

SPECIAL REPORT No 3/88

on

the common organization of the market in fishery products in Spain and Portugal together
with the Commission's replies

(88/C 188/02)

(Observations pursuant to Article 206a (4) of the EEC Treaty)

TABLE OF CONTENTS

	Paragraph reference
1. Introduction	1.1 — 1.3
2. Legal basis for the application of the Community acts	2.1 — 2.10
Introduction	2.1 — 2.2
Adaptations made to the basic regulation	2.3 — 2.4
Adaptations made to the implementing regulations	2.5
Transitional measures	2.6 — 2.10
3. Expenditure connected with the implementation of the common market organization	3.1 — 3.5
4. Audits carried out by the Court in the new Member States	4.1 — 4.32
Introduction	4.1 — 4.2
Measures implemented	4.3 — 4.4
Approval and launching of producers' organizations	4.5 — 4.13
Compliance with marketing standards	4.14 — 4.20
Financial compensation	4.21 — 4.28
The offering for sale of fish: auctions	4.21
Observance of the Community withdrawal price	4.22 — 4.24
The handling of products withdrawn from the market	4.25
Financial solidarity between the members of the producers' organizations	4.26 — 4.28
Catch plans	4.29 — 4.32
5. Conclusions	5.1 — 5.9
	Pages
The Commission's replies	30 — 33

1. INTRODUCTION

1.1. The Court of Auditors has undertaken to update its 'Special report on the common organization of the market in fishery products' ⁽¹⁾ in order to ascertain whether the systems established in Spain and Portugal are capable of

ensuring that the market intervention procedures are implemented satisfactorily. This report is not concerned with the structural measures which form part of the common fisheries policy's 'Guidance' measures, and the latter will therefore be touched upon only insofar as reference to them is relevant for the purposes of the report.

1.2. The present document is, therefore, the Court's response to the 'Resolution on the common organization of

(1) The footnotes appear together at the end of the report.

the market in fishery products (Special report of the Court of Auditors) of 20 February 1987⁽²⁾, in which the Parliament invited the Court of Auditors to update its report on the common organization of the market in the fishery products sector to take account of the accession of Spain and Portugal, and to do so by the end of 1987.

1.3. The Special Report referred to above contains a description of the main features of the common market organization for fishery products; this report will mention only the temporary exceptions to the general system which apply to Spain and Portugal during the transitional period leading up to full implementation of the Community acts, as well as to the adaptations made to the basic Council Regulation (EEC) No 3796/81 of 29 December 1981⁽³⁾, with the associated implementing regulations, as provided in the Act of Accession⁽⁴⁾.

2. LEGAL BASIS FOR THE APPLICATION OF THE COMMUNITY ACTS

Introduction

2.1. The act concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities states that the acts of the Communities' institutions concerning the common fisheries policy — essentially the basic Council Regulation (EEC) No 3796/81 of 29 December 1981, which has been in force since 1 January 1983 — shall apply throughout the new Member States, with the exception of the territories of the Canary Islands and Ceuta and Melilla⁽⁵⁾.

2.2. The Act of Accession sets out several adaptations to the basic Regulation and the associated implementing regulations, as well as transitional measures relating to each of the new Member States⁽⁶⁾. Other adaptations made necessary by the accession of the two countries are to be drawn up by the Council or by the Commission, in accordance with the guidelines set out in the Act⁽⁷⁾.

Adaptations made to the basic regulation

2.3. Intervention in the form of a grant of financial compensation⁽⁸⁾ as part of the system of Community withdrawal prices⁽⁹⁾ has been extended to include megrim (*Lepidorhombus spp*), Ray's bream (*Brama spp*) and monkfish (*Lophius spp*)⁽¹⁰⁾.

2.4. A 'storage premium' to producers' organisations has been introduced for crabs of the species *Cancer pagurus* and for Norway lobster within the framework of a system of 'selling prices'⁽¹¹⁾ which apply where the products are either processed for freezing and storing, or preserved under certain conditions⁽¹²⁾. The system of 'selling prices' is analogous to the Community system of 'withdrawal prices'. However, when fixing the selling price below which the storage premium mechanism is triggered, the producers' organizations have a higher tolerance limit (10 % below and 10 % above the Community selling price) than that which applies to the species subject to withdrawal (10 % below and 5 % above). The system of storage premiums is also analogous to the system of carry-over premiums. The species which qualify for the storage premium, however, are not eligible for market withdrawal and the premium is granted in respect of each product for quantities not exceeding 20 % of the quantity sold annually. In addition, the amount of the premium may not exceed the amount of the technical and financial charges relating to the operations which are essential for the stabilization and storage of the products before they are returned to the market.

Adaptations made to the implementing regulations

2.5. Council Regulation (EEC) No 2203/82 of 28 July 1982⁽¹³⁾, which lays down general rules for the granting of a carry-over premium for certain fishery products, has been amended to enable producers' organizations to receive this premium for the species of fish mentioned above (megrim, Ray's bream, monkfish), as well as for Atlantic sardines and anchovies⁽¹⁴⁾.

Transitional measures

2.6. The transitional measures laid down by the Act of Accession, which provide for temporary exemption from the Community rules relating to the common organization of the market in fishery products, are concerned on the one hand with the alignment, between the new Member States and the Community of Ten, of the guide prices applicable to Atlantic sardines and anchovies, and on the other with each new Member State's systems of Community and extra-Community trade.

2.7. As regards Atlantic sardines, in the case of Spain and Portugal prices are to be adjusted in ten annual stages so as to align them with the level of the guide prices for

Mediterranean sardines⁽¹⁵⁾. In the case of Spanish anchovies the alignment is to be effected in five annual stages⁽¹⁶⁾.

2.8. Provision has been made for monitoring systems to apply to imports of these products during the period of gradual alignment of the guide prices⁽¹⁷⁾:

(a) in the Community of Ten, for Atlantic sardines from Spain and Portugal;

(b) in Spain, for anchovies from the other Member States.

2.9. These monitoring systems take the applicable reference prices into consideration and measures may be taken to prevent disruption of the market if the free-at-frontier prices of a given product on importation remain below the reference price for a certain length of time.

2.10. This price alignment mechanism is reflected in the level of the withdrawal price which is fixed annually by the Commission.

3. EXPENDITURE CONNECTED WITH THE IMPLEMENTATION OF THE COMMON MARKET ORGANIZATION

3.1. The Community budget for the financial year 1986 allocated an amount of 158,8 Mio ECU in commitment appropriations and an amount of 166,5 Mio ECU in payment appropriations⁽¹⁸⁾ to Title 4, 'Common policy on fisheries and the sea'.

3.2. Chapter 40, 'Common organization of the market in fishery products', included an amount of 41,3 Mio ECU (non-differentiated appropriations) for 1986.

3.3. As *Table 1* shows, only 2 % (0,373 Mio ECU) of the expenditure taken into account in Chapter 40 in 1986 (17,975 Mio ECU) relates to the new Member States. In reality, the only cases of producers' organizations requesting payment of financial compensation occurred in Portugal.

3.4. Thus, in 1986 the enlargement of the Community to include Spain and Portugal still had only a very limited impact on this area of expenditure.

3.5. At the end of 1984, under the heading of cooperation with countries of the Mediterranean area, the Community granted Portugal 'pre-accession' aid for the improvement of agricultural and fisheries structures⁽¹⁹⁾. The relevant appropriations were entered under item 9602 of the budget, in which an amount of 500 000 ECU was reserved for operations connected with the establishment of producers' organizations in the fishery sector. The Court has ascertained that all the corresponding payments were effected in 1987.

4. AUDITS CARRIED OUT BY THE COURT IN THE NEW MEMBER STATES

Introduction

4.1. Between 24 August and 11 September 1987, the Court carried out an on-the-spot audit in six fishing ports in Spain and six in Portugal. It had meetings with nine Spanish producers' organizations and seven Portuguese organizations.

Table 1 — EAGGF, Guarantee: Expenditure taken into account in 1986 under the common organization of the fisheries markets, by Member State

		(Mio ECU)												
		Bel- gium	Den- mark	FR Ger- many	Greece	Spain	France	Ire- land	Italy	Luxem- bourg	Nether- lands	Portu- gal	United Kingdom	Total
1 9 8	Intervention Refunds	0,456	—	0,438	0,356	—	4,577	1,673	1,843	—	1,105	—	5,695	16,143
		—	—	-0,085	—	—	—	—	—	—	-0,041	—	0,037	-0,089
5	Total	0,456	—	0,353	0,356	—	4,577	1,673	1,843	—	1,064	—	5,732	16,054
1 9 8	Intervention Refunds	0,484	2,539	0,165	0,389	—	6,762	1,505	1,124	—	0,903	0,373	3,731	17,975
6	Total	0,484	2,539	0,165	0,389	—	6,762	1,505	1,124	—	0,903	0,373	3,731	17,975

4.2. In view of the fact that the Community rules on fisheries have applied only since 1 March 1986 ⁽²⁰⁾, the main aims of the audit were to examine how much progress had been achieved in adapting structures in the new Member States to the Community model for the common organization of markets and to verify the effectiveness and reliability of the systems which had been set up.

the special nature of it, particularly as far as the administrative and accounting aspects are concerned, it will be possible for the Court to consider it only as part of an enquiry covering all the Member States concerned.

Measures implemented

4.3. At the time of the Court's audit visit, the only measures which had been implemented were financial compensation, in Portugal, and tuna compensation, in Spain. The other financial measures chargeable to the EAGGF's Guarantee Section (carry-over premium and storage premium), which are also intended to facilitate implementation of the common fisheries organization and the attainment of its objectives, had not been implemented.

4.4. In view of the very recent implementation of tuna compensation, not only in Spain but in France as well, and

Approval and launching of producers' organizations

4.5. As can be seen from *Table 2*, as of 1 October 1987 42 organizations had been approved by the two new Member States, of which 32 were Spanish and 10 Portuguese, i.e. 23 % and 7 % respectively of the total number of approved producers' organizations in the Community.

4.6. The Court found in the case of both Member States that the articles of association of the producers' organizations that had obtained approval now complied with Community regulations, following the adoption of certain amendments suggested by the Commission.

4.7. As a proportion of national production, the production of approved producers' organizations was estimated to be 80 % in Spain and 42 % in Portugal.

Table 2 — Number of recognized producers' organizations in the fisheries sector (position at 1.10.1987)

Member States	Local inshore fishing	Offshore fishing	High-sea fishing	Deep-sea fishing	Specialized or other fishing	Associations	Total
BELGIUM	—	1	—	—	—	—	1
DENMARK	2	—	1 ^(a)	—	—	—	3
FR GERMANY	—	9	2	—	8	2	21
GREECE	3	—	—	—	2	—	5
SPAIN	13	4	2 ^(a)	6	7	—	32
FRANCE	9	6	7	2	4	1	29
IRELAND	2	—	—	—	1	—	3
ITALY	14	1	1	—	1	—	17
LUXEMBOURG	—	—	—	—	—	—	—
NETHERLANDS	—	—	2	—	—	—	2
PORTUGAL ⁽¹⁾	4	5 ^(b)	—	1 ^(c)	—	—	10
UNITED KINGDOM	8	5	2	—	—	—	15
EEC	55	31	17	9	23	3	138

⁽¹⁾ The distribution of producers' organizations by type of fishing is provisional pending further information.

^(a) Including offshore fishing and local offshore fishing.

^(b) Including local inshore fishing.

^(c) Including offshore fishing.

Source: DG XIV.

4.8. In Portugal, the majority of the organizations had been set up before accession and had obtained approval before the date set for implementation of the common fisheries policy (1 March 1986). In Spain, on the other hand, the first organizations were not approved until the second half of 1986.

4.9. The availability of pre-accession aid helped to speed up the process of formation and approval of producers' organizations in Portugal. Furthermore, the fact that the Member State had already paid start-up aid for the organizations' first year of operation also helped to equip them with the resources which they needed in order to be able to perform the functions assigned to them by the Community rules.

4.10. Spanish producers had formed shipowners' associations and trade associations under public law, known as *cofradías*, long before their country's accession to the Community. The approved producers' organizations are often the result of a regrouping of their own branches by several *cofradías*.

4.11. The traditional Spanish organizations nevertheless continue to play an important role in the regulation and operation of the market, a role which must be taken over by the approved organizations in accordance with the responsibility which they are required to bear with regard to the Community.

4.12. The difficulties inherent in any organizational reform of this kind and the existence of average selling prices which are well above the withdrawal prices have done nothing to help the producers' organizations in Spain to become operational without delay. Nevertheless, the experience which has been accumulated by the traditional organizations mentioned above and the resources available to them ought to have made it possible for the producers' organizations which have been formed on their initiative to get under way quickly and effectively.

4.13. Examination of the accounts of the approved producer organizations which were visited in Spain showed that they do not yet in fact have genuinely separate accounts. In fact, the operations relating to producers' organizations are generally included in a current (third party) account in the accounts of the shipowners' association, *cofradías*, or federation of *cofradías*, in which they originated. The limited number of operations recorded for the approved producers' organizations confirm that the latter are not yet truly independent of the traditional producers' organizations. It follows therefore that the traditional organizations have still to transfer the responsibility for market regulation to the traditional organizations.

Compliance with marketing standards

4.14. The products governed by the common organization of the fisheries' market must comply with standards relating to classification by categories of quality, size or weight, packing, presentation and labelling and they may not be displayed for sale, offered for sale, sold or marketed unless they conform to these standards (21).

4.15. The approved producers' organizations, through which fishermen are required to dispose of all products in respect of which they are members (22), must therefore ensure that the marketing standards are implemented and adhered to in all markets.

4.16. The producers' organizations that were visited in Spain are not yet playing the role assigned to them in Spanish markets. In addition, the organizations which they will eventually replace have not changed their traditional methods of classifying and selling fish.

4.17. The Community marketing standards are thus only being applied to the extent that they correspond to those that were in use before accession.

4.18. In Spain, as in Portugal, white fish is classified according to categories of size which do not coincide exactly with those laid down by the Community legislation. The criteria set out in the Community texts are not taken into account when determining the degree of freshness. In practice, the degree of freshness is determined in the market, on the basis of the length of the period during which the relevant fishing-boats were at sea.

4.19. In both countries, the size and freshness categories are not indicated by labels on each batch, as required by Community legislation.

4.20. Specific shortcomings were noted as regards the application of common marketing standards to sardines. Thus:

- (a) in Portugal, it was noted during visits to three markets that sardines are sold in bulk on the basis of an assessment by samples (usually a crate) taken from the ships' holds. The fish is not unloaded until after it has been sold. Similar selling methods were noted in Spain for sardines and mackerel;
- (b) in another Portuguese port, lorries transporting batches of standardized crates stop in front of potential customers, to whom the crates are successively

exhibited for just long enough for their purchase by auction to be concluded. In the case of each of these batches, the sardines are regarded as being of one and the same category;

- (c) it was noted that the method of sampling used to classify fish on a Portuguese boat which was bringing back two categories of sardine (caught at different times) resulted in all the fish being classified in the lower category;
- (d) in the five ports visited in Spain and Portugal where sardines are usually landed, there is no grouping of the supply of this fish before it is offered for sale by all the members to each producers' organization. The fish is sold as and when the boats arrive.

Financial compensation

The offering for sale of fish: auctions

4.21. Fish auctions are managed in Spain by the *cofradías* and, in some cases, by private undertakings. In the latter case, no serious check is possible without a cross-check being carried out within the producers' organizations of documents drawn up by these undertakings, which deal only with the shipowners. In Portugal, on the other hand, fish auctions are run by a government department which is answerable to the Secretary of State for Fisheries.

Observance of the Community withdrawal price

4.22. In both Spain and Portugal, the classification methods used are such that it is not possible to make acceptable comparisons, for each category of freshness and size, between the prices actually applied and the Community withdrawal prices.

4.23. In any event, an on-the-spot examination of the auction records relating to sales by the members of the two Spanish organizations visited revealed that mackerel and sardines had been sold at prices below the withdrawal price, whereas the fish concerned should have been withdrawn from the market.

4.24. It was also noted that one producers' organization in Portugal had stored mackerel for a certain period which it had withdrawn from the market at a price which was above the withdrawal price, which is against the Com-

munity rules. Then, having exhausted its storage capacity, it allowed its members to sell the same species of fish at auction, at prices which were very much below the withdrawal price, which is also contrary to the Community rules. The producers' organization consequently lost its entitlement to financial compensation.

The handling of products withdrawn from the market

4.25. Observance of the legal requirement to make products that have been withdrawn from the market unfit for human consumption immediately after withdrawal involves recourse to processes that will ensure that this effect is achieved immediately and to adequate checking systems. These conditions are not being met in Portugal, where fish that is withdrawn (sardines and mackerel so far) is simply thrown into large containers, which are then sent to the flour mills. The fish is not rendered unfit for human consumption immediately, before being thrown into the containers.

Financial solidarity between the members of the producers' organizations

4.26. The producers' organizations are required to pay their members sums, by way of financial compensation, which may not exceed the withdrawal price but must be higher — by at least 2,5 points — than the percentage of the withdrawal price that is taken into consideration when calculating the compensation.

4.27. Moreover, in order to finance the withdrawal measures, the producers' organizations must either create intervention funds, contributions to which are to be assessed on the basis of the quantities offered for sale, or have recourse to an equalization system⁽²³⁾.

4.28. In Portugal, four of the five organizations visited, which had made payments to those of their members concerned by the withdrawals, had limited themselves to paying over the sums obtained in the form of financial compensation, with no contribution from own funds. Moreover, it was noted that in Portugal only two of the seven organizations visited had created an intervention fund and in Spain only one out of the nine organizations visited had set up a contribution scheme to which its members were required to contribute.

Catch plans

4.29. One of the major tasks assigned to the producers' organizations is to draw up catch plans so as to adjust the catch during the fishery year to demand. The legislation stipulates, moreover, that catch plans must take account of any quotas allocated to the Member State⁽²⁴⁾.

4.30. In Spain, the traditional producers' organizations are responsible for seeing that the quotas are observed, and they often lay down rules and catch ceilings before the start of the fishery year in the case of some species.

4.31. In Portugal, the majority of producers' organizations only place limits on catches subject to withdrawal when the quantities withdrawn prove to be excessive in relation to the total quantities offered for sale. It was noted, moreover, that one producers' organization visited also takes into consideration the existing absorption capacity of the local flour mill before deciding what limits it should impose on its members' catches.

4.32. Even if the methods applied in the two Member States are to some extent contributing to a rationalization of the fishing industry, they do not fully comply with the legal provisions governing the preparation and implementation of the catch plan.

5. CONCLUSIONS

5.1. The transitional system drawn up for Spain and Portugal on accession only affects, in the case of market interventions, the fixing of withdrawal prices, without the two new Member States being allowed to deviate from the basic system set up by the Community. This requirement implies the existence of prior conditions authorizing intervention on the market.

5.2. The legislation should be applied in full. The market price may only be considered on the basis of the size and category of freshness of the fish.

5.3. Moreover, the legislation aims to ensure the sale, under optimum competitive conditions, of the best quality fish, so that only the poorer quality fish is withdrawn from the market. These objectives presuppose competition, in a market where it is possible to compare the totality of each day's catch. However, there is not yet a satisfactory concentration of supply in the two new Member States. Furthermore, optimum conditions for competition and for any Community intervention can only prevail if all the fish subject to the Community arrangement has been classified

by quality of freshness and size according to the categories specifically provided for in the regulations.

5.4. In Spain, in the markets visited by the Court, checks on the freshness of the fish left something to be desired. In Portugal, health checks of the quality were carried out, but such examinations do not result in the fish being correctly graded. No satisfactory classification according to size was observed.

5.5. In the conditions described above, it is difficult to carry out effective checks on observance of the withdrawal price.

5.6. The producers' organizations have only played a limited role hitherto, and this role is, moreover, difficult to describe, since the individual situations vary so greatly.

5.7. After the publication of the Court's findings as regards the classification of blue fish (herring, mackerel and sardines), which were set out by the Court in its special report of 28 November 1985 (1), Council Regulation (EEC) No.3396/85 of 26 November 1985 (25) introduced the possibility of classification on the basis of a sampling system. However, this method of classification was only authorized for herring and mackerel. Following the accession of Spain and Portugal to the Communities, sardine fishing has taken on major importance in the Community and has become a sensitive issue. The Commission should therefore decide upon the means and ways of ensuring strict compliance with the common classification standards.

5.8. The structures set up by the two Member States to monitor the application of the Community legislation have not yet worked fully and effectively.

5.9. Emphasis has been put upon the fact that expenditure connected with the implementation of the common market organization was limited. Moreover, the financial consequences that could result from the irregularities that were noted during the audit visit would not be very serious. Nevertheless, it is worth bearing in mind that the future development of the common market organization could, in different market circumstances, produce a situation where the financial consequences would be more serious.

This report was adopted by the Court of Auditors in Luxembourg on 19 May 1988.

For the Court of Auditors
Marcel MART
President

- (¹) OJ C 339, 31.12.1985.
(²) OJ C 76, 23.3.1987.
(³) OJ L 379, 31.12.1981, p. 1.
(⁴) OJ L 302, 15.11.1985.
(⁵) Articles 24 and 25 of the Act of Accession (OJ L 302, 15.11.1985, p. 27).(⁶)Article 26 of the Act of Accession (OJ L 302, 15.11.1985, p. 28).(⁷)Article 27 of the Act of Accession (OJ L 302, 15.11.1985, p. 28). (⁸)Article 13 of Council Regulation (EEC) No 3796/81 of 29.12.1981 (OJ L 379, 31.12.1981, p. 8).Articles 9 — 12 of (⁹)Council Regulation (EEC) No 3796/81 of 29.12.1981 (OJ L 379, 31.12.1981, p. 7).
(¹⁰) Chap. XV, para. 4(j), of Annex I of the Act of Accession (OJ L 302, 15.11.1985, p. 237).
(¹¹) Chap. XV, para. 4(b), of Annex I of the Act of Accession (OJ L 302, 15.11.1985, p. 236).
(¹²) Chap. XV, para. 4(c), of Annex I of the Act of Accession (OJ L 302, 15.11.1985, p. 236).
(¹³) OJ L 235, 10.8.1982, p. 4.
(¹⁴) Chap. XV, para. 5, of Annex I of the Act of Accession (OJ L 302, 15.11.1985, p. 239).
(¹⁵) Article 169, para. 2 and Article 356 of the Act of Accession (OJ L 302, 15.11.1985, p. 74 and p. 128).
(¹⁶) Article 169, para. 3 of the Act of Accession (OJ L 302, 15.11.1985, p. 74).
(¹⁷) Articles 170 and 357 of the Act of Accession (OJ L 302, 15.11.1985, p. 75 and p. 128).General budget of the (¹⁸)General budget of the European Communities for the financial year 1986 (OJ L 358, 31.12.1985).
(¹⁹) Council Regulation (EEC) No 3598/84 of 18.12.1984 (OJ L 333, 21.12.1984, p. 7).
(²⁰) Article 394 of the Act of Accession (OJ L 302, 15.11.1985, p. 137).
(²¹) Article 2 para. 2, of Council Regulation (EEC) No 3796/81 of 29.12.1981 (OJ L 379, 31.12.1981, p. 4).
(²²) Article 5 para. 1 of Council Regulation (EEC) No 3796/81 of 29.12.1981 (OJ L 379, 31.12.1981, p. 5).
(²³) Article 9 para. 3 of Council Regulation (EEC) No 3796/81 of 29.12.1981 (OJ L 379, 31.12.1981, p. 7).
(²⁴) See Article 5 of Commission Regulation (EEC) No 2062/80 of 31.7.1980 (OJ L 200, 1.8.1980, p. 84) amended by Commission Regulation (EEC) No 1995/84 of 12.7.1984 (OJ L 186, 13.7.1984, p. 23) to which the amendment of 6.10.1984 (OJ L 268, 9.10.1984, p. 38) refers.
(²⁵) OJ L 322, 3.12.1985, p. 1).

THE COMMISSION'S REPLIES

2. LEGAL BASIS FOR THE APPLICATION OF COMMUNITY ACTS

The Commission would point out that the Act of Accession provides for several transitional measures which have some influence on the formation of market prices in Spain and Portugal.

In this context mention should be made of the intra-Community supplementary trade mechanism which applies to 12 species of fresh fish, the quantitative restrictions on imports from non-EEC countries which apply to 30 different fishery products, the tariff quotas for joint ventures and the gradual alignment of Spanish and Portuguese customs duties on the Common Customs Tariff.

Although these measures do not directly influence the rules which producers' organizations must follow when intervening on the market, they do affect the workload of the national administrations and represent a constraint which may explain certain special difficulties encountered in implementing the said rules.

4. AUDITS CARRIED OUT BY THE COURT IN THE NEW MEMBER STATES

Introduction

The Commission would point out that the Court carried out these audits very soon after the entry into force of the Accession Treaty and the recognition of the producers' organizations.

Voluntary and independent management of the market by the producers' organizations constitutes one of the essential features of the common organization of the market. For the purposes of intervening on the market, producers' organizations may opt for the Community price system, thus qualifying for financial compensation from the Community, or for the autonomous system, in which case there is no financial compensation.

In 1986 and 1987 the producers' organizations in Spain were unable to apply the Community price system, only a short period having elapsed since their recognition. In Portugal only some of the producers' organizations applied the Community system in 1986 and 1987, and only for certain species. The amounts granted in aid to producers' organizations in Portugal have been very small.

In view of these considerations, no on-the-spot checks were carried out by the EAGGF in Spain or Portugal during this period when the market organization was being introduced. The Court's findings, including the additional information supplied to the Commission at the latter's request and those cases mentioned in the Report which may have financial consequences will be examined in the context of the clearance of accounts for 1986 and 1987. In this connection the Commission would point out that no general conclusions can be drawn from individual departures from the market organization rules.

The Commission supplied the national administrations of the new Member States with technical assistance so that the market organization could apply with effect from 1 March 1986. Obviously, it took some time before all the various technical adjustments could be made at national level, bearing in mind the fact that several transitional arrangements provided for in the Act of Accession were to be implemented at the same time.

As far as the producers' organizations were concerned, the Commission began by monitoring the way in which they were set up (inspecting their articles of association, in particular) in order to ensure from the start that they were established on the proper basis and that the organizations which had existed prior to accession had become producers' organizations in the Community sense and in accordance with the principles of the market organization.

Approval and launching of producers' organizations

4.5 to 4.12. The traditional Spanish organizations which existed before accession were used as the basis for the new producers' organizations, the establishment of which they greatly facilitated. Although only a very short period of time has elapsed, Spain now has 35 producers' organizations covering 80 % of production.

The Commission would also point out that Member States are obliged under the Community rules to keep a constant watch on the operation of producers' organizations and that they have been reminded of this obligation on several occasions.

The Commission shares the Court's views that if the producers' organizations are to function properly and assume the role which they are supposed to play on the market, they must become more independent of the traditional Spanish organizations.

4.13. The Commission has taken note of the Court's comments on the fact that certain producers' organizations do not yet have genuinely separate accounts. The Commission will request the Member State concerned to ensure that the said organizations comply with the Community rules and that approval is withdrawn from any organization which fails to do so.

In this context the Commission would point out that effective management of producers' organizations depends on several factors, such as in-depth knowledge of the market and the Community rules and, more particularly, the ability to run a body of this kind.

The Commission's staff will organize briefing sessions with the producers' organizations and associations thereof in the new Member States, with a view to ensuring that requirements are met in future.

Compliance with marketing standards

4.14 to 4.18. The fish referred to in Article 3 of Regulation (EEC) No 103/76 and forming part of Community production may not be marketed for human consumption within the Community unless they satisfy the requirements of the said Regulation, which does not apply merely to fish marketed by producers' organizations or their members

Checks on compliance with common marketing standards are entirely the responsibility of the Member States, who have been reminded of their obligations on several occasions.

The Commission shares the Court's view that fish should be graded strictly according to the criteria laid down in the Community rules.

The Commission's staff are now carrying out a detailed investigation to determine how the common marketing

standards can be more strictly and more uniformly enforced in all Member States. The Commission can confirm that the control arrangements are to be strengthened in any case.

4.19. The Commission will request the Member States responsible to ensure that batches of fish are labelled in accordance with the Community rules. It will do its utmost to ensure that Member States comply with their obligation to take appropriate measures to penalize infringements of Regulation (EEC) No 103/76, as provided for in Article 4 (2) of Regulation (EEC) No 3796/81.

4.20 (a), (b) and (c) As regards the comments on the application of the common marketing standards for sardines, the Commission is currently considering whether, and along what lines, it should propose the introduction of a sampling system for certain pelagic fish (including sardines). This would be based on the experience gained with the existing sampling system for herring and mackerel and, more particularly, on the specific production and marketing arrangements for the pelagic fish concerned.

(d) In most Spanish and Portuguese ports fresh fish are sold according to a timetable which takes account of the arrival times of vessels, the auctions remaining open for as long as required. It is customary for inshore and offshore fishermen to sell their sardines immediately after the vessels arrive in port, so that the catch loses not of its freshness. For the purposes of the market organization, the grouping of supply does not necessarily mean physical grouping in one place (use of a single port) or at one point in time (simultaneous sale of the day's catch) because this would prevent the fish from being properly distributed and would diminish the average value of the products sold.

Financial compensation

The offering of fish for sale: auctions

4.21. The Commission shares the Court's view that the checks provided for in the rules governing the market organization are for government agencies rather than private bodies to implement. The Commission has pointed out to the Spanish authorities that control arrangements complying with the Community rules must be introduced.

Observance of the Community withdrawal price

4.22. The Commission would refer you to the comments made in Sections 4.14-4.18.

4.23. The Commission would refer you to the comments made in the introduction to Chapter 4.

The handling of products withdrawn from the market

4.24. and 4.25. In view of the Court's comments on certain shortcomings in the treatment of products withdrawn from the market, the Commission has requested the Member State concerned to take the necessary steps to ensure strict application of the relevant Community rules.

The Commission shares the Court's opinion that all products which have failed to find a buyer at the Community withdrawal price, or even at the autonomous withdrawal price, must be withdrawn from the market and disposed of in one of the ways specified in Regulation (EEC) No 1501/83.

Financial solidarity between the members of producers' organizations

4.26 to 4.28. Any failure to meet the requirements of Article 13 (1)(c) of Council Regulation No 3796/81 as regards financial solidarity constitutes an infringement of the Community rules. Where the financial consequences are concerned, the Commission would refer you to subsection 4.4 (Introduction).

Catch plans

4.29 to 4.32. The Commission has taken note of the Court's comments on certain problems relating to the preparation and implementation of catch plans. The Commission will endeavour, at the briefing sessions referred to above (4.13), to clarify the economic significance of the catch plan and how it should be drawn up and implemented so as to improve the efficiency of day-to-day market management by the producers' organizations.

5. CONCLUSIONS

5.1. The Commission shares the Court's view that the market organization for fishery products must be strictly applied in the new Member States, since no derogation from the fundamental principles is provided for in the Act of Accession.

It would point out, however, that the common organization of the market in fishery products has applied in Spain and Portugal only since 1 March 1986. Given the structural features peculiar to the fisheries sector in the new Member States, an adjustment period will be needed before all the instruments of the market organization (including producers' organizations, which are voluntary bodies) become operational.

It should also be mentioned that Spanish and Portuguese production is only partly covered by the intervention arrangements for which the market organization provides. To ensure that the market organization is applied in a more balanced manner throughout the enlarged Community and to provide the producers' organizations (particularly those in the new Member States) with more opportunity to take advantage of the Community arrangements, the Commission presented to the Council in 1987 a proposal whereby 14 additional species would be included in a specific Community scheme (COM(87)213 final).

The Commission feels that, for these reasons, the fairly rapid rate at which producers' organizations are being established in Spain and Portugal constitutes a solid basis for more efficient application of the various market-organization instruments in the future.

5.2, 5.4, 5.7. The Commission shares the Court's view that the operation of the market organization for fishery products and the achievement of its objectives should be based on strict application of the common marketing standards. As regards the shortcomings discovered by the Court, the Commission has requested the Member States concerned to take all the measures necessary to ensure proper application of the Community rules. The Commission also reserves the right to propose appropriate measures to ensure stricter and more uniform application of the common marketing standards throughout the Community and to strengthen the control arrangements. As regards the special problem posed by certain pelagic fish such as sardines, the Commission is considering the possibility of introducing a sampling system which would reflect market requirements and guarantee correct application of the market-organization rules.

5.5, 5.6, 5.8, 5.9. At the time of the Court's visit, expenditure on the common organization of the market was very limited. The Court rightly points out that future expansion could create a situation, particularly in the

Member States, where the financial consequences could be more serious.

The Commission will make the necessary approaches to the Member States concerned to ensure that they correctly apply the Community rules, in particular by introducing

stricter control arrangements. The Commission, for its part, will make the necessary technical assistance available to the competent authorities of the Member States and, wherever possible, to the producers' organizations.