the fleet register is correctly updated, and that reports on their efforts to balance fishing capacity with fishing opportunities provide the required information and are of suitable quality.

RECOMMENDATION 2

When implementing CFP measures related to adapting the fishing capacity of their fishing fleets to available fishing resources, **Member States should:**

- (a) take corrective action to eliminate delays in implementation of the EFF;
- (b) ensure that any measures to aid investments on board are strictly applied and do not increase fishing ability;
- (c) ensure that the fishing fleet register is kept up to date;
- (d) ensure that selection criteria for fishing vessel decommissioning schemes are designed to have a positive impact on the sustainability of the targeted fish stocks and avoid providing public aid for decommissioning inactive fishing vessels;
- (e) ensure that public aid rates for decommissioned fishing vessels take into account their cost effectiveness on the basis of sufficient objective criteria;
- (f) use the Commission's guidelines when producing annual reports on their efforts to achieve a sustainable balance between fishing capacity and fishing opportunities and give reasoned conclusions on the state of that balance.

This report was adopted by Chamber I, headed by Mr Olavi ALA-NISSILÄ, Member of the Court of Auditors, in Luxembourg at its meeting of 28 September 2011.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

IMPLEMENTATION OF THE EUROPEAN FISHERIES FUND AS AT 31 DECEMBER 2010

Member State	EFF BUDGET			EFF Priority Axis 1 budget (measures to adapt fishing fleets)			EFF implementation certi- fied by Member States to 31.12.2010			EFF Priority Axis 1 implementation certified by Member States to 31.12.2010					
	million euro			million euro			million euro			million euro			% of budget		
	Public aid	EFF	National	Public aid	EFF	National	Public aid	EFF	National	Public aid	EFF	National	Public aid	EFF	National
Belgium	48	26	22	18	12	6	11	8	3	10	7	3	56 %	58 %	50 %
Bulgaria	107	80	27	11	8	3	4	3	1	0	0	0	0 %	0 %	0 %
Czech Republic	36	27	9	0	0	0	4	3	1	0	0	0	-	-	-
Denmark	238	134	104	54	40	14	41	29	12	22	20	2	41 %	50 %	14 %
Germany	247	156	91	13	8	5	38	26	12	1	0	1	8 %	0 %	20 %
Estonia	113	85	28	20	15	5	19	14	5	6	5	1	30 %	33 %	20 %
Ireland	66	42	24	46	35	11	37	27	10	37	27	10	80 %	77 %	91 %
Greece	274	208	66	98	77	21	41	39	2	8	8	0	8 %	10 %	0 %
Spain	2 071	1 132	939	764	439	325	402	202	200	237	132	105	31 %	30 %	32 %
France	557	216	341	179	66	113	172	50	122	136	38	98	76 %	58 %	87 %
Italy	849	424	425	323	161	162	81	60	21	55	42	13	17 %	26 %	8 %
Cyprus	39	20	19	10	5	5	12	6	6	3	1	2	30 %	20 %	40 %

Latvia	167	125	42	35	26	9	30	22	8	19	14	5	54 %	54 %	56 %
Lithuania	71	55	16	17	14	3	14	11	3	5	4	1	29 %	29 %	33 %
Hungary	47	35	12	0	0	0	5	4	1	0	0	0	-	-	-
Malta	11	8	3	3	2	1	1	1	0	1	0	1	33 %	0 %	100 %
Netherlands	121	49	72	45	17	28	33	10	23	28	8	20	62 %	47 %	71 %
Austria	10	5	5	0	0	0	5	3	2	0	0	0	-	-	-
Poland	979	734	245	225	169	56	50	37	13	50	37	13	22 %	22 %	23 %
Portugal	326	246	80	75	63	12	51	42	9	29	27	2	39 %	43 %	17 %
Romania	308	231	77	13	10	3	17	13	4	2	1	1	15 %	10 %	33 %
Slovenia	29	22	7	3	2	1	2	2	0	0	0	0	0 %	0 %	0 %
Slovakia	19	14	5	0	0	0	3	2	1	0	0	0	-	-	-
Finland	92	39	53	8	3	5	20	9	11	1	1	0	13 %	33 %	0 %
Sweden	105	55	50	23	14	9	28	16	12	17	10	7	74 %	71 %	78 %
United Kingdom	247	138	109	74	40	34	12	6	6	6	3	3	8 %	8 %	9 %
Total	7 177	4 306	2 871	2 057	1 226	831	1 133	645	488	673	385	288			
Implementation (%)							16 %	15 %	17 %				33 %	31 %	35 %

REPLY OF THE COMMISSION

SUMMARY

IV. (a)

Fishing capacity is quantified on the basis of fishing capacity indicators. All possible indicators including GT (gross tonnage) and kW have advantages and disadvantages, and all of them are subject to the effects of technological progress. Indicators based on fishing gear size and characteristics may theoretically have a closer relationship to fishing mortality; nevertheless, capacity or effort limitations based upon them are significantly more difficult and resource-intensive to enforce and require much more data.

IV. (b)

The fleet capacity ceilings are used only in the context of public financial support for the decommissioning of fishing vessels under the EFF (European Fisheries Fund) regulation ((EC) No 1198/2006), and are the result of the implementation of the entry–exit regime for the management of fishing capacity, as set out in the basic CFP (common fisheries policy) regulation ((EC) No 2371/2002). Most Member States continue to apply a strict entry–exit regime to all vessel replacements and do not use the capacity margin they have under their reference level for the capacity of the fishing fleet

IV. (c)

In order to assist the Member States in assessing the capacity of their fleets, the Commission drafted in 2008 'Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities'. These guidelines were based on the scientific advice of the Scientific, Technical and Economic Committee for Fisheries (STECF), and represent a common methodological framework of indicators for helping Member States to assess the balance between fishing capacity and fishing opportunities. The work initiated by the Commission, together with Member States and the STECF, can provide qualitative estimations of overcapacity based on a combination of technical, biological, economic and social indicators.

REPLY OF THE COMMISSION

On 13 July, the Commission presented its proposal for the reform of the common fisheries policy. A key element of the reform is the replacement of the current, publicly funded approach to reduction of overcapacity with a new, market-based approach (transferable fishing concessions), which should effectively address the Court's recommendation to develop actions to effectively reduce the overcapacity of the fishing fleet.

IV. (d)

The experience in Europe with an approach based on transferable fishing rights prior to the 2002 common fisheries policy reform was too limited to be taken into account.

V. (a)

The delays were predominantly due to the late adoption by the Council of the EFF regulation. In addition, Member States gave priority to the programming and setting-up of management and control systems (MCS) for larger EU funds. Setting up compliant MCS was a complex task undertaken for the first time by relatively small fisheries administrations, which, at the same time, had to finalise implementation of the Financial Instrument for Fisheries Guidance (FIFG) 2000–06. Finally, revisions of operational programmes, necessary in those Member States which decided to implement Regulation (EC) No 744/2008¹, entailed further delays.

¹ Council Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis.

V. (b)

The fishing effort adjustment plans (FEAPs) are adopted in line with the rules set out in Articles 5 to 16 of Council Regulation (EC) No 2371/2002. Their content is defined in Article 22 of the EFF regulation and detailed in the EFF vademecum officially communicated to all Member States. However, the Commission agrees with the Court that these rules were not strong enough to ensure sufficiently sound design of the FEAPs. This is why the Commission has devoted particular attention to ensuring the correct implementation of FEAPs by the Member States via monitoring and control activities, thus leading to a number of payment interruptions under Article 88 of the EFF regulation.

V. (c)

The Commission agrees with the Court. The Commission notes however that, under Article 4 of the EFF regulation, balancing resources and fishing capacity is one objective of the EFF. Strengthening the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector is another objective. This means that an FEAP adopted under Article 21(a) (vi), concerning 'national decommissioning schemes as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002', may have the aim of restructuring the fleet to promote its profitability, not only adapting fishing fleet capacity to fishing opportunities.

V. (d)

Investment on board a fishing vessel might increase its ability to catch fish. Such investments would not be eligible for EFF financing. However, there are examples of investment in hygiene, freezing equipment, quality of the catch or working conditions which do not increase the ability to catch fish.

REPLY OF THE COMMISSION

V. (e)

The fleet register is being corrected and the capacity ceilings are being recalculated. The Commission will closely monitor compliance with these rules. However, Member States are responsible for keeping their fleet registers up to date and have the necessary information to do so.

V. (f)

The Commission agrees that criteria for selecting vessels for scrapping should target fisheries where there is most evidence of fishing overcapacity. Under shared management, it is the responsibility of the Member States that select the projects on the ground to ensure that the selection criteria used for fishing-vessel decommissioning schemes reflect their impact on targeted fish stocks. Moreover, it should be noted that Article 4 of the EFF regulation gives Member States the possibility to restructure their fleets to promote their profitability.

V. (g)

In the light of the Court's comments, the Commission will request Member States to further justify the level of premiums for permanent cessation of fishing activities in the light of the obligations spelled out in Section 4.2.2 of the EFF vademecum², requiring Member States to demonstrate that the level of the premium for permanent cessation represents the best cost/effectiveness ratio.

² Section 4.2.2 of the EFF vademecum indicates that 'Member States may set the level of the premium for permanent cessation of fishing activities using the scales of Annex IV to Implementing Regulation (EC) No 2792/1999 or similar scales under the condition that they demonstrate that the level of the premium represents the best cost/effectiveness ratio for them'. It also says that 'In accordance with Article 4(2) of the implementing regulation the operational programme shall specify the method for calculating the premiums granted under Article 23 of the EFF'. The term 'method' includes both the criteria and the formula for calculating the premiums.

V. (h)

At the time Council Regulation (EC) No 744/2008 was adopted, fuel prices returned to pre-crisis levels, which significantly reduced the interest of the Member States and fishers in the use of decommissioning schemes under the regulation.

V. (i)

The Commission agrees with the Court and considers that no comprehensive overview of the balance between fishing capacity and fishing opportunities can be drawn up due to poor reporting by Member States.

VI.

On 13 July 2011, the Commission presented its proposal for the reform of the common fisheries policy. A key element of the reform is the replacement of the current, publicly funded approach to reduction of overcapacity with a new, market-based approach (transferable fishing concessions), which should effectively address the Court's recommendation to develop actions to effectively reduce the overcapacity of the fishing fleet.

VII.

The Commission will follow up with the Member States on the Court's recommendations, in particular, in the context of its monitoring and supervisory role in the monitoring committees and the EFF Committee.

REPLY OF THE COMMISSION

OBSERVATIONS

19. (b)

In fisheries characterised by overcapacity, fishers cannot expect reasonable profits from normal fishing operations.

21.

Fishing capacity is quantified on the basis of fishing capacity indicators. All possible indicators, including GT and kW, have advantages and disadvantages and all of them are subject to the effects of technological progress. Indicators based on fishing gear size and characteristics may theoretically have a closer relationship to fishing mortality; nevertheless, capacity or effort limitations based upon them are significantly more difficult and resource-intensive to enforce and require much more data.

22.

The new engine power control measures that were adopted in the new control regulation ((EC) No 1224/2009) have been further developed in its implementing rules³. The process of engine power certification in the Member States should begin in January 2012.

23.

The fleet capacity ceilings are used only in the context of public financial support for scrapping and are the result of the implementation of the entry–exit regime for the management of fishing capacity. Most Member States continue to apply a strict entry–exit regime to all vessel replacements and do not use the capacity margin they have under their reference level for the capacity of the fishing fleet.

³ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

24.

The Commission notes that the level of overcapacity reported in 1995 was an estimate based on a 40 % effort reduction, which was assumed to require a capacity reduction of the same magnitude. The approach proposed in the guidelines currently being developed is more complex because it will take into account all the factors mentioned above.

The work initiated by the Commission, together with Member States and the STECF, on the guidelines for assessment of the balance between fishing capacity and fishing opportunities can provide qualitative estimations of overcapacity based on a combination of technical, biological, economic and social indicators.

However, the Commission considers it very difficult to calculate excess capacity, given the complexity of the factors to be taken into account (biological, economic and social) and the fact that political/social choices are required for this calculation.

25.

The example of fleets put forward by the Court illustrates the difficulties of adopting a comprehensive definition of overcapacity, particularly for fleets that fish in a sustainable way from the biological point of view but with a low capacity utilisation.

REPLY OF THE COMMISSION

27.

The fishing rights of decommissioned vessels cannot be withdrawn from the fishing quotas allocated to the Member States. The mechanism for setting fishing quotas and fishing effort allocations is well established, as it is based on the assessment of the state of the stocks. Moreover, the Commission's new proposal for CFP reform calls for reinforced scientific advice to provide data on stocks that are still not assessed. One of the options considered for the future fisheries fund is the discontinuation of support for decommissioning.

28.

Article 11 of Regulation (EC) No 2371/2002 stipulates that fishing licences and, where applicable, fishing authorisations should be withdrawn when public aid is granted for the decommissioning of a vessel. The differences in the application of this article in the Member States are the result of different national systems; in some of them, fishing licences include fishing rights while in others this is not the case. The system chosen by each Member State is the responsibility of the Member State concerned and a common system cannot be imposed at EU level. Such an imposition would be against the principle of subsidiarity.

29.

The rates of public aid are set in relation to the value of the decommissioned vessel, in line with the EFF regulation.

Moreover, under Article 4 of the EFF regulation, balancing resources and fishing capacity and strengthening the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector are equally important objectives of the EFF.

Permanent cessation is a measure designed to target overcapacity both from the environmental and economic sustainability point of view, in line with the CFP objectives. In the most economically sound fisheries it is the possibility of transferring the fishing rights of scrapped vessels that provides the necessary incentive to reduce fleet capacity.

30.

In addition to the capacity reduction in the Danish fleet mentioned by the Court, there was a further decrease in 2010 to 71 295 GT and an overall reduction of 34 % since 2003.

31.

The Commission is examining the results of the Scottish fleet resilience scheme as reported in the annual implementation report and has requested further information from the UK authorities.

32.

The impact assessment accompanying the Commission's proposal for the reform of the CFP⁴ shows clearly that a reform scenario including a fishing rights approach performs much better in terms of environmental, economic and social sustainability than the current CFP and other reform options.

Accordingly, transferable fishing concessions (TFCs) are the primary tool for adjusting fishing capacity to fishing opportunities and a fundamental pillar of the CFP reform proposed by the Commission. For vessels over 12 metres in length and for vessels under 12 metres with towed gear, Member States should introduce a system of TFCs for stocks managed under fishing opportunities. Thus, more than 60 % of regulated catches (in terms of value) would come under rights-based management.

⁴ SEC(2011) 891.

REPLY OF THE COMMISSION

33.

There is experience in other countries (New Zealand, Iceland and Australia) which demonstrates that transferable quota systems can also be used in mixed fisheries. These examples indicate that fishing rights transfer schemes, which are not expressly included in the current CFP, can be used to provide incentives for reducing fishing overcapacity.

34.

The legislation did not enable the Commission to check and ensure that fishing capacity in the Member States matches their fishing opportunities. Moreover, under the shared management system, it is up to the Member States to decide what part of the financial allocation under the EFF is dedicated to decommissioning. Finally, taking into account the cost of decommissioning and the limited size of the EFF, matching fishing capacity with fishing opportunities cannot be achieved by the EFF alone.

35.

Capacity adjustments depend not only on the measures taken by Member States' administrations but also on the sector's willingness to reduce fishing capacity, which depends on the profitability of its business. The implementation of decommissioning measures under the EFF is the most advanced of all measures.

36. (a)

The delays were predominantly due to the late adoption by the Council of the EFF regulation. In addition, Member States gave priority to the programming and setting-up of MCSs for larger EU funds. Setting up compliant MCS was a complex task undertaken for the first time by relatively small fisheries administrations, which, at the same time, had to finalise implementation of the Financial Instrument for Fisheries Guidance (FIFG) 2000–06. Finally, revisions of operational programmes, necessary in those Member States which decided to implement Regulation (EC) No 744/2008⁵, entailed further delays.

⁵ Council Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis.

37.

The situation has changed substantially since the first assessment by the Court of the implementation of the EFF in Italy. Implementation of the operational programme accelerated significantly in the last months of 2010.

39.

The fishing effort adjustment plans (FEAPs) are adopted in line with the rules set out in Articles 5 to 16 of Council Regulation (EC) No 2371/2002. Their content is defined in Article 22 of the EFF regulation and detailed in the EFF vademecum officially communicated to all Member States. However, the Commission agrees with the Court that these rules were not strong enough to ensure sufficiently sound design of the FEAPs. This is why the Commission has devoted particular attention to ensuring the correct implementation of FEAPs by the Member States via monitoring and control activities, thus leading to a number of payment interruptions under Article 88 of the EFF regulation.

39. (d)

Under Article 4 of the EFF regulation, balancing resources and fishing capacity is one objective of the EFF. Strengthening the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector is another objective. This means that an FEAP adopted under Article 21(a) (vi), concerning 'national decommissioning schemes as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002', may have the aim of restructuring the fleet to promote its profitability, not only adapting fishing fleet capacity to fishing opportunities.

REPLY OF THE COMMISSION

40.

The fishing effort adjustment plans (FEAPs) are adopted in line with the rules set out in Articles 5 to 16 of Council Regulation (EC) No 2371/2002. Their content is defined in Article 22 of the EFF regulation and detailed in the EFF vademecum officially communicated to all Member States. However, the Commission agrees with the Court that these rules were not strong enough to ensure sufficiently sound design of the FEAPs. This is why the Commission has dedicated particular attention to ensuring the correct implementation of FEAPs by the Member States via monitoring and control activities, thus leading to a number of payment interruptions pursuant to Article 88 of the EFF regulation.

Box 2 (a)

The Commission is aware that the French FEAP was not published, and notes that there was no legal obligation to do so. Nevertheless, the conformity of the French FEAP was checked and three payment interruptions were imposed.

The high percentage of fishing capacity eligible for decommissioning aid is to a large extent a result of the poor design of the selection criteria, in turn a consequence of the possibility offered by Article 4 of the EFF regulation to restructure the fleet to promote its profitability and not simply to adapt its capacity to fishing opportunities.

Box 2 (b)

The increase in the fishing capacity reduction targets in the Polish FEAP in comparison to the targets of the operational programme was a result of the negotiations between the Commission and the Polish authorities on the content of the FEAP. The Commission negotiated decommissioning targets for Poland taking into account the Polish cod pay-back scheme (Council Regulation (EC) No 338/2008⁶).

⁶ Council Regulation (EC) No 338/2008 of 14 April 2008 providing for the adaptation of cod fishing quotas to be allocated to Poland in the Baltic Sea (Subdivisions 25–32, EC Waters) from 2008 to 2011.

The aid for permanent cessation of fishing activities is available to all active vessels of the Polish Baltic fishing fleet that catch cod. Extending the eligibility of the scrapping scheme to all vessels in the Baltic Sea increases the opportunities for eliminating any vessels catching cod, since the Polish Baltic fishing fleet is mostly a multi-purpose fleet.

Box 2 (c)

The Commission agrees with the Court's observation. Since there was no legal obligation for Member States to obtain *ex ante* approval of their FEAPs by the Commission, the latter requested the Member States to document their implementation *ex post*. Spain was in particular requested to demonstrate the link between its FEAPs, EU recovery and management plans and the capacity and/or effort reduction objectives set out in the Spanish operational programme for fisheries at risk. In the meantime, three successive partial payment interruptions have been imposed.

Box 2 (d)

The UK decommissioning scheme⁷ can be expected to have a considerable impact on improving the balance of the targeted fleet segment between fishing capacity and fishing opportunities. The scheme called for applications from vessels that had a high track record of catching certain quota stocks, and the ranking system for the decommissioning scheme included lists of stocks for which the quota or level of effort was reduced or to be reduced.

⁷ The list of stocks covered in the ranking system for the decommissioning scheme did include North Sea cod, North Sea sole, cod in Area VIID (as part of the wider Area VII cod stock) and sole in Area VIIE. It also included several stocks where there had been significant quota reductions in recent years (such as North Sea whiting) and also where there had been advice to reduce the level of effort involved (for example for skates and rays, where the advice has been to move away from any targeted fishery for these species). Some stocks were also added where there may not be pressure at EU level but where for local fisheries within the UK there were issues concerning the lack of availability of the quota involved — such as North Sea nephrops. The scheme scrapped 65 vessels and removed 457 GT and 6 504 kW.

REPLY OF THE COMMISSION

The Commission will follow up this issue and monitor the continuation of operations.

Box 4 (b)

The Portuguese operational programme provides information on the stocks which are overexploited and the fleet segments to be the subject of reductions.

Box 4 (c)

The Spanish operational programme does contain a chapter on fisheries at risk which indicates specific capacity and/or effort reduction objectives for specific fisheries in Spain.

In addition, during the dialogue initiated by the partial interruptions imposed by the Commission, Spain documented how these objectives had been translated in the 24 individual FEAPs adopted so far by Spain (including six fleet adjustment schemes adopted under Article 12 of Council Regulation (EC) No 744/2008).

Box 4 (d)

Both the NSP (national strategic plan) and OP (operational programme) contain a forecast for reducing the overall UK fleet capacity (measured in GT) by 10–15 % by 2015 in comparison to the baseline level of 2007.

44.

Many cases of investments on board concerning matters such as hygiene, freezing equipment, quality of the catch or working conditions do not increase the ability to catch fish.

The Commission will provide guidelines to the Member States clarifying which kind of investment on board is eligible for public aid and which is not. These guidelines will be communicated to the Member States within the EFF Committee.

47.

The Portuguese authorities have indicated that increases in the catches of vessels benefiting from aid for investment on board are theoretical and result from the requirement that the vessel owner justifies the economic and financial viability of the investment.

48.

The fleet register is being corrected and the capacity ceilings recalculated. The Commission will closely monitor compliance with these rules. However, Member States are responsible for keeping their fleet registers up to date and have the necessary information to do so.

49.

The Commission has asked the UK to confirm that all scrapped vessels have been removed from the fleet register.

50.

Since the Court's audit, the total of vessels decommissioned has risen to 183 by the end of 2009. All but 15 of the vessels identified by the Court have now been correctly recorded. The Commission will request the French authorities to send proof that all scrapped vessels are correctly recorded as decommissioned in the fleet register, and shown as having benefited from public aid in the fleet register.

REPLY OF THE COMMISSION

51.

The Commission agrees that criteria for selecting vessels for scrapping should target fisheries where there is evidence of fishing overcapacity.

The Commission notes that the design of the French general FEAP led to payment interruptions starting from 18 May 2010. Regarding selection criteria in general, the Commission asked for them to be reviewed as from 14 July 2008. This was also raised with reference to the Court's audit at the annual implementation meeting with the French authorities in November 2010, where it was agreed that the selection criteria would be redefined following the interim evaluation report on the EFF.

In the case of Poland, the overcapacity identified in the FEAP concerns cod in the Baltic Sea. Extending the eligibility of the scrapping scheme to all vessels entitled to a cod fishing permit is an appropriate solution, taking into account the multi-purpose character of the Polish Baltic fishing fleet.

52.

The Commission agrees that the main eligibility criterion in most French decommissioning schemes was not sufficiently targeted. The Commission will propose to the French authorities the introduction of catch composition as one of the selection criteria.

54.

The Polish EFF aid for permanent cessation of fishing activities is available to all active vessels of the Polish Baltic fishing fleet. Extending the eligibility of the scrapping scheme to all vessels active in the Baltic Sea increases the opportunities of eliminating any vessels catching cod, since the Polish Baltic fishing fleet is a multi-purpose fleet. The quota for catching cod was allocated through a lottery system in 2009–11, and basically any vessel could have obtained a cod fishing permit. As a result, two thirds of the Baltic fleet stopped fishing cod on a yearly basis.

This aspect was thoroughly discussed during the negotiation of the FEAP, and thus fully justifies granting aid for permanent cessation of fishing activities to any vessel of the Polish Baltic sea fleet.

The annual report on the Polish fishing fleet has constantly improved, and the 2010 report contains an assessment of the cod fishing effort that had been eliminated.

55.

There is a risk that fishing vessels which would cease fishing activities anyway may be scrapped with public aid. However, such scrapping does ensure that the capacity withdrawn cannot be replaced. The latter is an essential condition and one of the most important aspects of decommissioning programmes.

56.

The Commission will request the French authorities to check if all decommissioned vessels had a valid navigation licence and to follow up any cases where there was no such licence.

REPLY OF THE COMMISSION

Box 6

The Commission will request the French authorities to decertify any irregular expenditure and, if necessary, will make financial corrections.

57.

The Commission has requested Spain to clarify that the eligibility conditions for decommissioning aid have been met in the cases identified by the Court and will check that it has decertified irregular payments, and if necessary the corresponding financial corrections will be made.

Box 7 (a)

The Commission has requested Spain to clarify the matter and will check that it has decertified irregular payments, and if necessary the corresponding financial corrections will be made.

Box 7 (b)

The Commission has requested Spain to clarify the matter and will check that it has decertified irregular payments, and if necessary the corresponding financial corrections will be made.

58.

The Commission confirms that two of the 65 scrapped vessels as detailed in Box 8 did not meet the eligibility criteria, and the UK authorities agree with this finding for one vessel. The Commission will ensure that the appropriate corrections are made, i.e.: (a) corrected results in terms of the number of vessels scrapped and GT and kW reduction to be communicated to Commission in the annual implementation report 2010; (b) wrongly paid amounts to be recovered and reported.

Box 8 (b)

The Commission will ensure that appropriate corrections are made.

60.

In the light of the Court's comments, the Commission will request Member States to further justify the level of premiums for permanent cessation of fishing activities in the light of the obligations spelled out in section 4.2.2 of the EFF vademecum, requiring Member States to demonstrate that the level of the premium for permanent cessation represents the best cost/effectiveness ratio.

61.

The EFF is implemented under shared management and it is the responsibility of the Member States to ensure that the decommissioning scheme takes into account specific characteristics and the impact of the applicants' fishing vessels on fish resources. Moreover, Member States are in the best position to take into account in their decommissioning schemes the variety of existing fisheries, changing fishing patterns, the evolving situation of stocks or the multi-species nature of many fisheries.

The rates of public aid are set in relation to the value of the decommissioned vessel, in line with the EFF regulation.

REPLY OF THE COMMISSION

63.

There is no definition of 'fleet segment' in Regulation (EC) No 744/2008. This question was raised and answered at the EFF Committee meeting of October 2008. The full text is available in EFF Committee EFFC_30_2008_EN. The answer provided was:

'There is neither a Community definition of "segment" nor a provision in Regulation 744/2008 that requires that the Fleet Adaptation Scheme (FAS) should concern vessels belonging to the same "segment" or include only the vessels of a given "segment" of the Member States fleet. However, as a general rule, a FAS should be composed by a coherent set of vessels.'

'The only case where some limitation exists in that sense is when the FAS includes the financing of partial decommissioning. In this case, the obligations set in Article 17 apply.'

65.

In Denmark, Council Regulation (EC) No 744/2008 was implemented in one single FAS, which was subdivided into sets of restructuring plans with a group of fishers being responsible for meeting the targets of each plan.

66.

According to the Danish national rules, beneficiaries were required to invest in modernisation or the construction/import of new fishing vessels. Denmark argued that the link between scrapping and reinvestment in more energy-efficient vessels was fully in accord with the objectives of Council Regulation (EC) No 744/2008 to reduce costs for vessels affected by the economic crisis and to further reduce fleet capacity in an accelerated way beyond what market forces would achieve.

In respect of the six newly constructed vessels the Commission carefully examined the conformity of this link with Article 25 of the EFF, which expressly prohibits all public aid for the construction of fishing vessels.

The conclusion of this examination was that the wording of the Danish national rules is not in line with Article 25 of the EFF. However, the information provided by Denmark concerning these vessels proved *de facto* that EU aid was not reused for the construction of vessels.

Also, it has to be noted that tonnage did not increase as a result of FAS implementation, when account is taken of the withdrawal of capacity required in order to obtain permission to import or construct new vessels, in compliance with Council Regulation (EC) No 2371/2002.

67.

The Commission takes note of the Court's observation concerning the implementation of Council Regulation (EC) No 744/2008 in France. It also notes that Council Regulation (EC) No 744/2008 does not explicitly state which vessels should be incorporated within an FAS to attain the 30 % capacity reduction objective, leaving some margin to include vessels already accepted under previous schemes.

68.

The UK authorities have accepted the Court's finding. Higher rates paid will be recovered and reported, and the Commission will ensure that this is done.

70.

The Commission recognises that the reporting by Member States on their fleets is not satisfactory, but notes that Member States' reports are improving. More Member States are applying in full or in part the Commission's guidelines and submitting their reports within the deadline.

REPLY OF THE COMMISSION

71.

The Commission recognises that the CFP Council regulations do not specify any consequences for Member States for poor reporting on the balance between fishing capacity and fishing opportunities. This may be because the adjustment of capacity to fishing opportunities is the responsibility of the Member States.

73.

No comprehensive overview of the balance between fishing capacity and fishing opportunities can be drawn up due to poor reporting by Member States. Nevertheless, there are clear indications of overcapacity in some fleets, on the basis of which Member States can take action.

CONCLUSIONS AND RECOMMENDATIONS

74.

The Commission has proposed new measures as part of the CFP reform to set up a market-based mechanism for the removal of overcapacity (transferable fishing concessions). In line with the experience of countries where it is applied, this mechanism could lead to a progressive alignment of fishing opportunities with available resources. One of the options currently considered for the future fisheries fund is the discontinuation of support for decommissioning.

75. (a)

All possible indicators, including gross tonnage and kW, have advantages and disadvantages, and all of them are subject to the effects of technological progress⁸. Indicators based on fishing gear size and characteristics may theoretically have a closer relationship to fishing mortality; nevertheless, capacity or effort limitations based upon them are significantly more difficult and resource-intensive to enforce and require much more data.

⁸ The new engine power control measures adopted in the new control regulation ((EC) No 1224/2009) have been further developed in its implementing rules. The process of engine power certification in the Member States should begin in January 2012.

75. (b)

The fleet capacity ceilings are used only in the context of public financial support for the decommissioning of fishing vessels under the EFF (European Fisheries Fund) regulation ((EC) No 1198/2006), and are the result of the implementation of the entry–exit regime for the management of fishing capacity, as set out in the basic CFP regulation ((EC) No 2371/2002). Most Member States continue to apply a strict entry–exit regime to all vessel replacements and do not use the capacity margin they have under their reference level for the capacity of the fishing fleet.

75. (c)

In order to assist the Member States in assessing the capacity of their fleets the Commission drafted in 2008 'Guidelines for an improved analysis of the balance between fishing capacity and fishing opportunities'. These guidelines were based on the scientific advice of the STECF, and represent a common methodological framework of indicators for helping Member States to assess the balance between fishing capacity and fishing opportunities. The work initiated by the Commission, together with Member States and the STECF, can provide qualitative estimations of overcapacity based on a combination of technical, biological, economic and social indicators.

On 13 July 2011, the Commission presented its proposal for the reform of the common fisheries policy. A key element of the reform is the replacement of the current, publicly funded approach to reduction of overcapacity with a new, market-based approach (transferable fishing concessions), which should effectively address the Court's recommendation to develop actions to effectively reduce the overcapacity of the fishing fleet.

REPLY OF THE COMMISSION

75. (d)

Article 11 of Regulation (EC) No 2371/2002 stipulates that fishing licences and, where applicable, fishing authorisations should be withdrawn when public aid is granted for the decommissioning of a vessel. The differences in the application of this article in the Member States are the result of different national systems; in some of them, fishing licences include fishing rights while in others this is not the case. The system chosen by each Member State is the responsibility of the Member State concerned and a common system cannot be imposed at EU level. Such an imposition would be against the principle of subsidiarity.

76.

The Commission recognises that the measures adopted by Member States did not result in a balance between fishing capacity and fishing opportunities in many fisheries. In the context of its monitoring and supervisory roles the Commission did everything within its power to ensure that implementation problems did not arise. The Commission is addressing the problem of matching fishing capacity to fishing opportunities in the context of the CFP reform (see reply to recommendation 1).

76. (a)

As highlighted by the Court there were delays in implementing EFF-funded projects. These were due to late adoption of the Regulation by the Council, the initial priority given by Member States to larger EU funds, the challenge for Member States to set up compliant management and control systems and the ongoing work at national level on finalising the FIFG.

76. (b)

The Commission notes that, under Article 4 of the EFF regulation, balancing resources and fishing capacity is just one objective of the EFF. Strengthening the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector is an equally important objective. This means that an FEAP adopted under Article 21(a)(vi), concerning 'national decommissioning schemes as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002', may have the aim of restructuring the fleet to promote its profitability, not only adapting fishing fleet capacity to fishing opportunities.

76. (c)

The Commission notes that the Member States referred to by the Court in paragraph 42 set overall targets and, in one case, estimations for capacity reduction.

76. (d)

There is risk that some but not all investments increase the ability to catch fish but if adequate verification is carried out by Member States this risk can be minimised. There are also many examples of such investment in hygiene, freezing equipment, quality of the catch or working conditions for which there is no risk of increasing the ability to catch fish.

76. (e)

Following the audit of the Court, the fleet register is being corrected and the capacity ceilings are being recalculated. The Commission will closely monitor compliance with these rules. However, Member States are responsible for keeping their fleet registers up to date and they have the necessary information to do so.

REPLY OF THE COMMISSION

76. (f)

The EFF is implemented under shared management and it is the responsibility of the Member States to ensure that the decommissioning scheme takes into account specific characteristics and the impact of the applicants' fishing vessels on fish resources. Moreover, Member States are in the best position to take into account in their decommissioning schemes the variety of existing fisheries, changing fishing patterns, the evolving situation of stocks or the multi-species nature of many fisheries.

76. (g)

The rates of public aid are set in relation to the value of decommissioned vessels, in line with the EFF regulation.

76. (h)

At the time Council Regulation (EC) No 744/2008 was adopted, fuel prices returned to pre-crisis levels, which significantly reduced the interest of the Member States and fishers in the use of decommissioning schemes under the regulation.

76. (i)

The Commission will work further in order to improve the methodology and clarify the data required for assessment of the balance between fishing capacity and fishing opportunities. This is technically complex because it needs to take into account biological, economic and social aspects. Member States' fisheries administrations have the knowledge and data to assess the balance between their fleet and the fishing opportunities and to reach appropriate conclusions.

Recommendation 1

The Commission will take the necessary actions to address the Court's recommendations.

Recommendation 1 (a)

The Commission will maintain the current definition of fishing capacity. This is necessary in order to keep coherent historical records and to maintain a coherent basis for implementation of the EFF until the end of 2015. To address the Court's recommendation, the Commission will work with the STECF to further develop the existing guidelines for the Member States on how to assess overcapacity. In addition, the Commission has already tabled a proposal for a new CFP basic regulation. This proposal calls for the introduction of TFCs as the main, market-based, mechanism to address overcapacity. This mechanism does not require a definition of overcapacity, as adjustment to available fishing resources happens automatically, through the sale of fishing rights by those vessels which are not economically viable. One of the options considered for the future fisheries fund is the discontinuation of support for decommissioning.

Recommendation 1 (b)

Limitations on fishing capacity, despite the use of better defined indicators, are not effective in dealing with the problem of overcapacity. Consequently, for the reformed CFP, the Commission proposes the implementation of transferable fishing concessions, a management system shown to be effective in adjusting fleet capacity to fishing opportunities.

The new engine power control measures adopted in the new control regulation ((EC) No 1224/2009) have been further developed in its implementing rules⁹. The process of engine power certification in the Member States should begin in January 2012.

⁹ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

REPLY OF THE COMMISSION

Recommendation 1 (c)

One of the options currently considered for the future fisheries fund is the discontinuation of support for decommissioning.

Recommendation 1 (d)

The fishing rights of decommissioned vessels cannot be withdrawn from the fishing quotas allocated to the Member States. The mechanism for setting fishing quotas and fishing effort allocations is well established, as it is based on the assessment of the state of the stocks. Moreover, the Commission's new proposal for CFP reform calls for reinforced scientific advice to provide data on stocks that are still not assessed. One of the options considered for the future fisheries fund is the discontinuation of support for decommissioning.

Recommendation 1 (e)

The Commission's proposal for the new CFP basic regulation calls for the introduction of transferable fishing concessions as the principal, market-based, mechanism to address overcapacity. This mechanism will be obligatory for large fleets and voluntary for small fleets. This is a design similar to the approaches taken in other countries, such as Norway and Denmark. At the same time, one of the options considered for the future within the CFP reform is the discontinuation of support for decommissioning.

Recommendation 1 (f)

The Commission will provide guidelines to the Member States clarifying which kind of investment on board is eligible for public aid and which is not. These guidelines will be communicated to the Member States within the EFF Committee.

Recommendation 1 (g)

Member States are already obliged to update their fleet registers, following clear rules. In addition, Article 16 of the basic CFP regulation ((EC) No 2371/2002) provides for aid to be suspended if the fleet register is not updated.

The Commission will closely monitor compliance by the Member States with their fleet register obligations, in particular by cross-checking the fleet information reported against projects financed under the EFF.

Recommendation 2

The Commission will follow up with the Member States on the Court's recommendations, in particular in the context of its monitoring and supervisory role in the monitoring committees and the EFF Committee.

European Court of Auditors

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OVERCAPACITY OF THE EU'S FISHING FLEETS HAS UNDERMINED THE SUSTAINABILITY OF FISH STOCKS AND THE VIABILITY OF THE FISHING SECTOR FOR MANY YEARS. THIS REPORT EXAMINES THE EU'S MEASURES TO REDUCE FISHING OVERCAPACITY. IT CONCLUDES THAT THE MEASURES TAKEN TO DATE HAVE FAILED, GIVES REASONS FOR THIS FAILURE, AND MAKES RECOMMENDATIONS FOR TACKLING THESE PERSISTENT FAILURES.



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