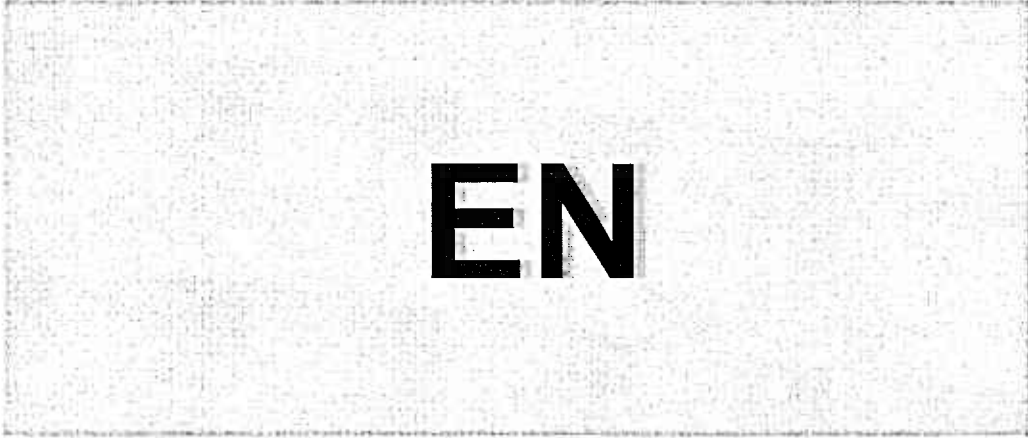




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Special Report No 3/93 concerning the implementation of the measures for the restructuring, modernization and adaptation of the capacities of fishing fleets in the Community together with the Commission's replies

1

I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 3/93

concerning

the implementation of the measures for the restructuring, modernization and adaptation of the capacities of fishing fleets in the Community together with the Commission's replies

*(94/C 2/01)**(Observations pursuant to Article 206a(4) of the EEC Treaty)*

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1. INTRODUCTION

*General background**The fisheries sector in the European Community**Economic and budgetary significance*

1.1. The FAO statistics (see *Table 1.1*) show that, of the total world catch of 99,5 million tonnes of fisheries products in 1989, the volume landed by the Member States' fishing fleets, namely some 7 million tonnes, was significantly lower than the volume of Japanese, USSR and Chinese (11 million tonnes) landings, but higher than the figure for the United States.

1.2. According to the data used by the Commission ⁽¹⁾, the Community fleets' production in 1989 amounted to 5,74 million tonnes, for an estimated value of some 6,200 Mio ECU. These figures represent almost 0,4 % of the Community's gross domestic product and correspond to around 260 000 fishermen's jobs (0,2 % of the total working population). The following considerations put the significance and extent of these figures into perspective:

- (a) firstly, for each sea-going job there are around four or five land-based jobs in both upstream (shipbuilding and maintenance) and downstream sectors (processing and marketing fisheries products);
- (b) secondly, fishing activities are concentrated along the coast, and more particularly in the ports, where in the absence of other economic factors, they may represent a key element in terms of production, income and employment;
- (c) finally, as regards the importance in relation to employment and contribution to gross internal product, varies significantly in terms of absolute and relative value, from one Member State to another: the

value of landings as a percentage of GDP and the number of fishermen in the total working population is more than 0,5 % in Greece, Spain and Portugal and less than 0,1 % in Belgium, Germany, the Netherlands and the United Kingdom ⁽²⁾.

1.3. In budget figures, the appropriations allocated by the Community to the fishing sector between 1987 and 1990 represent 1 341 Mio ECU (229 Mio ECU in 1987 and 446 Mio ECU in 1990). This total is made up of the following:

- (a) commitments relating to the common market organization: 112 Mio ECU, i.e. an average of 28 Mio ECU for each financial year;
- (b) commitments relating to the policy of fishing agreements: 459 Mio ECU (these increased significantly over the period, from 59 Mio ECU in 1987 to 173 Mio ECU in 1990);
- (c) appropriations earmarked for the structural policy: 738 Mio ECU, which can be broken down under two main headings:
 - (i) appropriations intended for the various forms of aid to the fishing fleet: 435 Mio ECU (101 in 1987, 133 in 1990);
 - (ii) appropriations for aquaculture, processing and marketing of fisheries products: 303 Mio ECU (50 Mio ECU in 1987, 100 Mio ECU in 1990);
- (d) finally, from 1987 to 1990, approximately 30 Mio ECU were entered in the budget for control, surveillance, conservation and research.

The report which follows examines the use of the appropriations earmarked for the three main forms of aid to the fishing fleet. The construction and modernization of fishing vessels take the form of direct aid, whilst aid for capacity adjustment is implemented by way of reimbursements to Member States.

Supplying the Community market

1.4. The Community market is supplied by means of imports and by landings from the shipping fleets which fly the Community flag (2,6 million tonnes in 1990). In the case

⁽¹⁾ As the statistical sources are not uniform, the macroeconomic reference figures have been taken from the Commission report to the Council and the Parliament on the common fisheries policy (DOC SEC(91) 2288 final, 4 December 1991).

⁽²⁾ 1991 Report by the Commission [SEC (91) 2288 final, 4 December 1991], Table 4 and chart 2, pp.42 and 43.

Table 1.1 — World production of fishery products

(tonnes)

	1971	1980	1986	1987	1988	1989
World	65 683 888 (23 821 456)	72 112 032 (20 936 976)	92 739 840 (29 626 640)	94 248 528 (28 309 728)	98 662 240 (31 111 344)	99 534 584 (30 320 000)
EEC ⁽¹⁾	6 643 877 (1 142 249)	6 703 961 (2 237 420)	7 033 504 (1 867 894)	6 921 528 (1 967 956)	7 188 630 (2 272 274)	6 956 688 (2 126 448)
(ex) USSR	7 332 640 (1 369 798)	9 515 640 (2 341 1165)	11 259 955 (2 929 396)	11 159 617 (2 810 429)	11 332 101 (2 810 607)	11 310 091 (2 718 766)
China	3 358 400 (10 500)	4 235 348 (0)	8 000 063 (272 500)	9 346 222 (255 999)	10 358 678 (293 500)	11 219 994 (312 500)
Japan	9 359 600 (2 061 992)	10 433 997 (3 137 039)	11 976 274 (5 070 592)	11 848 582 (5 063 573)	11 967 051 (5 438 728)	11 174 464 (4 482 781)
USA	2 879 900 (1 110 997)	3 793 612 (1 107 646)	5 166 619 (1 210 764)	5 986 120 (1 360 629)	5 936 618 (1 208 471)	5 744 318 (1 259 474)
Peru	10 506 100 (10 298 799)	2 708 612 (1 726 210)	5 613 977 (5 077 719)	4 583 600 (4 004 388)	6 637 106 (6 099 999)	6 831 465 (6 199 682)
Chile	1 487 000 (1 308 100)	2 816 768 (2 445 086)	5 571 638 (5 082 888)	4 814 641 (4 278 188)	5 209 883 (4 605 702)	6 454 142 (5 760 602)

N.B.: The figures in parentheses are for non-food uses.

⁽¹⁾All figures are for the Europe of 12.

Source: FAO, Fish and Fishery Products, Rome, July 1991.

of supplies provided by the vessels which fly the Community flag, a distinction must be made between landings of fish from Community waters and those from waters which are subject to the jurisdiction of non-Member States or are governed by international agreements on the management of resources. In the case of fish caught in Community waters, the volume is a very direct function of the resources available and the decisions taken within the framework of resources management.

1.5. On the basis of the available information concerning the fisheries sector, including the trend of the landing statistics and the various communications from the Commission ⁽¹⁾, it is possible to put forward a global hypothesis, rather than making a detailed breakdown by fishing zones and species, which might reveal contradictory situations and would certainly show fluctuations in time, and to suggest that, because of internal resources available, there has been a decline in catches, especially in the case of North Sea roundfish. Even if this decline in volume has sometimes been more than offset by a substantial rise in prices, the sector of the fishing industry which exploits the stocks in Community waters is at present experiencing varying degrees of economic difficulties, for various reasons, which are partly related to the stock situation.

1.6. In order to overcome the limitations imposed by the potential of Community stocks, as well as for historical reasons and for reasons connected with the policy of cooperation with third countries, the Community has developed a policy of fisheries agreements, especially in the last decade, to give Community fishermen access to the waters covered by international resource management agreements and the waters of third countries whose economic exclusion zones were extended following the conclusion of the United Nations Convention on the Law of the Sea (Montego Bay, 30 April 1982). In the absence of reliable statistics, the proportion caught in international or non-Community waters under agreements is estimated to be one quarter of the total Community catch of fish for human consumption.

1.7. Finally, imports constitute a not insignificant proportion of the supply to Community markets, especially the industrial sector which processes and markets fish products. In this area the last five years have been characterized by a virtual doubling of imports, in terms of both volume and value (see *Table 1.2*), whereas exports have remained stable. Thus, in 1989 the Community balance of trade in fish products for human consumption

represents a deficit of 1,4 million tonnes with a value of almost 4,6 Mio ECU.

The role of resources management and conservation

The objectives of the common fisheries policy

1.8. According to Article 38(1) of the Treaty of Rome, fishery products are included in the term 'agricultural products' and the common policy pursued in the fisheries sector has the same objectives as those which Article 39 of the Treaty assigns to the common agricultural policy, namely:

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labour;
- (b) to ensure a fair standard of living for producers;
- (c) to stabilize markets;
- (d) to assure the availability of supplies;
- (e) to ensure that supplies reach consumers at reasonable prices.

1.9. At the level of the common fisheries policy (CFP), these objectives are, to a very large extent, pursued through the policy of managing and conserving fish stocks. Fish stocks are a common good, i.e. they are not owned by anyone, and the only natural limits to competition between economic agents with a view to exploiting this resource are the cost of the initial investment as a function of the expected profit from the sale of fish catches. In fact, there is no reason why, for a given species or group of stocks, the market should arrive at an equilibrium price compatible with the level of depletion of the resource which is permissible if the continuing availability of that resource is not to be jeopardized. The aim of the policy of managing and conserving fish stocks is to maintain the stocks of these resources at a level sufficient to guarantee the economic viability of the fishing sector. In order to achieve this objective, on the one hand the volume of stock depletion must be limited, in such a way that the mortality rate as a result of fishing does not jeopardize the long-term existence of the stocks, and, secondly, the catch capacity must be adjusted to safeguard the economic viability of the sector.

⁽¹⁾ Communication SEC(90) 2244 FINAL, 30 November 1990. Commission report 1991 (SEC(91) 2288 final, 4 December 1991).

Table 1.2 — Extra-Community imports and exports of fishery products for human consumption

	1984		1985		1986		1987		1988		1989		1990	
	Vol.	Val.	Vol.	Val.	Vol.	Val.	Vol.	Val.	Vol.	Val.	Vol.	Val.	Vol.	Val.
Imports	1 352	3 188	1 410	3 576	1 663	4 145	1 896	4 782	2 141	5 384	2 287	5 814	2 599	6 433
Exports	649	907	713	1 086	854	1 228	791	1 211	789	1 169	888	1 249	890	1 204
Balance of trade	-703	-2 281	-697	-2 490	-809	-2 917	-1 105	-3 571	-1 352	-4 215	-1 399	-4 565	-1 709	-5 229

N.B.: Vol. = Volume in '000 tonnes.

Val. = Value in Mio ECU.

Imports/Exports/Balance = 03 + 1 605 (= fish for human consumption, excluding paste).

Imports/Export: source = COMEXT 18.10.1991.

1984-1990: All figures are for Europe of 12.

Source: 1991 Commission report (Annex 6).

1.10. The main provisions dealing with the management and conservation of resources are as follows:

- (a) Council Regulation (EEC) No 170/83 of 25 January 1983 ⁽¹⁾, which seeks to control fishing, especially by limiting catches by determining, in principle on the basis of scientific opinion, total admissible catches (TAC) and allocating them by means of national quotas between the Member States;
- (b) technical conservation measures, which lay down rules in terms of the type of fishing, region, species and fishing equipment used;
- (c) supervision of fishing activity, with the aim of ensuring that the conservation rules are correctly applied.

1.11. The implementation of all these rules, and the importance that has been attached to perfecting them over the years, is both a reflection and an expression in regulatory terms of the overall and/or differentiated evolution of the stocks of resources in Community waters, as well as the consequence of surplus fishing capacity in the Community fleet, given the fish stocks available.

The concepts of fishing capacity and fishing effort and overcapacity in the Community fishing fleet

The concept of fishing capacity

1.12. The capacity of a fishing fleet can be defined as the set of factors which combine to produce mortality by fishing in a stock of resources when the fleet is exercising its activities fully. Among these factors are, first of all, the number and efficiency of the ships, which can be apprehended more precisely by factors which may or may not be quantifiable.

1.13. Among the quantifiable factors, the primary ones are the length, the tonnage and the power. The efficiency

and impact of these factors are, to a considerable extent, a function of factors whose incidence is more difficult to measure, such as the fishing equipment, use of electronic equipment and the knowhow of the fishermen. Thus, in the absence of any quantitative changes (number of ships, tonnage and engine rating), the capacity of a fishing fleet may be increased significantly in different ways, including the incorporation of more effective fishing equipment or the installation of electronic equipment to facilitate the detection of resources.

The concept of fishing effort

1.14. The concept of fishing effort differs from that of fishing capacity by taking account of the way in which the component factors of fishing activity are actually employed in the activity of fishing in order to assess the mortality produced among a given population. For example, limiting the duration of fishing activity or the use of technical measures concerning fishing equipment (size of mesh, type and length of nets) have a direct influence on the fishing effort.

1.15. By its nature, the management of resources by using the concept of fishing effort aims to limit the impact on fish resources of a fishing capacity which might spontaneously be used at full power. In that sense the concept of fishing effort is inseparable from a whole battery of control measures intended to guarantee that the use of existing fishing capacity is restricted to a level compatible with ensuring the survival and rational long-term exploitation of existing fish stocks.

Overcapacity in the Community fishing fleet.

1.16. In view of what has been said above, a situation of overcapacity could be deemed to exist whenever the level of the stocks of fish resources makes it impossible for the existing fleet of fishing vessels to operate at full power. In practice, although the existence of restrictive measures such as TAC and quotas, technical rules on fishing equipment and rules which place limitations on the duration of fishing activity (number of days at sea) for certain types of fishing are clearly irrefutable evidence of overcapacity, it is very difficult to quantify the latter.

1.17. Establishing overcapacity in global terms thus covers situations which vary widely from one type of fishing to another, because less-exploited stocks exist side-by-side with stocks which are fully exploited, or even, in some cases, substantially over-exploited. Similarly, the

⁽¹⁾ OJ No L 24, 27.1.1983, p. 1.

condition and level of a stock may vary significantly over time as a result of biological and environmental mechanisms which are as yet largely unexplained.

1.18. Be that as it may, both the work of scientists responsible for analysing the condition of the stocks which are subject to quotas and the conclusions of a group of independent experts point to a substantial excess capacity in the Community fishing fleet, which can be estimated to be of the order of 40 % ⁽¹⁾ on average overall for all forms of Community fishing. Although the factors at the origin of this situation are to be sought among all the miscellaneous factors which make up the capacity of the fishing fleet, including aid from public funds, it must be said that since the CFP was instituted the technological changes in the fishing sector have been so big that catch and detection facilities have now reached such a level of perfection that the traditional balance between fishing and resources has been destroyed. Any resource can now be located and exploited with an efficiency that has never been known in all the time that man has been exploiting fish resources.

The structural policy framework in the fishing sector

The place of the structural policy in the common fisheries policy (CFP)

1.19. The conduct and definition of the structural policy in the fishing sector are closely dependent on the level and importance of the fish stocks available for exploitation by the existing fishing capacity. Designed and implemented as a way of controlling fishing capacity, the structural policy cannot be divorced from an appraisal of the situation of fish resources, their greater or lesser availability and their accessibility. At the same time, it cannot be conducted by reference to the Community context in isolation, because the different Community fishing fleets are competing against other, non-Community fleets. In that sense, one of the objectives of any structural policy must be to help to reinforce the various Community fishing fleets.

1.20. In a situation of over-capacity the objective of adapting the fleet to existing resources may also conflict with that of providing sorely needed support for the fleet in order to preserve its competitiveness within an international framework. Similarly, a situation of over-capacity inevitably entails attaching particular importance to reducing fishing in order to ensure the long-term survival of the stocks which form the basis of any fishing activity.

1.21. Any statutory regulation of fishing effort has consequences at two levels:

- (a) firstly, public management of the fishing effort must produce a cost in terms of control for the Community and the level of that cost rises, a priori, as the fishing capacity which must remain unutilized rises;
- (b) secondly, despite the increase in real prices, which partially offsets the regression in the volume of catches, the under-employment of fishing capacity (which is the necessary consequence of managing and controlling the fishing effort), affects the economic results of fishing undertakings, which in turn have less potential for modernization and renewal and thus become more dependent on public assistance.

1.22. In view of this, the structural policy must seek to adapt the capacity of the existing fleet to the volume of exploitable resources without jeopardizing their medium and long-term survival, which means that, ideally, the capacity objective of the fleet should be fixed at a level where the fleet can pursue its fishing activities at full power. The attainment of this objective becomes increasingly necessary in the perspective of the year 2002, which is when the present Community system of conserving and managing fish resources ends ⁽²⁾, after which all Community fleets will be allowed free access to all Community waters and by that date the size of the Community fleet ought to be in line with the exploitable fish resources.

1.23. Finally, the possibilities and prospects offered to Community fishing undertakings in international waters under international fishing agreements, as well as the inevitable constraints and developments which result from both the emergence of new producer countries and the internationalization of concern for the management and conservation of resources, are elements which the structural policy must take into account, amongst other things, so that the level of the fishing fleet's capacity can be assessed. Likewise, the Community sea-produce industries are finding themselves increasingly dependent on imports and this is combined with a certain tendency towards decentralization, under the encouragement of the new aid instruments in the form of joint ventures, temporary associations of undertakings and the redeployment operations ⁽³⁾ which also have a direct effect on capacity. The development of this approach is largely, but not

⁽¹⁾ Communication from the Commission to the Council and the Parliament (DOC SEC(90) 2244, 30.11.1990, p. 18.

⁽²⁾ Article 8(3) of Regulation (EEC) No 170/83 of 25 January 1983, OJ No L 24, 27.1.1983.

⁽³⁾ Titles Va, VI and VIa of Regulation (EEC) No 4028/86, as amended by Council Regulation (EEC) No 3944/90 of 20 December 1990 (OJ No L 376, 31.12.1986, p. 1 and OJ No L 380, 31.12.1990, p. 1).

exclusively, the result of the declaration of a state of overcapacity in the Community fishing fleet and the emergence of the new law of the sea and the resultant changes in the conditions for exploiting fish resources. In this respect, the propensity towards exploiting exclusive economic areas on the part of neighbouring states, and ships sailing under the flag of these states, will inevitably lead to a yet more radical re-evaluation of the place and role of the Community's fishing fleets in international fish production and fleets.

The framework provided by the structural policy regulations in the fishing sector

1.24. Since 1971, when Council Regulation (EEC) No 2141/70 of 20 October 1970 ⁽¹⁾ entered into force, the structural policy has been part of the common fisheries policy. In the beginning, the EAGGF Guidance Section aid was primarily intended for the construction and modernization of coastal and pelagic fishing vessels, and for the marketing and processing of the fish. Over the years this aid has been extended to include the restructuring of the coastal fleet, as well as aquaculture.

1.25. The adoption in 1983 of Council Regulation (EEC) No 2908/83 of 4 October 1983 ⁽²⁾ concerning joint restructuring, modernization and development measures in the fisheries sector, as well as the development of the aquaculture sector, marked an important stage because thereafter the structural policy's scope for action in the fishing sector became part of the medium-term planning framework: the multiannual guidance programmes (MAGP) set out for each Member State the capacity objective to be attained and describe the resources to be used. At the same time, Council Directive 83/515/EEC of 4 October 1983 ⁽³⁾ concerning certain measures to adopt capacities in the fisheries sector set up an initial budgetary funding to promote capacity withdrawal.

1.26. The regulations that were adopted by the Council at the time of the latest enlargement of the Community form an integral part of the pursuit and enrichment of the common structural policy in the fishing sector. For example, Council Regulation (EEC) No 2930/86 of 22 September 1986, defining characteristics for fishing vessels ⁽⁴⁾, pursues the objective of standardizing the conditions on which fishing activity operates within the Community, by defining the characteristics, especially the

physical characteristics (length, breadth, tonnage, engine power) of fishing vessels. For its part, Council Regulation (EEC) No 4028/86 of 18 December on Community measures to improve and adapt structures in the fisheries and aquaculture sector ⁽⁵⁾ fused together and amended all the provisions of the 1983 texts, as well as those of Council Regulation (EEC) No 2909/83 of 4 October 1983 ⁽⁶⁾ concerning arrangements to promote experimental fishing and cooperation in fisheries matters as part of joint ventures. The Regulation will remain in force for ten years from 1 January 1987 and the cost of carrying out the measures covered by the Regulation in the period 1987-1991 was provisionally estimated to be 800 Mio ECU, which is the amount that was actually committed in that period.

1.27. As had been envisaged at the time when Regulation (EEC) No 4028/86 was adopted, certain implementing procedures were reviewed when Council Regulation (EEC) No 3944/90 was adopted on 20 December 1990 ⁽⁷⁾. The Regulation came into force on 1 January 1991 and the object of the amendments which it introduced was:

- (a) to reduce the amount of aid provided for the construction of new ships and the modernization of fishing vessels, except in the case of ships less than nine metres in length intended for the small-scale fisheries sector, which become eligible for Community aid;
- (b) to increase the aid for capacity withdrawal, including the scrapping of vessels;
- (c) to reduce the strain of fishing in Community waters by promoting redeployment measures and the creation of joint ventures to facilitate the redeployment of some of the fishing vessels in the Community fleet whilst contributing to the objective of supplying the market.

1.28. The various types of structural aid which are given to the fishing fleet under the CFP in connection with the restructuring objective break down into two main categories:

- (a) aid which aims to renew and extend the fleet's method of operation in order to relieve the pressure on the

⁽¹⁾ OJ No L 236, 27.10.1970, p. 1.

⁽²⁾ OJ No L 290, 22.10.1983, p. 1.

⁽³⁾ OJ No L 290, 22.10.1983, p. 15.

⁽⁴⁾ OJ No L 274, 25.9.1986, p. 1.

⁽⁵⁾ OJ No L 376, 31.12.1986, p. 7.

⁽⁶⁾ OJ No L 290, 22.10.1983, p. 9.

⁽⁷⁾ OJ No L 380, 31.12.1990, p. 1.

Community's available domestic resources. This consists mainly of aid for exploratory fishing, re-deployment operations, temporary associations of undertakings and joint ventures;

- (b) aid which has a direct effect on existing capacity: this includes aid for the construction of fishing vessels, capacity adjustment aid (final cessation premiums and temporary laying-up) and modernization aid.

Intensity and limit of Community action in the sphere of the structural policy in the fisheries sector

1.29. The basic principle behind the aid which is provided from public funds within the framework of the fisheries structural policy is that of joint funding, i.e. the combination of national and Community budgetary resources. The amount to be provided from the Community budget for the various aid measures provided for in Regulation (EEC) No 4028/86 is precisely defined, either by reference to the amount of eligible investment or, within the limit of a specified ceiling, by reference to the aid granted by the Member State. Except in the case of capacity withdrawal, national aid must be within the limits laid down by the Community regulations, but this does not preclude the possibility that, for certain measures, the financial aid provided by the Member States may be modulated within a given range, provided that it is below an overall ceiling for public aid by reference to the amount of the eligible investment which the Community is responsible for determining.

1.30. In all cases, as with similar structural measures in the agriculture sector, the persons engaged in fishing sector activities are not eligible for the Community measures in the absence of a national aid system. This situation may give rise to the possibility (which has been confirmed in practice) of unequal access to Community aid, since such aid may vary according to type and the State concerned, bearing in mind the national policies pursued by the Member States.

Objectives and scope of the enquiry

Field of enquiry

1.31. The framework within which structural policy in the fishing sector is conceived and evolves is defined by the situation of the fishing fleet and changes in that fleet in view of available fish resources. The necessary objective of reinforcing the fishing fleet in the context of international competition has to be reconciled with the objective of

bringing existing capacity into line with the catch potential, given that the choice of measures and the intensity of the action to be promoted can only be achieved through a sound knowledge of the initial situation of the Community fishing fleet.

1.32. In view of this, the first section of the enquiry was devoted to a review of the period 1987-1991 and the way in which the measures designed to improve information concerning the fleet and its capacity were implemented during that time. The review first considered the reliability and degree of harmonization of the capacity measurement units, the present situation with regard to the fishing register and the management and supervisory instruments available to the Commission.

1.33. Secondly, since the entire structural policy for the fleet is implemented within the framework of multiannual guidance programmes (MGPs), which specify the objectives to be achieved and define the means required, the enquiry examined the implementation of the MGPs as instruments for managing the structural policy, their current situation and their suitability for the objectives pursued.

1.34. Among the different forms of structural aid employed within the framework of the CFP, and in view of the distinction drawn in paragraph 1.28, the audits were concerned with aid which immediately affects existing capacity, taking account of the level of implementation and its implementation over a long period in almost all the Member States. Only projects which form part of the MAGPs adopted specially for the French overseas departments ⁽¹⁾ were omitted from the audits as the programme in question provides for the expansion of the fishing fleets concerned. The second part of the report discusses aid for the construction and modernization of fishing vessels, whilst the final part examines the capacity adjustment aid more closely.

1.35. The execution of these forms of aid was examined in connection with the global objective of capacity adaptation as it results from the MAGPs and the objective of harmonizing the data concerning the Community fishing fleet, as it derives from the application of Regulation (EEC) No 2930/86 defining the characteristics of fishing vessels.

Progress

1.36. The audits were carried out after an examination of the Commission's appraisal and payment files in respect of the operations financed between 1987 and 1990, as regards both the construction and modernization projects and the capacity adjustment aid. The observations and findings

⁽¹⁾ Decision 88/569/EEC, 28 October 1988 (OJ No L 311, 17.11.1988, p. 40).

arising from the enquiry are based on the results of a review at the Commission of more than half the projects which received aid during the period in question. On the basis of this scrutiny, the Court then conducted on-the-spot audits of a smaller number of projects in all the Member States at both central and local level.

1.37. In accordance with Article 206a(3) of the Treaty, the supreme national audit institutions of Italy, the Netherlands, Portugal and the United Kingdom took part in the audits carried out by the Court. These joint audits were organized and carried out on the spot in close collaboration with the national audit institutions. They constitute a common approach in the area of the execution of public expenditure and were carried out on the basis of joint preparatory work, each institution being entirely free to use and follow up the results of the audit in accordance with its respective remit.

Objectives

1.38. Essentially, the aim of the audits was to discover whether:

- (a) the ways in which the various forms of aid are applied are compatible with the regulations on the harmonization of the units of measure used for measuring the capacity of the Community fishing fleet and with the objective of managing and conserving resources;
- (b) the expenditure on the various forms of aid makes any contribution towards the global objective of adjusting the capacity of the Community fishing fleet;
- (c) the simultaneous use of systems of aid for capacity reduction and for capacity creation is logically compatible with the global objective of adjusting capacity, given the current situation of excess capacity in the Community fishing fleet;
- (d) at the level of the individual aid measures, the procedures actually employed on the ground make it possible to achieve the established objective whilst observing the conditions laid down in the regulations and the principles of sound financial management.

2. THE COMMUNITY REGISTER OF FISHING VESSELS AND THE MULTIANNUL GUIDANCE PROGRAMMES (MAGPS): THE INSTRUMENTS OF INFORMATION AND MANAGEMENT

The Community fishing vessel register

The register as an instrument providing information on the Community fishing fleet

2.1. Until Regulation (EEC) No 4028/86 entered into force on 1 January 1987, the conception and definition of the structural policy applied to the Community fishing fleet were based on statistics and information supplied by the Member States. Article 5 of the Regulation provided that the Commission was to be given the information needed to establish and maintain a Community register of fishing vessels. This objective was pursued in concrete form by the adoption of Commission Regulation (EEC) No 163/89 of 24 January 1989 ⁽¹⁾ on the Community register of fishing vessels. Thus, as a result either of transfers of information or of censuses carried out expressly for that purpose, the Commission has an instrument which has gradually come on-stream since the second half of 1991. As a result there has been a marked improvement in its knowledge of the structure and capacity of the Community fleet of fishing vessels.

2.2. The censuses and audit carried out when the Community register was compiled made it possible to pick out existing capacity which was not registered along with anomalies in the data previously supplied to the Commission by the Member States. The data in question were taken into consideration in the multiannual guidance programmes (MAGPs) of the Member States concerned. The creation of the Community fishing vessel register made it possible to establish the unreliability of certain items of information, the correction of which is at the source of the revision of recorded capacity in the initial situations and the end-of-period objectives of certain MAGPs.

The limits of the Community register

2.3. As a method of both supplying precise information regarding the capacity of the Community fishing fleet and

⁽¹⁾ OJ No L 20, 25.1.1989, p. 5.

monitoring its evolution, the Community register continues to be an instrument that is of little value for the purpose of implementing a structural policy because of the weaknesses which affect the validity of its data and omissions which prevent it from playing more than a very limited role in the monitoring and implementation of aid dispensed within the framework of the structural policy.

Disparities in tonnage measurements.

2.4. As regards the units used to measure the capacity of fishing vessels, as will be seen from the description of measuring units supplied in Annex 1 to the report, the total tonnage of the fishing fleets of all the Member States is in fact a figure of uncertain value, insofar as it is the sum of non-uniform units of measurement. Standardization on the basis of the unit of measurement defined in the Community regulations will inevitably produce a change in the total tonnage registered as compared with the figure registered at present.

2.5. Had the tonnage measurement provisions contained in Regulation (EEC) No 930/86 been applied, all vessels which entered service after 1 January 1987, as well as those that had undergone modification, would have been registered using the Community units. In actual fact, although some Member States (Germany, Denmark and the Netherlands) refer to London Convention tonnage, others used it only for new vessels more than 24 metres long, but continued to register smaller ships, which are far more numerous, according to the customary criteria, which vary from one Member State to the next. As an illustration, two ships with almost identical physical characteristics were built by the same shipyard for shipowners in two different Member States and there was a 60 % difference in the tonnage registered, even though, in both cases, it was expressed in gross registered tonnes (grt).

2.6. The fact that differences of this order are still to be met with is undeniably a weakness which should be remedied without delay. The existing regulations should, in fact, have enabled the Commission to require a uniform tonnage declaration for all fishing vessels which entered service after 1 January 1987. Moreover, in view of the advantages of harmonizing the tonnage measurement of the Community fishing fleet, particularly in the management of fishing agreements and access to waters under the licensing system, the Commission should rigorously enforce the subordination of shipbuilding projects to the establishment of registered tonnage in accordance with the Community regulations. The same approach could be employed in connection with modernization measures, if

necessary by bearing the cost, which would, moreover, be limited of remeasuring the ship.

Uncertainty regarding the power criterion

2.7. Although the Community regulations, following the current international standards, adopt a precise definition of engine rating measurement for fishing vessels, the rating given in the fishing vessel register is either the maximum continuous power (ISO standard), or a reduced rating because the engine has been derated or adjusted to comply with the administrative rules on power limitation.

2.8. During the Court's examination of fishing vessel modernization and construction projects, it was found that there is a widespread practice of derating engines, particularly when new engines are being fitted, because it may be impossible to find an engine with the same rating as the engine which is being replaced. In such cases the acceptance of derated engines can be justified on pragmatic grounds and as a way of encouraging competition between engine manufacturers. On the other hand, when a new ship is being built, the installation of a derated engine is justifiable only in terms of the concern to respect the rating specified in the aid application.

2.9. In fact the enquiry showed that in the case of a working ship it is very difficult, not to say impossible, to ensure that the derating device will remain fitted, since any work on an engine is, technically, reversible. In view of the importance which is placed on the engine rating criterion when assessing whether shipbuilding and modernization projects are acceptable in terms of the capacity objectives for the Community fleet, the Commission should take a stricter line on the practice of derating, by accepting for aid projects only adjustments which have been duly certified and carried out in the factory by the engine manufacturer, as it is far more difficult to alter this type of derating.

Certain useful information not available in the register

2.10. According to Regulation (EEC) No 163/89 on the Community fishing vessel register, a set of data concerning any ship catching fish for commercial purposes must be made available to the Commission on a magnetic data-carrier. Such data must include the technical specifications of the vessel, registration details and the types of fishing equipment. Although the register has 21 different headings,

it was noted that there is no provision for stating whether or not the vessel has been derated. In view of the importance attaching to the power rating parameter in defining and monitoring the implementation of the capacity adjustment policy, the regulations should be supplemented so that the information concerning any derating is included in the register.

2.11. Similarly, the granting of Community public aid involves for the ships which receive it, certain obligations concerning the supply of fish to the Community market and if those obligations are not respected there may be grounds for requiring the Community aid to be repaid (see also paragraph 2.45). For obvious reasons of checking and monitoring the commitments entered into by aid recipients, the Community fishing vessel register ought to have made provision for a way of identifying the vessels for which aid has been granted, since the Commission has no other way of checking.

The multiannual guidance programmes (MAGP)

Description of the system

Definition

2.12. For the purposes of Regulation (EEC) No 4028/86, the term 'multiannual guidance programme' (MAGP) means a set of objectives, together with a statement of the means necessary for attaining them, as a guide for the development of the fisheries sector in the overall long-term context (Article 2(1) of Regulation (EEC) 4028/86). The MAGPs provided for in Regulation (EEC) No 4028/86 are subject to approval by the Commission and are direct descendents of the MAGPs provided for in Regulation (EEC) No 2908/83. The objectives of the latter, which were to be attained by 31 December 1986, formed the basis of reference in determining the objectives to be attained at the end of the period running from 1 January 1987 to 31 December 1991.

2.13. According to the sixth recital of that Regulation, the structural measures must be implemented within the framework of multiannual guidance programmes which ensure that, for each Member State, the community measures are consistent with national measures and that the latter are consistent with the objectives of the common policy. Furthermore, these programmes must be compatible with the objectives and instruments of regional policy and must allow the Commission to assess the overall structural situation at the outset, so that it can assess and

define the means which are to be employed and the objectives to be achieved in the medium term.

2.14. Throughout the implementation period the Member States are required to send the Commission all the necessary information and to take all steps necessary to monitor the carrying out of the MAGPs. The programmes are thus the reference device within which the common fisheries policy structural measures are defined, as well as being a means of assessing to what extent the prescribed objectives have been met.

Content

2.15. According to Annex 1 to Regulation (EEC) No 4028/86, the 1987-1991 multiannual guidance programmes were to include an evaluation of the importance of the fishing industry in the national economy and in the various regional economies concerned, the initial situation of the fleet, by category of vessel, type of fishing and region, as well as expected developments in the fleet and the investment needed during the period covered by the programme. The programmes were also to include estimates of the probable trend of available fish stocks and in the market for fish products. Finally, they were to provide a survey of the situation of the fleet and fishing capacity at the end of the programme and of the resources to be employed in order to achieve these objectives.

Follow-up criteria

2.16. As with the MAGPs, for the period 1983-1986, tonnage and engine power are the only criteria used to measure the capacity of the Community fishing fleet for the MAGPs provided for in Regulation (EEC) No 4028/86. For the period 1987-1991 the decisions adopted by the Commission regarding the programmes submitted by the Member States assigned to each fleet a final objective, providing for a 3 % reduction in tonnage and a 2 % reduction in engine power relative to the objective to be achieved by the end of 1986 under the previous programme. The overall objective of reducing the fleet was to be achieved in successive stages at a rate which varied slightly according to the Member State. Thus, for Belgium, Denmark, Ireland, Greece and Portugal the reduction objective set by the initial decisions was to be 20 % achieved at the end of 1988 and 80 % complete by the end of 1990, whilst for the other Member States (Germany, Spain, France, Italy, the Netherlands and the United Kingdom) 10 % of the overall objective was to be achieved by the end of 1988, 30 % by the end of 1989 and 80 % by 31 December 1990.

Implementation

A series of decisions

2.17. An initial series of 11 decisions approving the MAGPs was adopted on 11 December 1987 and amended at least once in December 1988 (the decisions were not published in the case of the Member States which were the subject of a third decision or were published without any change in 1990 or 1991) and again in 1990-1991 in the case of France ⁽¹⁾, Spain ⁽²⁾ and the United Kingdom ⁽³⁾.

2.18. *Tables 2.1 and 2.2* show the capacity, for each Member State, in terms of tonnage and engine power according to the objectives adopted by the MAGP of the Regulation, the figures as of 1 January 1987 and the objectives as of 21 December 1991 as they appear for each Member State in the decision approving the MAGP initially and in the latest amending Decision adopted by the Commission. Finally, the two end columns in the tables record the results achieved at the end of the period 1987-1991 covered by the MAGPs with the difference relative to the objective set.

Adjusting to reality

2.19. The programmes have been adjusted to reality by means of a succession of amendments to the Decisions approving the MAGPs for the Member States which have been active throughout the period covered by the programmes. For example, the last decision concerning the United Kingdom and Spain was taken six months before the end of the period covered by the MAGPs. Similarly, it was found that at the end of the same period, the capacity of the segment of the Greek inshore fishing fleet still had to be updated. These revisions are essentially due to the inclusion of the following elements.

2.20. The initial decision of 11 December 1987 started from the position of 1 January 1987 and did not take into account the shipbuilding projects which had been authorized under Regulation (EEC) 2908/83 but had not then been completed and commissioned. In view of the time lag, significant capacity came into service during the first two years of the 1987-1991 MAGPs. In almost all the Member States concerned the interim objective that had been set for 31 December 1988 became even less likely to be achieved as the legislative and statutory measures for encouraging

capacity reduction (final cessation) were only adopted on a gradual and piecemeal basis by the Member States.

2.21. The fishing capacity which existed but remained unrecorded in the initial programme was shown up firstly by a fuller survey of the fishing capacity which existed in a number of Member States (see paragraph 2.2) and, secondly, because the new MAGPs aimed to cover all the existing fishing capacity, whereas under the previous programme the fishing capacity taken into account in some of the Member States concerned only the fleet which had achieved a certain level of activity.

2.22. Conversely, fishing capacity contained in the reference situations for the initial decisions, especially ships used for transport, aquaculture and shellfish, was excluded in successive decisions from the fishing capacity taken into consideration in determining the final objective for all the Member States for which such a distinction could be made. The same approach was followed in the case of the fishing capacity of the Spanish fleet, specifically identified under the name of 'basic list' in Article 158 concerning access to waters and resources in the Treaty of Accession. The ships referred to in the list represent approximately 10 % of the total capacity recorded by the MAGP.

2.23. If all these factors are taken into account, it should be noted that, particularly in the case of Italy, France and the United Kingdom, the consequence of the full census of fishing capacity produced by the compilation of the Community register was a substantial upward revision of fishing capacity in tonnes and engine power taken into consideration under the MAGP.

2.24. In the case of Spain the impact was largely cancelled out by the exclusion of capacity included in the basis list mentioned in paragraph 2.2. It should be noted that, useful though the operations of laying-up and full census of existing capacity may have been, the effect of them, particularly in the case of Italy, France and the United Kingdom, was to take cognizance of fishing capacity which was relatively marginal in terms of activity compared with that which had previously been taken into account, bearing in mind the way in which the surveys were carried out. In effect, in these Member States the fishing capacity recorded previously did not take into account vessels which worked on a reduced scale at a level significantly lower than the average for the rest of the fleet.

2.25. Finally, it should be noted that the Commission's files did not provide evidence with which to establish accurately whether the capacity adjustments sanctioned on the occasion of the decisions on the MAGPs had in fact been strictly justified and documented. In particular, the monitoring of the trend was not made any easier by the

⁽¹⁾ Decision 90/229/EEC, 26.4.1990.

⁽²⁾ Decision 91/454/EEC, 1.8.1991.

⁽³⁾ Decision 91/455/EEC, 1.8.1991.

Table 2.1 — Changes in capacity and tonnage objectives of community fishing fleets (unit: grt)

	2908/83 objectives as of initial decision	2908/83 objectives as of final decision	Position at 1.1.87 according to initial decision	Position at 1.1.87 according to final decision	31.12.91 objectives according to initial decision	31.12.91 objectives according to final decision	Position at 31.12.91	Difference	Unit: grt %
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Belgium	22 000	22 000	22 846	25 165	21 340	21 340	27 089	+ 5 749	+ 26
Denmark	123 091	122 879 [212] ⁽¹⁾	136 488	136 680 [212] ⁽¹⁾	119 400	119 188	110 332	- 8 856	- 7
Germany ⁽³⁾	78 479	78 479	49 900	51 500 [2 200] ⁽¹⁾	48 200	49 200	—	—	—
Germany ⁽⁴⁾	—	—	—	—	—	76 950	69 991	- 6 959	- 9
Greece	134 659	134 659	137 761	137 761	130 619	130 946	131 970 ⁽⁵⁾	+ 1 024	+ 1
Spain	668 668 ⁽⁶⁾	613 530 [5 628] ⁽¹⁾ [65 874] ⁽²⁾	663 158	631 838 [8 337] ⁽¹⁾ [64 114] ⁽²⁾	648 607	604 757	567 568	- 37 189	- 6
France	192 807	207 839 ⁽⁷⁾	191 028	209 560 [15 271] ⁽¹⁾	187 023	201 604	184 495	- 17 109	- 8
Ireland	45 300	45 300	53 065	58 845	43 941	43 941	50 693	+ 6 752	+ 15
Italy	257 767	275 255	262 717	302 986	250 000	268 198	268 187	- 11	—
Netherlands	66 800	66 800	77 500	82 400 [13 500] ⁽¹⁾	64 796	64 796	82 400	+ 17 604	+ 27
Portugal	215 608 ⁽⁶⁾	215 930	210 525	208 670 [523] ⁽¹⁾	209 140	209 540	182 829	- 26 711	- 12
United Kingdom	146 000	198 977	148 403	206 934	141 620	193 027	217 273	+ 24 246	+ 12
Total	1 951 179	1 983 648 [5 840] ⁽¹⁾ [65 874] ⁽²⁾ 2 055 362	1 953 391 ⁽⁸⁾	2 052 339 [40 043] ⁽¹⁾ [64 114] ⁽²⁾ 2 156 496	1 864 686	1 906 537 1 934 287 ⁽⁴⁾	1 892 627	- 41 660	- 2

Sources: Commission and Member States

⁽¹⁾ Capacity not included in the reduction objective (transport, aquaculture or shell fisheries).⁽²⁾ Basic list, capacity not included in the reduction objective.⁽³⁾ Does not include the fleet of the former GDR.⁽⁴⁾ Decision 91/540/EEC of 14.10.1991 revised the 31.12.1991 objectives upwards by 27 750 grt and 44 500 kW to cover the whole German fleet.⁽⁵⁾ Position as of 30.6.1991. The Greek MAGP global objectives were in the process of being updated at the beginning of 1992 in view of the inaccuracy of the segment of data concerning the coastal fishery fleet.⁽⁶⁾ Estimates.⁽⁷⁾ As no figures were available this level was extrapolated from the final decision objective, which is conventionally 3 % lower than the objective for the previous programme.⁽⁸⁾ The initial objective shown in column (a) was exceeded by 0,1 %

Table 2.2 — Changes in capacity and power objectives of community fishing fleets (unit: kW)

	2908/83 objectives as of initial decision	2908/83 objectives as of final decision	Position at 1.1.87 according to initial decision	Position at 1.1.87 according to final decision	31.12.91 objectives according to initial decision	31.12.91 objectives according to final decision	Position at 31.12.91	Difference	Unit: grt %
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Belgium	70 656	70 656	71 250	78 506	69 242	69 242	79 816	+ 10 574	+ 15
Denmark	525 825	525 241 [584] ⁽¹⁾	571 996	563 667 [584] ⁽¹⁾	515 300	514 716	487 897	- 26 819	- 5
Germany ⁽³⁾	161 494	161 494	137 000	139 100 [4 000] ⁽¹⁾	132 000	138 000	—	—	—
Germany ⁽⁴⁾	—	—	—	—	—	182 500	166 300	- 16 200	- 8
Greece	502 467	502 467	568 823	568 823	492 413	493 776	574 736 ⁽⁵⁾	+ 80 960	+ 16
Spain	2 131 412 ⁽⁶⁾	1 776 610 [27 220] ⁽¹⁾ [162 827] ⁽²⁾	2 130 156	1 831 554 [50 264] ⁽¹⁾ [160 597] ⁽²⁾	2 088 783	1 756 001	1 671 551	- 84 450	- 4
France	914 000	1 076 582 ⁽⁷⁾	918 087	1 158 576 [117 421] ⁽¹⁾	895 720	1 055 050	1 053 931	- 1 119	—
Ireland	181 200	181 200	212 260	234 892	177 576	177 576	191 604	+ 14 028	+ 7
Italy	1 223 099	1 568 288	1 295 804	1 796 829	1 198 600	1 541 664	1 519 695	- 21 969	- 1
Netherlands	390 080	390 080	462 900	498 000 [39 043] ⁽¹⁾	382 278	382 278	419 397	+ 37 119	+ 9
Portugal	555 621 ⁽⁴⁾	552 044	542 527	515 988 [1 072] ⁽¹⁾	544 508	541 003	491 128	- 49 875	- 9
United Kingdom	763 515	1 117 557	759 953	1 155 212	748 245	1 095 206	1 219 574	+ 124 368	+ 11
Total	7 419 369	7 922 219 [27 804] ⁽¹⁾ [162 827] ⁽²⁾ 8 112 850	7 670 756 ⁽⁸⁾	8 541 147 [212 384] ⁽¹⁾ [160 597] ⁽²⁾ 8 914 128	7 244 665	7 764 512 ⁽⁷⁾ 7 809 012 ⁽⁴⁾	+ 1		

Source: Commission and Member States

⁽¹⁾ Capacity not included in the reduction objective (transport, aquaculture or shell fisheries).⁽²⁾ Basic list, capacity not included in the reduction objective.⁽³⁾ Does not include the fleet of the former GDR.⁽⁴⁾ Decision 91/540/EEC of 14.10.1991 revised the 31.12.1991 objectives upwards by 27 750 grt and 44 500 kW to cover the whole German fleet.⁽⁵⁾ Position at 30.6.1991. The Greek MAGP global objectives were in the process of being updated at the beginning of 1992 in view of the inaccuracy of the segment of data concerning the coastal fishery fleet.⁽⁶⁾ Estimates.⁽⁷⁾ As no figures were available this level was extrapolated from the final decision objective, which is conventionally 2 % lower than the objective for the previous programme.⁽⁸⁾ The initial objective shown in column (a) was exceeded by 3,4 %

omission of the number of fishing vessels from the decisions on the Member States' MAGPs, on the one hand, and on the other because the Community register of fishing vessels did not become operational until 1991, the last year covered by the MAGPs.

The figures

2.26. At the end of the period covered by Regulation (EEC) No 2908/83, the objectives of the 1989-1986 MAGPs seem, all in all, to have been achieved, if one refers to the reference situations at 1 January 1987 which were taken into consideration by the initial Commission decisions approving the MAGPs for the 1987 to 1991 period (see *Tables 2.1 and 2.2*).

2.27. In fact, the revisions of the Commission's authorizing decisions for the MAGPs that were carried out between 1988 and 1991 had the effect of highlighting additional capacity on 1 January 1987, compared with what was recorded on that date in the initial decisions, of 1 243 372 KW (i.e. 16,2 %) and 203 105 GRT (i.e. 10,4 %) as can be seen from a comparison of columns (c) and (d) of *Tables 2.1 and 2.2*. Allowing for the exclusion of the objective of reducing the capacity of the basic list and the fishing vessels used for transport, aquaculture and for fishing for molluscs and bivalves, the global objective at the end of 1991 was revised up to 520 000 KW (i.e. + 7,2 %) and 42 000 GRT (+ 2,2 %), which corresponds to a global capacity for the Community fleet of 1 906 537 GRT and 7 764 512 KW.

2.28. The corrections made following the amendments to the decisions approving the Member States' MAGPs represent, in terms of tonnage, almost the equivalent of the Irish fishing fleet, and in engine power the total of the German fleet (before reunification) and the Dutch fleet combined. As a proportion of new ships built, they correspond, in KW, to more than 220 % and in GRT to more than 60 % of the shipbuilding capacity receiving assistance from 1987 to 1990. In other words, maintaining the capacity level that results from totalling the capacities shown in the initial decisions would presuppose an additional withdrawal rate of 2,2 kW GRT for each new KW and 0,6 GRT for each new GRT built. This observation shows the effect, in terms of capacity, of the improved information on the Community fishing fleets. It also shows, a posteriori, that the figures for capacity objectives given for the MAGPs in Regulation (EEC) No 2908/83 have not been achieved, since the final figures were even significantly above the figures originally envisaged (3,4 % in terms of tonnage and 7,8 % in terms of engine power), as a comparison of columns (c) and (d) of *Tables 2.1 and 2.2* shows, ignoring excluded capacity.

2.29. On 31 December 1991, i.e. at the end of the period covered by the MAGPs, the global objectives in terms of tonnage had been achieved to the extent that global

tonnage was less than 2 % of the objective allocated, whilst in terms of engine power the global capacity was one point higher than the objective.

2.30. In fact, though, these results must be qualified, by taking the following factors into consideration:

- (a) in figures, taking into account the exclusion of certain capacities (Spanish basic list and capacity used for bivalve fishing), the capacity level recorded at the end of 1991, expressed in KW, was approximately equal to the objective set for the end of 1986, as shown by a comparison of columns (b) and (g) of *Table 2.2*;
- (b) in real terms, the uncertainties pertaining to the units of measurement of capacity referred to in 2.4 to 2.9 above are such that the figures have only a limited degree of reliability for as long as they are not underpinned by units of measurement which remain consistent and homogenous from one Member State to another.

2.31. Finally, the global results must not mask the fact that they represent the aggregate of situations which vary considerably from one Member State to another. Thus, it is clear from columns (h) and (i) of *Tables 2.1 and 2.2* that several Member States definitely achieved the capacity reduction objective, whilst Belgium, Greece, Ireland, the Netherlands and Great Britain have achieved results that differ from the objectives set by more or less significant amounts.

The continuance of a degree of heterogeneity

2.32. Although the MAGPs, as defined by the above-mentioned Regulation (EEC) No 4028/86, were supposed to cover the entire fishing fleet in respect of its total capacity as expressed in tonnage and engine power, the MAGPs of some Member States at present only concern part of the total capacity. Thus the MAGP for Spain excludes the basic list capacity (see 2.22), whilst the MAGP for Italy only covers licensed fishing vessels and the MAGP for the Netherlands only covers fishing capacity for species subject to quotas.

2.33. Whilst the fleets of the Member States have been allocated a global reduction objective in terms of tonnage and engine power, an examination of the content of the decisions adopted by the Commission for each Member State reveals a variety of approaches with variable degrees of precision. With the exception of the United Kingdom, for which only a global objective is mentioned, the other decisions quote, to varying degrees, capacities per section of the fleet that have been established either on the basis of the length of the fishing vessels or according to the waters fished in or the type of fishing, specifying the capacity at the

beginning and end of the period. This breakdown, in objective terms, imposes no constraints at all and the decisions explicitly envisage a measure of flexibility which has not been quantified. As a result, the structure of a fishing fleet could at a pinch be modified in a particular direction which might not necessarily be compatible with the overall policy, and there would be no other limits on such a modification other than observing the global capacity reduction objective.

Inadequacy of the existing management instruments

The limits of the present MAGPs

2.34. In order to be able to function as an effective tool for defining and implementing a structural policy in the fishing sector, the inadequacies in the current MAGPs could be remedied by a more differentiated and more finely nuanced approach. Such an approach should contain an element of weighting applied to the idea of fishing capacity, relating available fish resources to existing fishing capacities, along with a breakdown by different fishing zones.

Weighting the notion of fishing capacity

2.35. Whereas fishing capacity is exclusively measured at present in terms of the vessel's tonnage and engine power, it is obvious that technological advances in ways of detecting and locating fish stocks represent a gain in efficiency at the practical task of fishing which some professionals estimate, according to the fisheries concerned, at several tens of percent. Since the new regulation which took effect on 1 January 1991 significantly widens the scope of application of building and modernization aid to include small vessels between 5 and 12 metres long, i.e. mainly inshore fishing vessels, taking such equipment into consideration would make it possible to obtain a better picture of the potential of this fleet and define its requirements more precisely.

2.36. By the same token, the degree of perfection of the engines with which, in a given category, fishing vessels are equipped also results in greater efficiency, fishing capacity expressed in tonnage and engine power remaining equal.

2.37. Even if the Structural Policy, in particular via the aid granted in respect of modernization over the years, has had the effect of harmonizing the level of equipment and accelerating the diffusion of technological advances, more precise knowledge of the level of equipment of fishing vessels seems to be likely to allow some weighting of the existing fishing capacity and, on the basis of this, more

precise choices can be made, taking into consideration the assessment of the situation in respect of over-capacity in a given section of the fleet.

The relation between fish stocks and the existing level of fishing capacity

2.38. Establishing a link between available fish stocks and the capacity of the fleet fishing them presupposes accurate knowledge of the level of the stocks and the possibilities for exploiting them, as well as the vessels used for this type of fishing. If the catch statistics and the annual scientific assessments of certain permanent stocks make a comparison conceivable, the existence of fishing vessels which are able to carry out different sorts of fishing does not facilitate such an approach, even though it is undeniable that in the case of a permanent imbalance between the level of a stock of one species and the fishing capacity specifically related to that species, it is possible to draw useful lessons for the implementation of a structural policy.

2.39. In this sense, any differentiation by type of fishing of the existing capacity constitutes a step forward in the implementation of the structural policy in the fisheries sector, though it also presupposes more accurate data on catches made by zone and type of fishing. Such an approach can be used, even in a context of global overcapacity, to identify possibilities for developing certain sections of the fleet and for practising, where appropriate, a more selective policy in respect of aid.

Breakdown by main fishing zones

2.40. In addition to establishing a relationship between existing resources and fishing capacity, the implementation of which in itself presupposes a link with specific fishing zones, a breakdown of fishing capacity, at the level of each individual MAGP, according to the waters in which the activity is carried out also seems desirable. In fact, the structural aid granted at present is based to a large extent on objective criteria (the physical characteristics of the vessels), irrespective of all consideration of the legal system applicable to the waters in which the fishing activity is carried out.

Compatibility of MAGP objectives with the general guidelines for regional development

2.41. The policy of conserving and managing fish resources is implemented with the aim of protecting the

specific needs of regions whose local populations are particularly dependent on fishing or related industries. However, the objective of adapting or reducing capacities using the instrument of monitoring and managing the structural policy, which is what the MAGPs amount to, does not appear to take this basic objective into account, insofar as the reductions in capacity apply uniformly to the various Community fishing fleets, including those from regions which have been given special status (e.g. Ireland).

The relationship between the Community register and the MGAP

2.42. Although Regulation (EEC) No 163/89 stipulates that the Member States shall send the Commission, once a month and at the latest three months after the event has been confirmed, information on any change or correction made to the national fishing register, it is clear, in the light of the Commission's files, that the Member States are not fully meeting their obligations in this respect. Whilst well aware of the time needed to set up the system, and of the difficulties connected with harmonization and the ways of using the various national systems, the majority of the Member States, at the beginning of the financial year 1992, had not forwarded a magnetic data-carrier with which to update the situation of the Community fishing fleet register as at 30 June 1991. In the Court's opinion, it is essential, in the interest of monitoring and management, that this delay should be significantly reduced, so that the register may play its full role as an operational instrument in the service of the structural policy.

2.43. Although decisions to grant Community aid to projects for building fishing vessels are taken on the basis of prior confirmation that the capacity growth objectives set by the MAGPs are being observed (see 3.5), the Commission should be able to ensure, using the Community register of fishing vessels, that the intermediary objectives have been achieved, or are in the process of being achieved, before it takes the decision to grant aid.

2.44. In fact, in contrast to the current procedure, where decisions relating to the building of vessels are mainly taken under the second tranche of the financial year and in the light of the situation of the MAGPs declared by the Member States, these decisions should be taken under the first tranche, after confirmation, corroborated by an examination of the file, that the intermediary objectives selected for the previous 31 December had been achieved. In any case, a clear link between the discharge of the Commission's obligations to provide information arising from Regulation (EEC) No 163/89 and the granting of aid with a positive effect on capacity growth should be envisaged, particularly in the event that this aid should be included within the framework of the Structural Funds,

which would result in further decentralization of the Member States' powers in respect of the administration of Community aid.

Other management weaknesses

2.45. In accordance with Regulation (EEC) No 4028/86, any vessel receiving construction or modernization aid must be used to supply the Community market for ten years (five years in the case of modernization aid) and, reciprocally, the granting of a final cessation premium during this period or failure to respect the commitment entered into for any other reason results in the Community aid received being repaid. However, there is no Commission instrument for monitoring commitments entered into and the Commission is at present not in a position, on the basis merely of the name of the vessel, to locate in the 'structures' file which traces the aid granted, the project in support of which the aid has been granted. Improved safeguarding of the Community's interests, which is especially important if one bears in mind the fact that in many cases the Community aid is greater than the aid paid by the Member State, could be ensured by interconnecting the Commission's data-files.

2.46. In the same way, internal checks should be capable of revealing which vessels and recipients have already received assistance previously, be it in respect of modernization or construction, in order to ensure, for example, that the same vessel may not first receive modernization aid and then, some months later, crop up again, without the prior cancellation of the first lot of aid, as having been withdrawn, in order to justify a new building project.

2.47. Similarly, concern for sound financial management of Community funds should lead to provision for the repayment of part of any aid previously granted in respect of construction or modernization aid when a new modernization measure resulting in the withdrawal of part of the equipment in respect of which the aid was granted, takes place before the five or ten year deadline is up.

2.48. Moreover, the entry in the register of a ship from another State ought not to be possible until the past history of the ship in question has been traced, so as to provide an assurance that it has not, in any case, been deprived of the right to fish in Community waters, either because of the fact that it has been granted final cessation aid or because it has been offered for withdrawal in support of a ship-building project. In this respect, the Court's audit revealed, particularly in the case of Ireland and the United Kingdom, that fishing boats from other Member States had been registered without the body responsible for the register being aware of or able to disclose the name and the registration number of the ship in its country of origin. This

being so, and especially if the country of origin is implementing a capacity reduction scheme, it is not possible to be sure that the condition laid down for the granting of final cessation aid, namely definitive exclusion from fishing in Community waters, is in fact being abided by. Similarly, the arrangements for monitoring fishing boats should be improved so as to ensure that boats that fly the flag of a Member State which have been temporarily chartered by operators from another Member State, are not, ultimately, taken into consideration for any MAGP relating to the Member States concerned in cases where the ships in question have been fishing in Community waters.

2.49. Finally, steps should be taken to ensure that the beneficiaries of public aid are not in a position to make profits in the event of a forced sale, for whatever reasons, of ships that have received Community subsidies, as was the case in particular with project ES 99/87/1, in respect of which the owner made a profit, compared with his own investment, of 145 %.

2.50. In fact the information and monitoring systems for financial aid relating to fishing boats should be such as to allow the Commission to put into effect a system of integrated management that is closely related to the MAGPs. The Commission should be in a position to ensure that in all cases the conditions governing the awarding of aid are actually observed. The creation of such an integrated system is the precondition for retaining control at the Community level of the structural policy, as also during the changeover, envisaged by the Commission, from the present Structural Fund financial instruments.

3. AID FOR THE CONSTRUCTION AND MODERNIZATION OF FISHING BOATS

Linking the aid to the MAGPs

The primacy of the Community decision

3.1. The legal frameworks established by Regulation (EEC) No 4028/86 provides that measures for the construction and modernization of fishing boats must be included within the framework of the Multiannual Guidance Programmes (Articles 6(2)a) and 9(2)b) of the above regulation). Although no regulatory provision actually specifies which authority (Member State or Commission) is responsible for ensuring that the projects are included within the framework of the MAGPs, Article 5(1) of the abovementioned regulation entrusts the

Commission with responsibility for monitoring the implementation of the MAGPs on the basis of information sent by the Member States; the Commission can therefore only grant Community aid to a project after it has checked that the project conforms with the objectives of the MAGP.

3.2. Moreover, concerning more specifically the question of calculating the amount of the aid, both for shipbuilding projects (Article 7(1) and for modernization projects (Article 10(1), the Regulation stipulates that 'for each project and in relation to the amount of investment eligible for aid, the aid provided for... and the financial contribution by the Member State concerned must be granted at the rates shown in Annex II'.

3.3. In view of the above, the Member State's financial aid may only be granted in relation to the amount of the investment taken into consideration by the Commission for the purposes of granting aid, i.e. the Member State's financial intervention is subject, in accordance with the legislation, to recognition that the project conforms with the objectives of the MAGP and, as far as the amount of national assistance paid is concerned, observance of the amount deducted from the rates established in Annex II of the regulation as a ratio of the amount of the investment taken into consideration by the Commission for the purposes of granting financial assistance.

Observance of the primacy of the Community contribution by the national aid scheme

3.4. It has emerged from an examination of projects carried out during the 1987—1990 period that the national aid schemes for the construction and modernization of fishing boats which exist in Germany, France, Ireland and the United Kingdom (for projects submitted to the competent authority up to April 1990, in the latter case) result in national aid being granted before the Commission has made its decision on the projects concerned. As a result, particularly in the case of the United Kingdom, it has been possible for construction projects to receive national State aid even though the capacity reduction objectives fixed by the MAGP had not been achieved, thus making these objectives even more difficult to achieve.

Inadequacies in the Commission's decision-taking process

3.5. When applications relating to projects likely to affect fleet capacity are submitted to the Commission, the latter systematically evaluates them in the light of the data available to it in respect of the capacity objectives fixed in the MAGPs of the Member State concerned. In fact, the practice followed up to 1989 (except for the freezing of construction projects agreed for 1989) led to projects being rejected for a variety of reasons, but mainly on the grounds

that the budgetary resources were inadequate. Thus it was that, in respect of the second tranche of 1989 decisions, almost all shipbuilding projects, save for three, submitted by the United Kingdom were rejected because of a lack of available budgetary resources. Similarly, modernization projects submitted by Ireland entailing an increase in engine power were rejected on the same grounds, although these projects were not compatible with the objectives of the structural policy (see paragraph 5.12 of the annual report of the Court of Auditors concerning the financial year 1990) ⁽¹⁾. In view of the alleged reason for rejection, the national authorities considered that they were justified in granting public assistance to these projects, whereas a rejection confirming that these projects (of which there were about thirty) failed to comply with the objectives of the structural policy would have excluded them from any form of public aid.

3.6. A decision-taking process capable of preventing purely financial financing which does not conform to the objectives of the structural policy and integrating the objective of capacity control followed by the current regulation would require the Commission to intervene, for any investment project affecting capacity, on two levels:

- a) to declare that the project comes within the framework of the MAGP and establish the amount of the investment to be taken into consideration for financial assistance: this constitutes intervention at the level of the definition and pursual of the structural policy;
- b) to grant assistance within the limits of its financial resources: this constitutes intervention at the level of and within the limits of the budgetary resources available.

Once the Commission has expressed a favourable opinion on a project in respect of the MAGP, public aid (national and Community or solely national) becomes possible and its compatibility with the objectives of the structural policy is recognized at Community level.

3.7. As far as aid for modernization is concerned, the Commission, having excluded projects involving an increase in capacity (tonnage and engine power) from all assistance adopted, in its latest internal guidelines, a more flexible position authorizing increases in capacity in cases where withdrawals of capacity were associated with the project, or where the MAGP objectives had been reached. This approach ensures that modernization aid will remain without effect on the final objectives of the MAGPs. In fact, pressure on fishing stocks is not a result solely of capacity as defined by the MAGPs, but also of the effort devoted to fishing, i.e. all the factors which together increase fishing

efficiency. In this sense, modernization projects help to increase the fishing effort, even where there is no quantitative increase in fishing capacity, and a concern for consistency in the implementation of the structural policy ought to lead the Commission to establish a link between the MAGP and the granting of modernization aid that is similar to that existing since 1990 for construction projects, i.e. not to grant financial assistance to projects that increase the fishing effort if the objectives of the MAGP of the Member State concerned have not been achieved.

Appraising projects for aid for shipbuilding

Appraising aid applications

3.8. Requests for Community financial assistance relating to construction projects are sent to the Commission via the Member State concerned on the basis of the MAGP priorities. Twice a year, by 30 June and 31 December at the latest, the Commission decides whether to reject or accept the applications for assistance which have been submitted to it. In practice, the link established with the monitoring of the MAGPs has several times led the Commission to defer decisions relating to construction aid. Thus, in 1988, decisions concerning the building of new boats were only taken for Portugal and the French overseas departments, whilst, in respect of subsequent financial years, they have mainly been taken in respect of the second tranche of the financial year, the deferment most frequently being justified by the lack of information available concerning the state of progress of the MAGPs.

3.9. In some cases, this leads to the Community decision being taken very late in relation to the date the project was started; and even, in some cases, after the project has been completed. In fact, an application for aid is admissible if it reaches the Commission before the boat concerned is put into service. As aid is not granted automatically to every applicant, this admissibility condition is not adequate to ensure an effective link between the Community decision to grant financial assistance and the realization of the investment. Where a decision is made late, the impact of the structural policy consists solely of aid being granted *a posteriori* for an investment which has already been made whereas, in view of the particular context of the structural policy, the Commission should pursue the objective of influencing, via the financial assistance granted, both the date and the decision to invest.

3.10. In order to re-establish a genuine link between the decision to invest and the Community financial assistance,

⁽¹⁾ OJ No C 234, 13.12.1991, p. 95.

and subject to the comment made in paragraph 2.43, aid should only be granted to projects relating to vessels which have not entered service before the deadline for the submission of requests for assistance relating to the tranche in respect of which the decision to grant assistance is made.

3.11. Whereas Regulation (EEC) No 4028/86, in respect of which construction aid is granted, entered into force on 1 January 1987, a large number of internal rules relating to admissibility and conformity with MAGP objectives and to the calculation of the amount of the investment to be taken into consideration for granting Community financial assistance were made late, and were not formally communicated to the Member States until the spring of 1991.

3.12. This state of affairs is one of the reasons why there is a lack of uniformity in the appraisal of the files for applications for assistance relating to construction projects. This is illustrated by the following findings:

- (a) projects presented to the Commission on the basis of strictly identical estimates were the subject of decisions to grant assistance where the amount eligible for Community assistance was different (e.g. Es 166 and 173/87/1; It 99 and 100/89/2;
- (b) for some projects (projects F/1987) no increase for hazards and contingencies was taken into consideration, even though this was requested and, as a rule, such an increase is always granted;
- (c) conversely, an increase for contingencies and price amendments was granted for project P 54/87/1 (Community aid granted: 342 000 ECU), whereas it is not clear from the Commission file that the beneficiary made any such request. An over-commitment resulted at the level of the Community budget, which then led to a disbursement of appropriations corresponding to 14 % of the amount committed;
- (d) one project (ES 190/87/1: Community aid granted: 328 000 ECU) was given Community aid, although the beneficiary had not enclosed an estimate supporting his request for assistance;
- (e) in some cases, (e.g. It 47/87/1, UK 253/89/2), information on the tonnage and engine power of the boat it was proposed to build included with the request for assistance was imprecise or self-contradictory which meant that, when the project was completed, it was impossible to ensure that the criteria at the basis of

this decision had been complied with (see paragraphs 3.26 and 3.51-3.52 below).

3.13. More generally, it should be pointed out that, when the amount to be taken into consideration for the granting of financial assistance is determined for each project, the amounts which are not considered eligible for Community aid are not always clearly justified. Such justification should be drawn up clearly, by budget heading and sub-heading, and should be attached to the document submitted to the Financial Controller for approval, so that, when the final payment is made, the amounts considered not to be eligible can be effectively excluded from the package of Community financial assistance.

Linking shipbuilding aid to the shipbuilding premium

3.14. Although the 'guidelines for the examination of national aid in the fisheries sector' ⁽¹⁾ adopted in response to the provisions of Regulation (EEC) No 2908/83 did not explicitly mention aid granted in the form of premiums for shipbuilding and merely pointed out that national aid was compatible with the common market if the rate of such aid did not exceed, in terms of subsidy equivalents, the global rate of subsidies permitted by the Community legislation in the fisheries sector, the new guidelines ⁽²⁾ adopted in this field explicitly exclude the granting of national aid under the sixth directive on shipbuilding to for fishing boats intended for the Community fleet.

3.15. In view of the date on which these guidelines were published (8 December 1988), construction projects in receipt of aid in 1987 under Regulation (EEC) No 4028/86 were still eligible to benefit from shipbuilding premiums and the aid application files refer to the existence of a shipbuilding premium, in particular in the case of Spanish construction projects.

3.16. An examination of the appraisal files for the projects concerned revealed that in numerous cases the amount of the shipbuilding premium which it was planned to grant had not been taken into account for the purpose of establishing whether or not the projects conformed to the objectives of the structural policy, and that, in particular, many projects had received financial assistance even though it was clear from the aid application files that the Member State's financial contribution exceeded, in percentage terms, the maximum amount fixed by Annex II to Regulation (EEC) No 4028/86 as a ratio of the amount taken into consideration for the purposes of granting

⁽¹⁾ 85/C 268/02, OJ No, 19.10.1985, p. 2.

⁽²⁾ 88/C 313/09, OJ No, 8.12.1988, p. 21.

Community financial assistance (see Spanish projects Nos 95, 97, 100, 103, 116, 173, 177 and 179/87). Such anomalies were still to be found under the second tranche for 1989 (projects 142 and 451). Whether one considers that only expenditure actually borne by the beneficiary is eligible for Community aid or whether one takes the view that the total expenditure on the project is eligible, the result in any case is that the total amount of public aid referred to in the appraisal file, compared with the amount of the investment considered to be eligible, exceeds the thresholds laid down by the regulations. As a proportion of the estimated expenditure to be borne by the beneficiary, the amount of Community aid exceeds, sometimes by 20 %, the amount which should have been granted if only the estimated expenditure actually borne by the beneficiary had been taken into account.

The importance of the criterion of associated withdrawal

3.17. According to Regulation (EEC) No 4028/86 (Article 8(2)), associating the withdrawal of an active fishing vessel with the completion of a shipbuilding project is only a priority criterion. Nonetheless, the structural overcapacity situation which typifies the Community fleet has led the Commission to demand more and more insistently, that any new project should be accompanied by a withdrawal. Thus, the quantity of capacity withdrawn in relation to the planned new capacity, subject to general conformity with the MAGPs, has gradually become one of the principal criteria for the selection of projects.

3.18. Even if, globally, from 1987 to 1990 all shipbuilding projects represent in terms of capacity a total tonnage that is barely lower than the tonnage withdrawn and an installed engine power that is 10 % higher, an examination of *Tables 3.3 and 3.4* shows that only the projects under the 1987 tranche were authorized with a withdrawal rate of about 60 %, although, since that date, the withdrawal rate has almost always been higher than 1.

3.19. In fact, the withdrawal rate varies significantly according to the Member State concerned: Spain and Portugal have a withdrawal rate greater than one, whilst shipbuilding projects financed in Germany, Ireland and the United Kingdom have only been accompanied by capacity withdrawals of less than 50 % in comparison with the planned new capacity. In this respect, though the reasons for these differences are to a very great extent the result of the particular circumstances of individual projects, they can also be explained by the following differences of approach:

(a) in some national regulations, which have been refined over the years in line with the capacity reduction objective, a new ship can only benefit from public aid

provided an equivalent reduction in capacity is proposed (either in terms of tonnage or in terms of engine power, according to the specific difficulties experienced by the Member State concerned in achieving the capacity reduction objectives). In a context which envisages a withdrawal rate greater than one, the building of new ships becomes an essential means of achieving the MAGP objectives;

(b) the Member States which implement programmes for reducing capacity by means of the payment of final cessation premiums may arrive in terms of capacity sufficiently beyond the objectives fixed by their MAGP in order to be able to allow the construction of new vessels to go ahead without associated withdrawals.

3.20. Moreover, demanding a concomitant withdrawal of capacity with any new shipbuilding project inevitably causes problems which in fact limit the effectiveness of the measure undertaken.

3.21. In the first place, the amount of actual fishing activity likely to result from any given quantity of fishing capacity is not only a function of the intrinsic capacity of the boat but also, and increasingly, of the extent to which the ship in question has been authorized to fish. Thus, granting financial assistance should not only be linked to the capacity withdrawn but also to an assessment and confirmation of the fishing rights and licences which will be granted to the new vessel. In this respect, the Commission's priority criterion must be weighted by taking into consideration the order of priority expressed by the Member States in support of their aid applications in the light of the new ship's actual fishing possibilities.

3.22. Secondly, demanding an associated withdrawal should also have been strictly related to the possession and, above all, the actual use, by the beneficiary of the new project, of the vessel offered for withdrawal. Normally, the Commission requires that the boat which is offered for withdrawal should have been in the possession of the beneficiary for at least one year, but, in fact, the checks of the files carried out show that this requirement has frequently not been upheld. This has led in some places to the emergence of a real market on which tonnage and engine power operate are traded so that the beneficiaries can meet the requirement of an associated or additional withdrawal. Extreme examples in this respect are provided by transactions or associated withdrawals concerning fishing vessels which have sunk, sometimes even before Regulation (EEC) No 4028/86 came into force (e.g. P 11/88/2, Gr 19/89/1 and 157/89/2).

3.23. In addition, any vessel that is withdrawn should be accompanied by properly documented evidence to show

Table 3.3 — General summary: tonnage and power (by tranche *)

Tranche	N	grt-b	%	grt-w	%	rwt	kW-b	%	kW-w	%	rwt
1987/1	269	26 048	37,9	15 615	21,7	0,60	99 961	42,7	55 998	26,2	0,56
1988/2	14	4 206	6,1	6 439	9,0	1,53	7 908	3,4	10 177	4,8	1,29
1989/1	122	11 418	16,6	11 264	15,7	0,99	40 800	17,4	38 916	18,2	0,95
1989/2	105	12 806	18,6	26 464	36,8	2,07	41 863	17,9	65 966	30,8	1,58
1990/2	138	14 304	20,8	12 114	16,8	0,85	43 427	18,6	42 927	20,1	0,99
	648	68 782	100,0	71 896	100,0	1,05	233 959	100,0	213 984	100,0	0,91

Average tonnage of projects 1987-1990/2: 106

Average withdrawal for projects 1987-1990/2 grt: 111

Average power of projects 1987-1990/2: 361

Average withdrawal for projects 1987-1990/2 kW: 330

*) Aided projects in the French overseas departments have not been included in the table: the multiannual guidance plan for these departments was approved in Decision 88/569/EEC of 28 October 1988 and provided for the expansion of the fleets concerned.

grt-b : tonnage built

grt-w : tonnage withdrawn

rwt : rate of withdrawal for the tranche

kW-b : power built

kW-w : power withdrawn

Table 3.4 — General summary: tonnage and power (by Member State)

Member State	N	grt-b	%	grt-w	%	rwt	kW-b	%	kW-w	%	rwt
Belgium	2	379	0,6	247	0,3	0,65	1 100	0,5	941	0,4	0,86
Germany	31	7 195	10,5	2 407	3,3	0,33	13 633	5,8	6 749	3,2	0,50
Greece	49	2 507	3,6	1 683	2,3	0,67	10 966	4,7	7 237	3,4	0,66
Spain	192	21 727	31,6	24 885	34,6	1,15	67 344	28,8	73 165	34,2	1,09
France (*)	98	10 329	15,0	10 404	14,5	1,01	41 275	17,6	34 861	16,3	0,84
Ireland	15	420	0,6	41	0,1	0,10	2 484	1,1	308	0,1	0,12
Italy	119	8 563	12,4	5 973	8,3	0,70	41 871	17,9	30 332	14,2	0,72
Portugal	116	15 158	22,0	25 117	34,9	1,66	44 525	19,0	56 415	26,4	1,27
United Kingdom	26	2 504	3,6	1 139	1,6	0,45	10 761	4,6	3 976	1,9	0,37
	648	68 782	100,0	71 896	100,0	1,05	233 959	100,0	213 984	100,0	0,91

Average tonnage of projects 1987-1990/2: 106

Average withdrawal for projects 1987-1990/2 grt: 111

Average power of projects 1987-1990/2: 361

Average withdrawal for projects 1987-1990/2 kW: 330

*) Aided projects in the French overseas departments have not been included in the table: the multiannual guidance plan for these departments was approved in Decision 88/569/EEC of 28 October 1988 and provided for the expansion of the fleets concerned.

grt-b : tonnage built

grt-w : tonnage withdrawn

rwt : rate of withdrawal for the tranche

kW-b : power built

kW-w : power withdrawn

that it actually was used for fishing. In fact, the checks carried out showed that a significant number of projects had been carried out in the absence in the Commission files of any supporting evidence in respect of catch quantities relating to the boats which had been withdrawn. In these cases, the new fishing boat in fact helps to increase even further the fleet's overcapacity (e.g. Es 88/87/1; P 10, 11 and 12/88/2; 11, 18 and 19/87/1; UK 151/87/1 and Italy 262/89/2).

3.24. Thirdly, the provisions relating to withdrawn vessels stipulate that the withdrawal must be carried out either by sending the boat to the ship-breakers' yard, or by using it for an activity other than fishing, or, lastly, by exporting it to an area outside Community waters. In fact, the indications given on the aid application forms relating to the redeployment of the withdrawn vessel when a new vessel is put into service are not binding, i.e. such a vessel may very well be exported even though it was originally intended to send it to the breaker (e.g. Es 166, 173, 177/87/1, 438/89/1; P 21/87/1). In this case, taking account of the possibility of more or less genuine reallocations of boats through the use of flags of convenience in fact increases competition outside Community waters with vessels flying the Community flag.

3.25. Finally, all new capacity is put into service following the building of a new ship, in terms of tonnage and power equivalent to the capacity withdrawn, a measure of effectiveness that is greatly superior to the units which it replaces. In the absence of precise figures, the replacement of one ship by another which is identical in terms of tonnage and power results undeniably in added pressure on stocks. If this factor is taken into account, a withdrawal rate significantly higher than one is needed if construction aid is to remain compatible with the objective of maintaining the same pressure on stocks.

The contents of the Commission decisions

3.26. In relation to the capacity criteria (tonnage and engine power), which constitute the reference units for the operational objectives of the structural policy in the fisheries sector, the Commission decisions granting financial assistance are surprisingly imprecise. On a formal level, first of all, they are remarkably ambiguous regarding the power rating of withdrawn boats and do not specify exactly whether it is measured in kilowatts or horsepower. As for the physical characteristics of the project envisaged, the decision refers only to the length between perpendiculars, which affects the amount of the Community contribution. It does not, on the other hand, contain any information on the power or tonnage of the proposed new

vessel. Given that these are conditions that are of vital importance bearing in mind the quantitative indicators given in the structural policy, such information should be shown, if only for the sake of transparency and clarity, in the decision sent to the beneficiary and the Member State. In many cases the Court's findings made during its checks on the implementation of projects and payments (see paragraphs 3.49 and 3.54 hereafter) originate in the failure to respect, when the projects are carried out, the physical characteristics mentioned in support of aid applications.

Budgetary implementation

3.27. From 1987 to 1990, the Commission granted 177,3 Mio ECU of aid for the construction of 672 fishing boats, representing 69 800 GRT and an engine power of 238 000 KW, i.e. a renewal of approximately 3 % of the total capacity of the Community fleet. *Table 3.1* shows the situation, by Member State, of the shipbuilding projects in receipt of aid, which reflects the relative importance of the various fishing fleets. Only two Member States, Denmark and the Netherlands, do not have any scheme of public assistance for the construction of fishing boats.

3.28. At the beginning of the financial year 1992, the state of implementation of all these projects (see *Tables 3.1 and 3.2*), as observed through the Commission's accounts can be described as follows:

- (a) out of the 672 projects selected, 307 have been completed, 38 have been abandoned and 327 are still to be completed;
- (b) out of 177,3 Mio ECU committed, 92,5 Mio ECU has been paid over, 1,7 Mio ECU has been decommitted in respect of outstanding projects and 7,4 Mio ECU in respect of abandoned projects;
- (c) the overall implementation rate for projects in receipt of assistance from the 1987 to 1990 tranches measured in terms of payments made, was 54 % of appropriations committed.

3.29. This overall situation in fact reflects very variable rates of implementation and execution in the different Member States (Ireland: 29 %; Italy: 35 %; Portugal: 41 %; France, Germany, the United Kingdom and Belgium: more than 65 %) which, in fact, is slightly higher on account of the time span, which varies from one Member State to another, between the moment the fishing boat is put into service and the moment the balance is paid out.

Table 3.1. — General summary: Implementation level for projects funded in the period 1987-1990, by member state, end 1991

(in ECU at the accounting rate for the commitment)

Member State	Commitments			Paid				Released			Abandoned				Still outstanding			
	N	ECU	%T	N	ECU	%N	%T	ECU	%N	%T	N	ECU	%N	%T	N	ECU	%N	%T
Belgium	2	639 690	0,4	2	627 716	98,1	0,7	11 974	1,9	0,7	0	0	0,0	0,0	0	0	0,0	0,0
Germany	31	8 926 438	5,0	14	6 155 371	69,0	6,5	43 341	0,5	2,6	3	241 196	2,7	3,3	14	2 486 533	27,9	3,4
Greece	49	6 517 416	3,7	32	3 840 436	58,9	4,0	162 048	2,5	9,7	4	751 813	11,5	10,2	13	1 763 120	27,1	2,4
Spain	192	60 853 289	34,3	92	35 842 670	58,9	37,6	289 990	0,5	17,4	8	2 294 084	3,8	31,0	92	22 426 543	36,9	30,7
France	122	32 617 333	18,4	68	20 982 079	64,3	22,0	285 565	0,9	17,2	6	923 931	2,8	12,5	48	10 425 758	32,0	14,3
Ireland	15	2 052 865	1,2	6	572 209	27,9	0,6	20 896	1,0	1,3	0	0	0,0	0,0	9	1 459 759	71,1	2,0
Italy	119	27 257 170	15,4	31	9 323 781	34,2	9,8	174 220	0,6	10,5	1	22 613	0,1	0,3	87	17 736 556	65,1	24,3
Portugal	116	32 055 880	18,1	40	12 604 438	39,3	13,2	559 848	1,7	33,6	13	2 961 996	9,2	40,1	63	15 929 601	49,7	21,8
United Kingdom	26	6 369 593	3,6	22	5 255 661	82,5	5,5	116 289	1,8	7,0	3	196 360	3,1	2,7	1	801 284	12,6	1,1
	672	177 289 674	100,0	307	95 204 361	53,7	100,0	1 664 171	0,9	100,0	38	7 391 993	4,2	100,0	327	73 029 154	41,2	100,0

N = Number of ships built.

%T = Member State's share of Community total.

%N = Paid or unused as a percentage of the appropriations committed for each Member State.

Table 3.2 — Implementation rate per tranche

(in ECU at the accounting rate for the commitment)

Tranche	Commitments		Paid		Released		Abandoned		Still outstanding	
	ECU	%	ECU	%	ECU	%	ECU	%	ECU	%
1987/1	61 018 290	34,4	47 753 592	50,2	1 043 226	62,7	2 349 611	31,8	9 871 863	13,5
1988/2	8 645 694	4,9	3 234 738	3,4	109 469	6,6	1 345 048	18,2	3 956 440	5,4
1989/1	28 185 821	15,9	17 767 688	18,7	162 513	9,8	1 368 587	18,5	8 887 034	12,2
1989/2	35 239 664	19,9	15 511 689	16,3	281 696	16,9	1 973 798	26,7	17 472 482	23,9
1990/2	44 200 205	24,9	10 936 654	11,5	67 267	4,0	354 949	4,8	32 841 335	45,0
	177 289 674	100,0	95 204 361	100,0	1 664 171	100,0	7 391 993	100,0	73 029 154	100,0

3.30. In accordance with Article 2 of Commission Regulation (EEC) No. 116/88 of 20 April 1988 ⁽¹⁾, and the clauses of the individual decisions granting aid, the beneficiary initially has twelve months in which to start work, followed by a period of twenty four months in which to complete the project and a final six months to send, via the responsible national authority, the refund application file to the Commission. Possible extensions to these deadlines may be granted, on request, by the Commission. In view of all this, all the projects in receipt of assistance in respect of the 1987 tranche should have been completed, yet 30 % of them are still in progress and a significant number of these have not yet received any payment.

3.31. In this respect, the Court's on-the-spot checks showed, particularly in Italy and Portugal, that in some cases the absence or the lateness of a payment were due to the time needed by the national authorities for the reimbursement application file and, in the case of Italy, for paying over the Member State contribution. Thus, ships financed in respect of Regulation (EEC) No 4028/86 may have been in service for more than a year before the request for payment of the subsidy was received by the Commission. Such delays have negative repercussions on the effectiveness of the aid granted by the Community because the financial costs which have to be borne by the beneficiaries in the meantime proportionately reduce the real value of the aid granted.

3.32. Be that as it may, steps should be taken to make it possible to implement projects within a satisfactory time limit. In fact, whilst the burden in terms of managing and monitoring the projects that is represented by the maintenance of appropriations made available in respect of previous financial years may appear acceptable in the context of a public administration, the chief preoccupation of any structural policy should be to bear down on the beneficiaries' decisions to invest and to retain flexibility as regards implementation, so that, if the circumstances have changed, the new guidelines can be implemented without their impact being limited by the side-effects of previous decisions which have not yet been implemented. In the context of the present overcapacity of the Community fishing fleet, financial assistance intended for the construction of new units should only be granted on the express condition that projects which receive aid are carried out within an agreed period. Failure to respect this deadline should result in the automatic imposition of substantial sanctions. This type of approach would give a boost to the effectiveness of the structural policy, by allowing it to adapt more rapidly to the changes imposed by the circumstances and necessities of the policy for managing and conserving fishing stocks.

3.33. As a counterpart to this approach, and so as to limit the cost of prefinancing for the beneficiary, advances could

be granted to beneficiaries as soon as the decision is made to grant aid, on condition that the appropriate guarantees (bank or satisfactory completion guarantees) have been given before the advance is paid out. Such an approach would, in fact, be nothing more than the corollary of the necessary link between the decision to grant assistance and the decision to invest.

Observations on the implementation of aid

The geographical concentration of the aid

3.34. In accordance with the provisions of Annex 2 to Regulation (EEC) No 4028/86, Community financial aid for the restructuring, the renewal and the modernization of the Community fishing fleet varies according to the lengths between perpendiculars of the boats in question and according to whether the projects concern sensitive regions or not. During the period covered by the Court's enquiry and up to 31 December 1991, fishing boats having a length between perpendiculars of less than 33 metres were eligible for aid at the rate of 35 % (the increased rate) of the eligible rate in the sensitive regions as compared with 20 % in other regions, whereas ships of more than 33 metres received aid at a rate of 25 % of eligible costs in the sensitive regions and 10 % in the others. Since Council Regulation (EEC) No 3944/90 of 20 December 1990 came into force, these rates have been uniformly lowered to 5 %, with the exception of boats having a length between perpendiculars of less than 9 metres, or 12 metres in the case of boats capable of trawling, which were not previously eligible for Community aid and which have become eligible since 20 December 1990 at the old rates (35 % and 20 %).

3.35. Projects receiving aid in Greece, Ireland and Portugal all have the benefit of the increased rate, whilst those located in sensitive regions of Spain, France, Italy and the United Kingdom also qualify. As a result, most of the aid is granted at the increased rate, especially in Italy and Spain and to a smaller extent in France.

3.36. All in all, 470 of the 672 shipbuilding projects, corresponding to 142 Mio ECU of commitments, or 80 % of the total, receive aid at the increased rate (the situation is pretty well identical in the case of modernization projects). The consequence of that is that Community aid for the creation of fishing capacity is mainly, and as a matter of priority, orientated towards the sensitive regions where the bulk of fishing activity is already concentrated, that is, those regions where the problem of excess capacity, which is being or will be remedied by final cessation aid, is

⁽¹⁾ OJ No L 112, 30.4.1988, p. 1.

severest. To a certain extent, this finding reveals that the fisheries structural policy is being implemented in a manner that is in contradiction with the objective of sound financial management.

3.37. Aid at the increased rate is granted according to the boat's home port, or the port out of which it is operated, irrespective of any consideration as to the part of the Community fleet to which it belongs. The result of this situation is that ships such as tuna-fishing boats or those belonging to the high-seas fleet, which operate permanently in international waters or in waters that come under the jurisdiction of non-member States, receive a rate of aid that varies depending on their home port. From the point of view of the way the structural policy is conceived, the Court takes the view that it would be logical also to take the part of the fleet to which the ships receiving aid belong into consideration, as well as the nature of their fishing activity. All this should be in the light of an analysis of capacity needs, bearing in mind the available fish stocks or the fishing grounds or types of fishing in question, so as to establish, and, where necessary, graduate, the level of public aid.

Compliance with the rules on payments

Implementation of part payments

3.38. Article 4 of the aforementioned Regulation (EEC) No 1116/88 states that part payments are subject to the requirement that at least 40 % of eligible expenditure should already have been carried out, along with the submission of a detailed work schedule that has been drawn up and certified by a shipyard. Furthermore, part payments for a given investment may not exceed the rate of implementation of the work relating to that investment. The Court's examination of payments carried out in connection with a number of construction projects (numerous Italian and Portuguese projects and, in particular, IT 6, 16, 18, 24, 28, 51 and 63/87/1 and 34, 36 and 37/89/1 and PO 8/87/1 and 23/89/1) shows that the work schedule required by the Regulation is not always available, and that, in certain cases (IT 23 and 84/87/1, 38/89/1 and PO 8/87/1 and 23/89/1), payments were made over and above the implementation rate submitted in support of the relevant refund applications. Furthermore, whereas the applications in question mention an estimated completion date for the work, adequate account is not taken of this for the monitoring procedure, which partly explains the absence of final payments for projects which have long been completed.

Supporting documents

3.39. Application files for the payment of Community aid mainly consist of attestations and certificates issued by the

competent authorities in the Member States, the implementing rules only providing for the submission of invoices for the following: engines, electronic equipment, fishing gear and nets and, in general, any invoices relating to differences between work planned and work actually carried out. As a result of its audits, the Court has come to the following conclusions:

- (a) there is a great deal of variation from one Member State to another in the quantity and completeness of the supporting documents submitted. In certain cases copies of all invoices relating to the project are available, in others almost none. Particularly in the case of one Member State (Italy), the documentation provided for in the Regulation is almost always missing, which means that the implementation of nearly all the payments in question is strictly speaking irregular;
- (b) where construction work is carried out on the basis of a global contract, it can be difficult to obtain individual invoices for particular operations. Insofar as any checks that are carried out when payments are made must at least aim to ascertain that the planned project complies with what has actually been carried out, a precise statement of the make and technical specifications of all the equipment installed should be systematically required;
- (c) the payment files contain little information, particularly as regards the number of horsepower and the technical specifications of the engines that have been installed. The result of this is that, in certain cases, checks to ensure that the projects authorized comply with those that have actually been carried out are unsatisfactory.

3.40. First of all, there are projects for which the Commission's files do not contain an engine invoice. In other cases such an invoice does exist but it does not give the complete technical specifications (engine type and manufacturer's code as well as maximum horsepower and the number of revolutions per minute). Moreover, these specifications do not appear systematically in the vessels' certificates of seaworthiness.

3.41. Secondly, the information included in support of the applications for payment is sometimes supplied by the shipyard, which certifies engine type and, where applicable, that the engine in question has been derated. The Court's audits show that information provided at this level is not always reliable and that the plate attached to the engine or the number of horsepower indicated in the log when the audit was carried out do not always coincide with the figure declared in support of the relevant application for payment.

3.42. Given the importance of the engine power criterion, all refund applications should include the invoice, or failing this, any other document issued by the engine manufacturer which unambiguously states the engine's serial number, characteristics and complete technical specifications.

Documentary evidence of payments made by the aid recipient

3.43. Payment applications submitted by Member States to the Commission must contain, for each invoice, an indication of the means of payment (bank, cheque, cash or other — to be specified) used by the aid recipient to carry out expenditure pertaining to the project. The Court's audits in the Member States indicate that practices and approaches are many and varied. Thus, although the Regulation provides for an explicit indication of the means of payment used by aid recipients to pay their suppliers, for certain payment applications the Commission has followed the competent authorities in accepting the suppliers' declarations of revenue as sufficient proof that the payments in question have actually been carried out. In other cases, the fact that payments have been carried out is attested by the banks, or even demonstrated by means of copies of bank statements, transfer orders, cheques or bank drafts. Finally, some fishing boats have been largely, and sometimes even completely, paid for in cash, which means that the fact that the aid recipients have made the payments in question is certified by the very parties who carried out the work and supplied the material and equipment used.

3.44. The findings made during the Court's audit of the Spanish construction projects illustrate the difficulties involved in checking that aid recipients have actually made the payments in question. During the early years of implementation of the Regulation, suppliers and providers of services themselves attested that payments had actually been made, the words 'paid in cash' indicating that the aid recipient had settled his debt. Following an audit carried out by the Commission in 1989, during which it was found that accounting information held by recipients of construction aid did not agree with the information included with their refund applications, the Commission asked the national authorities to carry out detailed checks on the projects in question. These checks, which were carried out on the accounts of the suppliers (shipyards) and the aid recipients, revealed the following:

- (a) incorrect dates had been given for payments for work carried out;
- (b) aid recipients had made inaccurate declarations with regard to the amounts paid, the amounts in question

having been increased so as to take into account the shipbuilding premium paid directly to the shipyard.

3.45. Following these findings, the competent authority created a system whereby a third party (an auditing or accounting firm) certified expenditure carried out by aid recipients. This system, for which there is no equivalent in the other Member States, results in significant delays in the submission of applications and the payment of aid without necessarily guaranteeing more reliable results. Thus, for project 441/89/2, the external audit certificate set the ascertained cost of the project at 445 829 411 PTA, of which 441 355 290 PTA were paid by the aid recipient, whereas, according to a document drawn up in the form of a notarial deed and used as the basis for the collection of indirect taxes, the cost of the vessel amounted to 385 038 000 PTA, including the shipbuilding premium of 79 884 188 PTA, which must have reduced the price paid by the aid recipient by the same amount.

Non-uniform settlement of applications for payment

3.46. The Court's examination of payment applications for fishing boat construction projects has brought to light approaches to settlement checks, at Commission level, that vary over time and from one Member State to another. For some projects, any price overrun at sub-item level relative to the original estimate is rejected unless it is justified by additional work. For other projects, any cost overruns are taken into consideration strictly within the limits of the reserves provided for hazards, contingencies, technical expenses and price adjustments. Finally, there are projects for which money saved on certain items in the initial estimate (for example, the refrigeration system of certain vessels that fish in the Mediterranean was not completed) is used to compensate for price overruns on other items, even if the equipment in question would appear to be essential if the vessel is to be operated properly. Strictly speaking, the procedures for the payment of construction aid ought to be standardized and the Commission should draw up precise rules to this effect.

3.47. Moreover, whereas the contingency reserves and those for price adjustments are currently used indifferently to pay for additional work, price increases and both of these at once, the procedures for their use should be codified in order to ensure that the reserves in question, which are explicitly mentioned in the aid decisions, are only used strictly for the purpose for which they were created.

Monitoring the implementation of the projects

The substitution of estimates between the appraisal and implementation stages

3.48. Community aid for shipbuilding projects is granted after the examination of a file containing precise evidence concerning the cost of the project planned, which is forwarded to the Commission by the Member State. Thus, the aid recipients back their applications up with estimates containing a break-down of the cost of the various parts of the job. In certain Member States, aid recipients are required to produce more than one offer per part of the job, whereas in others one offer is enough. During the appraisal phase, the Commission uses the estimates to establish the eligible cost of the project, which may then be increased by 5 % for contingencies and unforeseen circumstances and for a variable reserve for price adjustments up to the maximum subsidizable amount. The result of this approach is that the amount of Community aid granted is directly related to the documents for estimated expenditure attached in support of the aid applications.

3.49. When refund applications are submitted to the Commission for settlement, for a very large number of projects and, in the case of several Member States, for nearly all of them, it emerges that the shipyard responsible for supplying the estimates on which the amount of Community aid is based were not the ones who actually carried out the work. In certain cases, it may be deduced from the information contained in the competent authority's file that the aid recipient has negotiated a more advantageous contract with another shipyard and, therefore, has the benefit of a more generous margin for contingencies, unforeseen circumstances and price adjustments. In other cases, the competent authority does not even possess the new contract, which is the basis for the supply of the equipment that is to be subsidized from public funds. In such cases, verification of work carried out is based merely on the documentary evidence showing that the aid recipient has made the payments in question, and the difficulty of establishing the reality of these has already been demonstrated (paragraphs 3.43 — 3.45). The practice of switching estimates results in the commitment of larger sums and in payments that are partially in excess of the amounts that would have resulted from a correct application of the appraisal procedure to the estimate that was actually put into effect. In fact, in order to prevent aid recipients claiming an excessive margin for contingencies and unforeseen circumstances, any financial aid granted on the basis of provisional evidence of expenditure for which the aid recipient has substituted more advantageous contracts should be revised downwards by the appropriate amount and the excess appropriations decommitted as soon as the competent authority finds out about it, or, at

the very latest, when the payment is made. In conclusion, acquiescence in the current practice can only encourage the submission of overvalued aid applications with all the consequences for public funds that this involves.

Adjustments and modifications to projects under completion

3.50. Adjustments and modifications that are made to projects when they are already underway must be authorized either by the competent authority or by the Commission, which, depending on the circumstances, either takes a new aid decision or sanctions the adjustment or modification without changing its decision. In this respect, practice has varied over the period in question, because it was only in 1989 that the Commission decided on a real doctrine to establish which types of amendment and adjustment actually fell under its jurisdiction and which of these actually required a new decision.

3.51. The result of this was that different projects that had undergone quite comparable adjustments were treated differently from one period and one Member State to another. In particular, the Court's enquiry revealed a significant number of projects whose capacity in terms of tonnage and horsepower was higher than that which had been authorized, despite the fact that there had been no amending decision. In other cases, projects were backed up by amending decisions which give rise to the following observations:

- (a) In the case of project F 238/89/1, the planned crayfish boat, which was intended to be used for fishing along the Mauritanian coast, was replaced by a trawler intended for use in Community waters. Despite this, the new decision specifies that the structural objective of the project has not been affected.
- (b) In the case of UK 151/87/1, an increase in engine power was authorized for a small vessel of less than 12 metres in length, thus enabling it to trawl for sea perch, despite the fact that Article 6(2)(b) of Regulation (EEC) No 4028/86 does not allow vessels under 12 metres that can be used for trawling to qualify for Community aid.
- (c) In numerous cases (projects UK 151/87/1, I 51/87/1, I 262/89/2, PO 22/87/1, PO 10 and 11/88/2) increases in capacity were endorsed by new decisions in exchange for additional withdrawals, when, in fact, there was no evidence to show that the ships that were being withdrawn had actually made any catches during the year preceding the aid application.

(d) In the case of projects PO 18 and 19/87/1, the facts submitted to the legal department in support of the request for an opinion regarding a new decision (that the changes planned for the projects did not involve any increase in capacity) were manifestly ignored when the work was actually carried out. This did not prevent the aid from being paid.

3.52. Generally speaking, the Commission takes far too long to adopt new decisions (between a year and 18 months), though the delay is not always its fault. However, although these decisions are taken late, they are nevertheless taken, and this is often done on terms that do not strictly comply with the regulations and the objectives of the structural policy (see paragraph 3.51). In this context, it should be noted that the files on some projects for which a second decision was taken authorizing adjustments to the project concerned and the payment of aid contain documents that show unambiguously that consideration had been given to cancelling the aid and that it was eventually only granted to the modified project in view of the withdrawal of additional vessels, for which no documentary evidence of fishing activity was available at the time of the audit (UK 151/87/1; P 10, 11 and 12/88/2).

Implementation certificates

3.53. The competent authority backs up the payment applications for each project with a certificate to the effect that the work carried out corresponds to that described in the aid application and, where appropriate, it points out any changes, which are then described in an explanatory annex. In practice, only differences resulting from the implementation of the work have to be covered by declarations of this kind, with an indication of the financial consequences. Additional costs are then charged, where necessary, to the contingency funds provided for in the aid decision, without detailed consideration being given to the grounds on which the commitment of those funds was authorized (see paragraph 3.47).

3.54. The Court found that construction projects that had undergone quite substantial changes (built with a higher tonnage and engine power by a different shipyard) had been declared to comply with the project submitted in support of the aid application. In the case of project I 51/87/1, on which a second decision had been taken, the competent authority admitted that the recorded cost declared in support of the application for payment did not include all the expenditure that was actually carried out.

3.55. The length between perpendiculars is a measure of naval architecture, characteristic of each vessel, which corresponds to an exact technical definition (explained in Annex 2 below). As provided for in Annex 2 to Regulation (EEC) No 4028/86, it constitutes an essential criterion for establishing the amount of Community aid to be granted for construction projects, in that ships measuring less than 12 metres between perpendiculars were not eligible for aid before the amendment that came into force on 1 January 1991, whereas those longer than 33 metres are only eligible at a reduced rate. An examination of several projects which had been authorized on the basis of a length between perpendiculars of just less than 33 metres (i.e. eligible for Community aid at the normal rate) showed that they had, in fact, been carried out with a length of more than 33 metres and should therefore only have received aid at the reduced rate. In fact, the certificates attesting the length between perpendiculars presented in support of the payment applications had been drawn up by the shipyards, despite the fact that the international tonnage certificates or other documents in the files of the competent authority clearly showed that the length between perpendiculars of the vessels in question was in excess of 33 metres. Strictly speaking, this failure to comply with the Regulation should oblige the Commission to recover the excess Community aid (a total of about 717 000 ECU) for projects IRL Mod 14/88/1, UK Mod 307/87/1, UK C 187/87/1 and UK C 188/87/1. As a general rule, the Commission should require each repayment application to be backed up with an international tonnage certificate, which would make it possible to establish beyond any conjecture the length between perpendiculars of the vessels in question.

3.56. Moreover, for a significant number of construction projects, the actual tonnage is also decidedly higher than the tonnage mentioned in the aid applications and recorded in the statements communicated to the Standing Committee on Fishing Industry Structures and, in some cases, it exceeds the authorized tonnage by more than 10 %. The same applies to engine power. In this field, the Court found, particularly in the United Kingdom, that the engine power declared in support of payment applications turned out to be lower than that mentioned for the same ships in the fishing boat register. Given that the Community fishing fleet as a whole is characterized by excess capacity, and that one of the objectives of Community policy is to lower it by a rate (established by the 1987 — 1991 MAGP) of 2 % in terms of engine power and 3 % in terms of tonnage, it is, to say the least, surprising that projects can be implemented and receive public aid, even though, in some of them, increases in these same parameters of more than 10 % can be found.

Member State participation in modernization and construction projects

3.57. In accordance with Community Regulations, in order for projects to be able to qualify for Community aid, the percentage of Member State participation in fishing boat construction and modernization projects must be between 10 % and 30 % of the amount of the investment taken into consideration for Community aid (5 % and 25 % since 1 January 1991).

3.58. With regard to the bottom end of this scale, only in Greece are the rules in force such as not to ensure that the aid recipient responsible for the project receives a national contribution equivalent to 10 % of the eligible cost. This is because of a special tax which amounts to a levy of 3.6 % of the aid paid by the Member State, the gross amount of which is set strictly at 10 %.

3.59. As for the upper limit, the Court's inquiry revealed cases of non-compliance which were the result of the following implementation procedures:

(a) Whereas most Member States only require a single estimate to be presented in support of aid applications, the United Kingdom and Germany require aid applicants to provide evidence of several offers and pay out their aid to the lowest bidder. In contrast, any overruns are evaluated case by case and can, where applicable, be approved as being eligible for aid from the Member State. Insofar as, for the Commission, the amount of the investment eligible for financial aid is defined on the basis of the initial application, the closer the rate at which national aid is being granted is to the upper limit established by the Regulation, the more adjustments of national aid of this type on the basis of recorded costs lead to non-compliance. The fact remains that such adjustments should still be compatible with the limits provided for in the Regulation, in accordance with the commitment entered into by the Member State when it submitted the application in Section 6 of the administrative memorandum to the project in question ⁽¹⁾.

(b) In the case of Spain, the sum total of aid paid out pursuant to the fisheries structural policy, on the one

hand, and the shipbuilding premium, on the other, has also led, in a number of cases, (ES 166, 173 and 177/87/1), to the granting of aid in excess of the maximum limit provided for in the Community Regulations. In another case (ES 391/89/1) the existence of aid granted by a local authority and not mentioned in the final repayment application also led to an over-stepping of the maximum limit determined with reference to the amount of the investment taken into consideration for financial aid.

3.60. Over and above the documented cases of non-compliance with the maximum limit for aid, the existence, in a number of Member States (specifically in Germany Spain, France and Italy) of provisions allowing the local authorities to intervene makes it difficult to ensure that the maximum limit on Member State aid set by Community Regulations is actually being complied with. Indeed, particularly in the cases of Spain, France and Italy, the competent national authorities responsible for supervision and the correct application of the Community Regulations do not always have documentary evidence to show unequivocally either how much aid has been paid by the local authorities or that no aid has been paid at all. In this respect, in all cases where local aid schemes co-exist concurrently or concomitantly with the national scheme, the competent national authorities, rather than contenting themselves with mere declarations on the part of the beneficiaries that aid has or has not been received, should require certificates from the local authorities concerned.

3.61. Monitoring compliance with the maximum amount of aid authorized by the Regulation is also made difficult by the fact that direct public aid can take various different forms. For example, it can be granted in the form of repayable interest-free loans (the actual repayment of which needs to be verified) as well as that of traditional loans at subsidized interest rates. In the latter case, it became apparent during the course of the inquiry that the 'subsidy equivalent' (i.e. the expression in terms of capital subsidies at market value of the advantage that the granting of a loan at a subsidized rate of interest constitutes for its recipient) is not always calculated accurately. In any case, moreover, the rate above which the Commission requires a subsidy equivalent to be calculated is, in all Member States, decidedly lower than the rate at which a private operator can borrow. The result of this is that the granting of a subsidized loan represents a much greater advantage than what is actually taken into consideration for the calculation of the subsidy equivalent. Finally, in the case of one Spanish autonomous region, in addition to direct shipbuilding aid, there is an aid scheme for investment and job creation which is intended for the same beneficiaries.

⁽¹⁾ Commission Regulation (EEC) 970/87 of 26 March 1987 (OJ No L 96, 9.4.1987 p. 3)

3.62. Regarding the attitude of the Commission in the event of non-compliance with the ceiling for Member State aid, the Court's examination of the files on the projects concerned showed, in all cases, that the Community aid was paid in full according to the usual criteria, but after long delays, which, in most cases, represent a financial loss for the recipient likely to be equal to, or in excess of, the surplus in national aid. In certain cases (UK), fresh refund applications showing that the amount of Member State aid had indeed been limited to 30 % of eligible costs were requested. On the strength of the new documentary evidence, the Community aid was paid out, but there is no evidence, either in the Commission's files, or in those of the Member State concerned, that the beneficiary had returned the surplus aid.

3.63. As things stand at the moment, the Commission seems to take the view, on the grounds that the aid recipient should not suffer because of the behaviour of other parties, that ignorance of the Regulations on the part of the Member State authorities is not a sufficient reason for refusing to pay the full subsidy. This sort of approach amounts to arguing that aid recipients and national authorities are in different positions with regard to the provisions of a Community Regulation and that this authorizes aid recipients to take advantage of Member States' failure to comply with the rules. Short of specifically acknowledging that the Commission is entitled to reduce its own financial contribution by the amount paid in excess by the Member State, the conclusion must be that the conditions for payment laid down in the Regulation have not been satisfied. Another approach to the problem could consist of adopting an amending decision to redefine the costs eligible for public aid, whilst maintaining the Community's financial assistance at the current level.

Further aspects

Increased aid for investments by young fishermen

3.64. In accordance with Article 7(1) of Regulation (EEC) No 4028/86, the rate of financial aid may be increased by 5 % if the recipient, or one of the recipients, is less than 40 years of age, has never owned a majority share in another fishing vessel, is, at the moment in which the aid is paid, owner of at least 40 % of the vessel in question and commits himself to working as its skipper for at least five years.

3.65. The terms on which these provisions have been applied lead to the following observations:

- (a) Given the existence of excess capacity in the Community fishing fleet, eligibility for Community aid has been increasingly linked to the withdrawal of a certain amount of fishing capacity, particularly in Spain, where no new shipbuilding projects may be authorized unless a vessel of the same tonnage is withdrawn. Thus, in the case of project ES/438/89/1, the aid recipient bought two boats, not to use them for fishing, but merely to offer them for withdrawal in support of his aid application. Despite the fact that the provisions of the Community Regulations were thus flouted from the formal point of view, he received the 5 % increase.
- (b) Many of the cases that have given rise to this 5 % increase actually involved the replacement of vessels that were jointly owned by the same association or the same two fishermen. In such cases, the rules are apparently being complied with, if one bears in mind that someone owning 50 % of a vessel is not a majority owner, but, quite obviously, the objective behind the 5 % increase (i.e. access to the ownership of an instrument of production) has not actually been achieved, as compared with the previous situation.
- (c) In one case (It 06/87/1), in which a two-fisherman association of this type was in the process of replacing a vessel in which both had an equal share when one of the two went bankrupt, the other one, in order to be able to take advantage of the aid at the increased rate, formed a partnership with a student who was able to show that he owned at least a 40 % share in the vessel in question at the time when the aid was paid. The rules in force regarding construction aid should not enable the 5 % increase to be awarded to an association of fishermen who are merely renewing existing equipment, whilst the young fisherman in question continues to own a more or less identical share of the business. Moreover, where financial aid has been granted at the higher rate, the post-implementation report provided for under Article 39(1) of Commission Regulation (EEC) No 3798/88 of 24 November 1988⁽¹⁾ should explicitly contain a section that makes it possible to ensure that the special condition is always observed.

Discrepancies in the costs of comparable projects.

3.66. Given the lack of homogeneity in the units used to measure tonnage in the various Member States of the

⁽¹⁾ OJ No L 339, 9.12.1988, p. 1.

Community (see paragraphs 2.4 to 2.6), it is difficult to compare construction costs, on a quantitative basis, from one Member State to another. Be that as it may, comparisons made between projects carried out during the same period in the same Member State indicate that, depending on the project, there can be discrepancies in cost per registered ton of 50 % to 80 % between absolutely comparable projects (e.g. I 1/87 and 32/87, I 47/87 and 51/87 and I 77/87 and 94/89/1, and Greece 19 and 30/89/1). Discrepancies of this size raise the question as to whether it is appropriate to pay out public aid on the evidence of nothing more than estimates that are submitted by the aid recipients themselves.

Making available and exploitation of post-implementation reports

3.67. In accordance with Article 39(1) of Regulation (EEC) No 4028/86, a report on the results of each project, and on the financial results in particular, must be submitted two years after the final aid payment. In practice, with the exception of the UK projects, no reports of this type were available at the time of the audits in the Member States, even though the final aid payment for some projects had been made more than two years before. The Commission should make absolutely sure that these reports are produced, and they should be systematically exploited for the purpose of monitoring and defining structural policy. In particular, despite the cyclical nature and great variability of types and methods of fishing, a comparison between the catches landed by ships that are withdrawn in support of construction projects and those landed by the new ships could give useful information on the effect of the renewal of the fleet on fish-stock mortality.

A proposal for a new criterion for the granting of Community aid

3.68. Given the observations set out in paragraph 3.66 on the differences in costs observed with regard to certain comparable projects, in paragraphs 3.48 — 3.49 on the practice of substituting estimates, and in paragraphs 3.43 — 3.45 on the limits to verification of the proof of payments carried out by aid recipients, a new criterion for the allocation of aid should be envisaged. Independently of the question of whether, given current overcapacity, this sort of aid should be maintained, reference to Community tonnage (London tonnage), leading to the granting of a given amount in ECU per ton constructed, would constitute a better criterion for the allocation of aid for the construction of fishing vessels. Indeed, apart from the fact that a system of this sort would strictly limit financial aid to the tonnage authorized in the aid decision, with the

possibility of a reduction in the event of this tonnage being exceeded, it would also have the following advantages:

- (a) simplicity of payment of the aid;
- (b) reference to Community tonnage would be obligatory, which would effectively bring about the standardization of the unit of measurement of capacity;
- (c) the possibility of making adjustments in line with parts of the fleet and types of fishing, rather than with geographical criteria.

3.69. This system presupposes a prior investigation of the cost of fishing vessels, according to their size and type, as well as increased vigilance in respect of the material implementation of the projects, in order to make sure that all ships entering service satisfy the standards and criteria for safety and materials.

The modernization of fishing vessels

Budgetary implementation

3.70. Between 1987 and the end of 1990, the Commission granted financial aid corresponding to total commitments of 75,5 Mio ECU for the execution of 2 214 fishing vessel modernization projects (see *Table 4.1*).

3.71. At the close of the 1991 financial year, 1 372 projects had given rise to payments totalling 38,4 Mio ECU and the decommitment of 2,7 Mio ECU of unused appropriations, which corresponds to an effective rate of use of the appropriations allocated to the projects that were implemented equivalent to 93,4 %. At the same time, 136 projects, or 6,1 % of the total (corresponding to 3,5 Mio ECU and 4,4 % of the appropriations committed), had been abandoned by their beneficiaries before their implementation had got underway. Bearing in mind the time needed for both the preparation of the refund applications and the procedures for their submission to the Commission (see paragraph 5.14 of the Court's annual report on the 1990 financial year), a significant proportion of the 706 projects, representing 31 Mio ECU of aid which has not yet been paid out, can be regarded as having been implemented in the field. The proportion of renunciations, or projects that were abandoned by the aid recipients after Community aid had been granted, is particularly high in Denmark and the Netherlands, where significant permanent withdrawal programmes are in progress. The fact is that in certain cases the would-be beneficiaries of modernization aid preferred to opt for permanent withdrawal rather than go ahead and actually modernize their vessels.

Table 4.1 — General summary: Level of project implementation, by Member State

(in ECU at the accounting rate for the commitment)

Member State	Commitments			Paid				Released			Cancelled				Still outstanding			
	N	ECU	%T	N	ECU	%N	%T	ECU	%N	%T	N	ECU	%N	%T	N	ECU	%N	%T
Belgium	35	951 198	1,3	29	677 143	71,2	1,8	10 200	1,1	0,4	1	6 185	0,7	0,2	5	257 670	27,1	0,8
Denmark	239	5 871 323	7,8	203	4 632 141	78,9	12,1	270 484	4,6	10,0	36	968 697	16,5	28,9	0	0	0,0	0,0
Germany	79	1 294 354	1,7	46	779 597	60,2	2,0	154 280	11,9	5,7	2	28 920	2,2	0,9	31	331 557	25,6	1,1
Greece	102	2 131 001	2,8	77	1 477 658	69,3	3,8	76 517	3,6	2,8	9	99 834	4,7	3,0	16	476 991	22,4	1,5
Spain	714	26 344 479	34,9	482	15 136 368	57,5	39,4	1 089 924	4,1	40,2	36	1 224 135	4,6	36,5	196	8 894 052	33,8	28,7
France	110	4 344 492	5,8	48	1 995 905	45,9	5,2	70 117	1,6	2,6	1	73 663	1,7	2,2	61	2 204 808	50,7	7,1
Ireland	119	3 694 326	4,9	96	2 386 310	64,6	6,2	208 509	5,6	7,7	8	86 667	2,3	2,6	15	1 012 838	27,4	3,3
Italy	386	19 547 080	25,9	74	3 068 626	15,7	8,0	555 869	2,8	20,5	5	204 407	1,0	6,1	307	15 718 177	80,4	50,7
Netherlands	48	621 600	0,8	21	283 158	45,6	0,7	19 605	3,2	0,7	12	179 084	28,8	5,3	15	139 754	22,5	0,5
Portugal	112	3 914 417	5,2	57	1 899 021	48,5	4,9	103 000	2,6	3,8	10	252 293	6,4	7,5	45	1 660 773	42,4	5,4
United Kingdom	270	6 778 823	9,0	239	6 090 268	89,8	15,8	152 912	2,3	5,6	16	230 404	3,4	6,9	15	305 224	4,5	1,0
	2 214	75 493 093	100,0	1 372	38 426 195	50,9	100,0	2 711 416	3,6	100,0	136	3 354 289	4,4	100,0	706	31 001 844	41,1	100,0

N = Number of vessels

%T = Member State's share of Community total

%N = Paid or unused as a percentage of the appropriations committed for each Member State

Implementation times

3.72. With the exceptions of Italy, France and, to a lesser extent, Portugal, for which the projects that have not yet been carried out represent, respectively, 80 %, 51 % and 42 % of the aid granted, the level of implementation can be regarded as satisfactory insofar as the projects for which aid has not yet been paid out mainly correspond to the decisions allocating subsidies for the two tranches of 1990.

3.73. Taking into account the nature of modernization work, the average time taken to carry it out and the fact that it is accepted practice that aid recipients may start work as soon as the aid application has been handed in to the competent national authority, the aid granted under the 1987 and 1988 tranches ought already to have been used, whereas in fact 6,5 Mio ECU, or 22 % of the original appropriations, have yet to be paid out (see *Table 4.2*). These findings lead the Court to make the same recommendations as in the field of aid for the construction of fishing vessels (paragraph 3.22).

Compliance with the Regulations

3.74. In addition to the aforementioned basic Regulation, (EEC) 4028/86, the implementation of modernization projects is governed by Commission Regulation (EEC) No 894/87 of 27 March 1987⁽¹⁾ and Regulation (EEC) No 1116/88. Certain aspects of the Regulations concerning more specifically the Commission's role were brought up by the Court in its annual report on the 1990 financial year (paragraphs 5.12 — 5.14), whereas, given the nature of the aid, the monitoring and control of other aspects of the Regulations are largely the responsibility of the Member States. In this connection, the on-the-spot checks carried out by the Court led to the findings set out below.

3.75. It is accepted that the same fishing vessel may undergo several successive modernization operations, which may sometimes overlap in time. This practice calls for two observations:

- (a) in the first place, particularly in Denmark and the United Kingdom, the necessary checks to verify compliance with the provisions of Article 9(3)c of Regulation (EEC) No 4028/86 (according to which modernization work should not exceed 50 % of the value of a new vessel of the same type as the one being modernized) are not systematically carried out;
- (b) secondly, in cases where more than one modernization project has been authorized for the same vessel and a

fresh aid application has been submitted whilst the work or the previous modernization measure is still in progress, compliance with the provisions of Article 4.1 of Regulation (EEC) No 894/87 (which states that 'no increase in the anticipated eligible investment amount notified after the final date for submission of aid applications to the Commission shall be taken into account for the calculation of the Community aid') is not guaranteed, particularly where the work is of the same type as, and is complementary to, that for which the aid had been granted under the previous application. The Commission, which, until 1991, was, during its examination of aid applications, unable to identify which vessels had already received aid for modernization, should specify on what terms and with what frequency a fishing vessel may benefit from more than one modernization measure. In any case, from the point of view of the management of the commitment of public money, it would not appear to be desirable for a new commitment to be entered into for a new project on behalf of the same beneficiary when payments authorized on the basis of a previous commitment have not yet been carried out.

3.76. More specifically, the Court's checks have revealed that, when individual projects are examined, the following rules may be overlooked without the national authorities drawing the appropriate conclusions in terms of the submission of the relevant repayment application to the Commission:

- (a) Although the Regulations clearly state that projects begun before the aid application is submitted are not eligible, the Court found that in certain cases (Mod ES 283/87/1 and 197/90/1) the work had in fact begun earlier. In other cases, (Mod ES 321 and 325/87/1), the work carried out beforehand had been excluded from the assessment base of the Community's contribution, when, in these circumstances, the whole project should have been rejected. With regard to the rules concerning the dates on which the work was carried out, the Court's inquiry showed that, in a number of cases, the certificates issued by the competent national authorities referred to the date on which the completion of the work was recorded rather than the actual dates on which it was carried out, a fact which greatly limits the scope of the audit.
- (b) The Member States' files (Germany and Ireland) are not always explicit with regard to the prior authorization on the part of the competent authority in the Member State that Article 4(2) of the aforementioned Regulation (EEC) No 894/87 requires for the making of any modifications to the original projects.
- (c) Certain modernization measures, regarding the French tuna fleet based in the tropical waters of the Atlantic and Indian Oceans, were carried out outside the Community, despite the fact that, in accordance with

⁽¹⁾ OJ No L 88, 31.3.1987, p. 1.

Table 4.2 — General summary: implementation rate er tranche

(in ECU at the accounting rate for the commitment)

Tranche	Commitments		Paid		Released	Abandoned		Still outstanding	
	N	ECU	N	ECU	ECU	N	ECU	N	ECU
1987/1	273	9 783 828	203	6 187 926	694 903	31	1 127 642	39	1 773 355
1988/1	344	9 963 950	255	6 691 565	363 260	41	685 647	48	2 224 146
1988/2	353	9 311 556	260	6 023 691	506 139	22	295 680	71	2 486 046
1989/1	342	11 585 939	253	7 759 206	409 006	22	616 340	67	2 801 385
1989/2	252	8 641 315	190	5 892 388	325 873	13	364 075	49	2 058 981
1990/1	230	8 548 528	90	2 416 056	243 209	5	212 275	135	5 676 975
1990/2	420	17 657 977	121	3 455 363	169 026	2	52 630	297	13 980 956
	2 214	75 493 093	1 372	38 426 195	2 711 416	136	3 354 289	706	31 001 844

Average aid per project: 34 098 Average expenditure per project: 28 007

State of implementation: Paid 50,9
Released 3,6 %
Abandoned 4,4 %
Still outstanding 41,1 %

Article 9(3)d of Regulation (EEC) No 4028/86, modernization measures should involve work that is to be carried out within the Community.

Effect of modernization work on fishing effort and capacity

3.77. Whereas Community Regulations consider almost all of the component parts of a fishing vessel, with the exception of fishing implements and nets (which can only benefit from aid if the vessel is being converted to a different type of fishing), to be eligible for Community aid in the context of a fishing fleet modernization measure, the practice followed differs from one Member State to another and can differ within the same Member State from one period to another.

3.78. In the first place, certain Member States have a broader definition of which investments are eligible for aid, in particular with regard to aid for fishing gear and nets. The result is that, in comparable circumstances to those described above under construction projects, aid is paid out on the basis of actual costs rather than estimated costs, which leads us to the same type of observation as at 3.59 above.

3.79. Secondly, and during recent years in particular, there has been a tendency in some Member States (Denmark, and the Netherlands) to exclude from modernization aid all investments likely to have a positive effect on fishing activity.

3.80. The result of the above is that one and the same modernization measure may be treated differently according to the Member State in which it is proposed, and that, given the variability of assessments between one Member State and another, the people working in this field do not have access to Community aid on an equal footing unlike the practice observed in the case of shipbuilding and aid for capacity adjustment.

3.81. The Court's examination of the modernization projects financed since 1987 shows that a significant proportion of them concern the installation of new engines (remotorization) and the replacement or installation of radio and other electronic equipment. In practice, these investments have contributed considerably towards improving the performance of the vessels in question in terms of fishing activity, whereas only in rare cases have increases in capacity as the result of either the installation of a more powerful engine or the lengthening of the ship (increase in tonnage) been accepted.

3.82. With regard to fishing capacity management objectives and the general objectives of the structural policy in the fishing sector, the audits carried out in the Member States have led to the following observations:

- (a) As was observed in paragraphs 2.7 — 2.9 and 3.41 above, fishing boat remotorization operations are often carried out installing derated engines, even though it is acknowledged that it is practically impossible to check the permanence of a derating operation that has not been carried out at the factory by the engine's manufacturer. In some cases, the findings made on the spot did not enable the Court to conclude that remotorization had actually been carried out without an increase in engine power.
- (b) In the case of Modernization projects UK/237/88/2, 88 and 89/89/1, which all involved the same vessel, the boat's capacity was indeed increased (it was lengthened) although the aid applications made no reference to the matter. Bearing in mind the rules governing the examination of applications for modernization aid and the situation of the British fishing fleet with regard to the objectives laid down in the MAGP, complete and accurate information on the nature of the projects in question could have led to these measures' being deemed ineligible for Community aid, in that the lengthening of a vessel normally results in an increase in fishing capacity.
- (c) In the case of Denmark, a number of applications for modernization aid had explicitly indicated that the vessels in question were to be converted from fishing for the production of fish meat to fishing for human consumption, because the aid applications specified unambiguously that in future catches intended for industrial use would be reduced to zero. The Court's examination of the statistics on the catches landed by the vessels concerned showed that, in a very significant number of cases (eight out of a sample of twenty) industrial fishing had been continued at the same rate as before, whereas, given that the period in question was characterized by a fall in fish meal and oil prices, the time seemed to be ripe for a genuine conversion of use. Whatever the case may be, given that all aid for industrial fishing is excluded from the common structural fishing policy, manifest non-compliance with the information given in the aid applications regarding future catches should have led to the aid that had been granted being called into question.

Suitability of modernization measures to achieve the purpose of management of fishing effort

3.83. Through the installation of new engines and more efficient electronic and fishing equipment, modernization

measures contribute significantly towards increasing fishing activity. Given the current fish-stock situation and the extent of overcapacity, it would be appropriate to ask whether, in the field of modernization measures, the definition of eligible investments should be changed. In fact, though it is legitimate to develop fishing activity for those parts of the fleet without problems of fish-stocks and overcapacity, for all other ships, it would seem logical for modernization activity to be limited to investments that contribute towards guaranteeing and increasing the safety of crews, exploiting catches better (equipment for processing and packaging catches in order to make sure that the product is at its best in terms of quality and state of conservation when it is landed so that a better price can be obtained) and, where possible, towards improving the selectivity of catches.

4. AID FOR THE ADJUSTMENT OF CAPACITIES

Applicable regulation

4.1. Title VII of Regulation (EEC) No 4028/86 lays down the rules whereby Community support is given to measures to eliminate excess fishing capacity. In the event of a temporary fall in fish stocks, a temporary withdrawal premium is granted until the stocks are replenished. If there is a permanent imbalance, i.e. the fishing capacity in the long term exceeds in terms of activity and mortality the level which the stock could sustain without jeopardizing its survival, a final cessation premium is granted in order to adjust fishing capacity to stocks. In accordance with Community regulations, these two types of aid may be granted by Member States, who are then entitled to reimbursement of 50 % of their expenses in accordance with the scales annexed to the regulation.

4.2. Firstly, the laying-up premium, the execution and implementation conditions of which in the Member States concerned are the subject of paragraphs 4.9 to 4.22 of Chapter 4 of the Court's annual report for the financial year 1991, is granted to fishing vessels provided that they suspend fishing for an additional 45 days. This measure accounted for 26 % of the commitment appropriations allocated to capacity adjustment over the period 1987 to 1990. In the absence of any explicit indication as to the scope of the cessation plan and, in particular, of any definition in the Community regulations of what is meant by fishing activity, the way the aid is handled varies from one Member State to another and in some cases it is granted without any actual additional cessation. In this way, fishing concerns have been granted aid for periods during which

they do not normally engage in any profitable fishing activity, thus frustrating the aim of managing and conserving stocks. Furthermore, the lack of precision in the current regulations makes it possible for both this aid and the modernization aid to be granted for the same withdrawal periods. In this light, despite the declared aim of managing stocks, the laying-up premium effectively becomes an accompanying welfare measure. In this connection, the role and scope of this aid instrument should be subject to more rigorous implementing rules and its place amongst the other structural measures should be defined in terms of its impact on reducing fishing activity, whereas the welfare aspect should be included in Community measures designed for that purpose.

4.3. Secondly, the final cessation premium may be granted to fishing vessels with a length between perpendiculars of over 12 metres which can show that they engaged in fishing activity on at least 100 days during the calendar year before the application, provided that they are dismantled or permanently transferred to a third country or put to non-fishing uses in Community waters. Like the laying-up premium, the final cessation premium is set at a fixed rate, according to the tonnage, on a Community scale which defines the limits up to which the Commission refunds the Member States. By its very nature, this measure aims to deal with the permanent imbalance between fish stocks and existing fishing capacities within the framework of the structural policy. Since the adoption of the above-mentioned Council Regulation (EEC) No 3944/90, which came into force as of 1 January 1991, the financial arrangements under this measure have been made more attractive and some specific adjustments to the regulations have been made in order to improve the effectiveness of the measure as a whole. Given the deadlines laid down for applications to be submitted and for Member States to be refunded for the final cessation premiums, this survey only covers ships that were withdrawn over the period 1987 to 1990 under the regulations that were initially applicable in this area. Nonetheless, the findings and observations set out below take into consideration, as a matter of necessity, the amendments made to the regulations since then.

Aid for final cessation

Scope and budgetary implementation

4.4. Over the period 1987 to 1990 only Ireland and the United Kingdom failed to make use of final cessation premiums to facilitate the adjustment of the capacity of their fishing fleets, although the premiums were hardly implemented by Belgium and France, which meant that some of the commitment appropriations were unexpended. A total of 97,9 Mio ECU was committed as final cessation

aid for the period 1987 to 1990, of which 52 Mio ECU, or 53 %, had been expended by the end of the 1991 financial year (see *Tables 5.1 to 5.4*). In accordance with the refund rules laid down by Decision 88/163/EEC of 2 February 1988 ⁽¹⁾, all applications for the refunding of expenditure incurred by the Member States during the financial years 1987 to 1990 should have been lodged and settled by the end of the 1991 financial year.

4.5. The implementation rates, by tranche and by Member State, of the appropriations committed for 1987 to 1990 give rise to the following comments and observations:

- (a) the time it takes to introduce national plans for withdrawal aid explains to a certain extent the fact that 70 % of the appropriations committed for the 1987 financial year have been released (see *Table 5.2*);
- (b) after an improvement in 1988 (with an appropriation utilization rate of 56 %) and again in 1989 (69 %), the utilization rate levelled off at 53 % in 1990;
- (c) this overall situation actually corresponds to considerable differences between one Member State and another. For example, the capacity reduction plans put into effect by Germany, Portugal and Denmark justify the appropriations committed at Community level, their respective utilization rates of 79 %, 78 % and 72 % being well above the average. Despite successive amendments to the decisions fixing, by Member State, the maximum amount of expenditure eligible for Community reimbursement, as referred to in paragraph 5.16 of the Court's annual report concerning the financial year 1990, it has become clear, particularly in the case of the charging of refund to Denmark in respect of 1990 appropriations entered in the budget for 1991, that applications for appropriations which are not subsequently utilized by certain Member States tend to make the operation of the capacity reduction plan as a whole more difficult.

The results

4.6. Over the period 1987 to 1990, the 52 Mio ECU paid as aid for final cessation (together with the same amount again in national contributions) made it possible to finance the withdrawal of 725 vessel from the Community fishing fleet. This corresponds to 78 644 GRT, or 3,8 % of total tonnage, and about 10 000 GRT more than the tonnage from the building projects financed during the same period.

4.7. Most of the tonnage withdrawn from the Community fishing fleet was actually the result of the capacity reduction plans put into effect by Denmark (39 % of the ships and 20 % of the tonnage), the Netherlands (7 % and 20 %), Spain (6 % and 19 %) and Portugal (16 % and 17 %). Virtually 85 % of these vessels (see *Table 5.4*) were more than 20 years old, and of these the majority (250 vessels or 34 % of the total) were more than 40 years old. With the exception of the Netherlands, the withdrawn vessels had a tonnage of less than 100 tonnes (79 %). Furthermore, with the exception of the withdrawal of a few very large vessels of several hundred tonnes, the average tonnage of the vessels withdrawn was considerably lower than the average tonnage of newly built vessels.

4.8. As regards the breakdown of the use made of the withdrawn vessels (see *Table 5.4*), 120 vessels, accounting for a tonnage of 5 820 GRT, or 7 % of total tonnage, were scrapped, 481, or 27 424 GRT and 35 % of the total tonnage, were put to non-fishing uses within Community waters (tourism, transport, recreational fishing), while the remaining 124 vessels accounting for 45 400 GRT, or 58 % of total tonnage, were exported to non-member States. It should also be pointed out that, especially in Denmark, a number of vessels which had initially been declared as being intended for non-fishing uses were subsequently exported to non-Community countries as fishing vessels.

4.9. The findings above regarding the uses to which the withdrawn vessels were put give rise to the following observations:

- (a) firstly, in the case of withdrawn vessels intended for non-fishing purposes, there is a need to organize checks to ensure that the intended purpose is abided by and not altered. Moreover, vessels intended for recreational fishing may in particular constitute an appreciable risk and their reallocation to this purpose may, particularly in cases where they had previously been engaging in the minimum fishing activity required by the regulations, represent only a very slight reduction in fishing activity in practice;
- (b) secondly, exportation to countries outside the Community — which in several cases involved countries with flags of convenience — actually means that the fishing capacity represented by those vessels is maintained and their fishing in international waters makes for direct competition with the Community fishing fleet. In practice, several countries with flags of convenience are not signatories to the international agreements on the management and conservation of fishing resources in certain fishing zones in international waters, which means that the vessels in question can fish in these waters without being subject to the same obligations as fishing boats sailing under a Community flag. On-the-spot inspections showed that vessels which had received the final cessation premium were in fact continuing to be used by the same operators. This was particularly the case where the sale

⁽¹⁾ OJ No L 72, 18.3.1988, p. 52.

Table 5.1 — Final cessation — General summary: Global budgetary situation and tonnage withdrawn

Member State	Commitments	%T	Paid	%N	%T	Unused	%N	%T	grt-W	%T	A	C	Difference %
Belgium	1 080	0,01	57	0,05	0,00	1 023	0,95	0,02	165	0,01	41	346	-48
Denmark	21 919	0,22	15 865	0,72	0,31	6 054	0,28	0,13	16 081	0,39	57	987	49
Germany	1 952	0,02	1 550	0,79	0,03	281	0,14	0,01	1 825	0,06	46	849	28
Greece	9 173	0,09	3 218	0,35	0,06	5 955	0,65	0,13	6 735	0,12	80	478	-28
Spain	15 450	0,16	7 778	0,50	0,15	7 672	0,50	0,17	15 281	0,06	382	509	-23
France	1 094	0,01	152	0,14	0,00	942	0,86	0,02	151	0,01	17	1 005	52
Italy	14 286	0,15	6 852	0,48	0,13	7 434	0,52	0,16	8 740	0,14	87	784	19
Netherlands	24 973	0,26	10 300	0,41	0,20	14 673	0,59	0,32	15 980	0,07	307	645	-3
Portugal	7 956	0,08	6 239	0,78	0,12	1 717	0,22	0,04	13 686	0,16	121	456	-31
	97 883	1,00	52 011	0,53	1,00	45 872	0,47	1,00	78 644	1,00	108	661	

%N = paid or unused as a percentage of the appropriations committed for each Member State
%T = Member State's share of the Community total
N = Total number of vessels withdrawn
grt-W = Total tonnage withdrawn
A = Average tonnage of vessels withdrawn
C = Average cost of grt withdrawn (for EEC)
Difference % = Percentage difference between average EEC cost and average cost of grt withdrawn

Table 5.2 — Final cessation — General summary: budgetary situation and destination of tonnage withdrawn (by financial year)

Financial year	Commitments	Paid	%	Unused	%	N	grt-w	A	C	S	grt-s	%	E	grt-e	%	O	grt-o
1987	18 553	5 648	0,30	12 905	0,70	7 711	63	732	30	1 094	0,14	13	3 665	0,48	80	2 952	0,38
1988	24 684	13 758	0,56	10 926	0,44	23 115	116	595	9	1 115	0,05	32	12 087	0,52	159	9 913	0,43
1989	22 640	15 673	0,69	6 967	0,31	22 904	119	684	35	1 705	0,07	44	15 036	0,66	114	6 162	0,27
1990	32 006	16 932	0,53	15 074	0,47	24 914	119	680	46	1 905	0,08	35	14 611	0,59	128	8 398	0,34
	97 883	52 011	0,53	45 872	0,47	78 644	108	661	120	5 820	0,07	124	45 400	0,58	481	27 424	0,35

N = Total number of vessels withdrawn
grt-w = Total tonnage withdrawn
M = Average tonnage of vessels withdrawn
C = Average cost of grt withdrawn (for EEC)
S = Number of vessels scrapped
grt-s = Tonnage scrapped
E = Number of vessels exported
grt-e = Tonnage exported non-Member States
O = Number of vessels assigned to a purpose other than fishing
grt-o = Tonnage assigned to a purpose other than fishing

Table 5.3 — Final cessation — General summary: destination of tonnage withdrawn

Member State	N	grt-w	%T	A	S	grt-s	%N	%T	E	grt-e	%N	%T	O	grt-o	%N	%T
Belgium	4	165	0,00	41	2	116	0,70	0,02	0	0	0,00	0,00	2	49	0,30	0,00
Denmark	283	16 081	0,20	57	3	99	0,01	0,02	30	1 903	0,12	0,04	250	14 081	0,88	0,51
Germany	40	1 825	0,02	46	0	0	0,00	0,00	2	119	0,07	0,00	38	1 706	0,93	0,06
Greece	84	6 735	0,09	80	8	227	0,03	0,04	5	2 220	0,33	0,05	71	4 288	0,64	0,16
Spain	40	15 281	0,19	382	18	1 637	0,11	0,28	18	13 164	0,86	0,29	4	479	0,03	0,02
France	9	151	0,00	17	1	20	0,13	0,00	1	16	0,11	0,00	7	115	0,76	0,00
Italy	100	8 740	0,11	87	37	1 244	0,14	0,21	22	6 134	0,70	0,14	41	1 362	0,16	0,05
Netherlands	52	15 980	0,20	307	0	0	0,00	0,00	30	12 221	0,76	0,27	22	3 759	0,24	0,14
Portugal	113	13 686	0,17	121	51	2 477	0,18	0,43	16	9 623	0,70	0,21	46	1 585	0,12	0,06
	725	78 644	1,00	108	120	5 820	0,07	1,00	124	45 400	0,58	1,00	481	27 424	0,35	1,00

N = Total number of vessels withdrawn
 grt-w = Total tonnage withdrawn
 %N = As percentage of Member State's grt-w
 %T = Member State's share as percentage of Community total
 A = Average tonnage of vessels withdrawn
 S = Number of vessels scrapped
 grt-s = Tonnage scrapped
 E = Number of vessels exported
 grt-e = Tonnage exported non-Member States
 O = Number of vessels assigned to a purpose other than fishing
 grt-o = Tonnage assigned to a purpose other than fishing

Table 5.4 — Final cessation — General summary: structure of withdrawals (tonnage and age)

Member State	N	Tonnage							
		0 < N < 100		100 < N < 400		400 < N < 3 500		3 500 < N	
		N	%	N	%	N	%	N	%
Belgium	4	4	1,00	0	0,00	0	0,00	0	0,00
Denmark	283	240	0,85	43	0,15	0	0,00	0	0,00
Germany	40	39	0,98	1	0,03	0	0,00	0	0,00
Greece	84	73	0,87	6	0,07	5	0,06	0	0,00
Spain	40	13	0,33	19	0,48	8	0,20	0	0,00
France	9	9	1,00	0	0,00	0	0,00	0	0,00
Italy	100	85	0,85	9	0,09	6	0,06	0	0,00
Netherlands	52	3	0,06	46	0,88	3	0,06	0	0,00
Portugal	113	103	0,91	2	0,02	8	0,07	0	0,00
	725	569	0,79	126	0,17	30	0,04	0	0,00

Member State	N	Age							
		0 < N < 10		10 < N < 20		20 < N < 40		40 < N	
		N	%	N	%	N	%	N	%
Belgium	4	0	0,00	0	0,00	2	0,50	2	0,50
Denmark	283	3	0,01	17	0,06	123	0,43	140	0,49
Germany	40	0	0,00	0	0,00	17	0,43	23	0,58
Greece	84	7	0,08	13	0,15	39	0,46	25	0,30
Spain	40	8	0,20	12	0,30	18	0,45	2	0,05
France	9	0	0,00	0	0,00	7	0,78	2	0,22
Italy	100	6	0,06	11	0,11	55	0,55	28	0,28
Netherlands	52	6	0,12	22	0,42	23	0,44	1	0,02
Portugal	113	0	0,00	4	0,04	82	0,73	27	0,24
	725	30	0,04	79	0,11	366	0,51	250	0,34

had been made for a symbolic price, or when the vessel continued landing its catch at its former port of registry with the same regularity.

4.10. The amendments to Regulation (EEC) No 4028/86 introduced by the abovementioned Regulation (EEC) No 3944/90 regarding the implementation of final cessation measures should have the following effect:

- (a) the new Article 23(1)(b) of amended Regulation (EEC) No 4028/86 states that any final cessation transaction involving permanent transfer to a non-member State shall not be eligible for any kind of aid if the transfer is liable to contravene international rules on the management and conservation of stocks: this new measure means that exports of vessels to certain countries are excluded from final cessation aid;
- (b) the new scale increases considerably — in the region of 50 % on average — the maximum amount of aid payable for shipbreaking, as it does in other cases where the withdrawn vessel is less than 20 years old. Increasing the Community reimbursement rate for shipbreaking to 70 % of the eligible amount means that the remaining costs to be met by the Member States are smaller than with the other withdrawal measures. This means that there is a certain incentive to prefer scrapping over other withdrawal methods. However, the scale of aid for ships over 20 years old which have not been withdrawn by scrapping has only been very slightly adjusted (0 % to 10 % depending on the tonnage). This means that, since 85 % of the withdrawn ships were over 20 years old and only 16 % of the total of withdrawn ships were scrapped, the impact of the amended scale is likely to continue to be rather limited.

Eligibility criteria

Length between perpendiculars

4.11. Article 24(2)(a) of Regulation (EEC) No 4028/86 stipulates that the final cessation premium may be granted to vessels registered in the Community and sailing under the flag of a Member State with a length between perpendiculars of at least 12 metres. Since length between perpendiculars is a shipbuilding measurement that only appears on tonnage certificates issued subsequent to the London Convention (see Annex 2) it has not been established or certified for virtually any of the older vessels in the Community fishing fleet.

4.12. As regards the length between perpendiculars condition, the eligibility of withdrawn vessels for Community aid has been assessed differently from one Member State to another and the practices followed give rise to the following observations:

- (a) in Greece, Spain, Italy, the Netherlands and Portugal, the length between perpendiculars is established and certified by a technical department with responsibility for gauging vessels. Depending on the circumstances, this certification is based either on data from the department's file or on a re-measurement, which may be carried out either alongside the quay or out of the water. The selective checks carried out in the course of the audit on the files concerning the vessels with a length between perpendiculars close to the lower limit for eligibility revealed several cases where the information contained in the files of the relevant authorities were not consistent with the final length appearing on the form attached to the reimbursement application submitted to the Commission;
- (b) in Germany, the length between perpendiculars is worked out by applying a coefficient of 0.90 to the overall length of the vessel, although there is no correspondence between these two measurements;
- (c) in Denmark, the length between perpendiculars is established either by means of a standard calculation using a coefficient of 0.95 on the specification length or on the basis of a measurement made by the relevant technical department: in certain cases measurement gives a length of over 12 metres, whereas using the 0.95 coefficient would give a length significantly under this threshold.

4.13. In any case, the diversity of practices as regards establishing eligibility has undeniable financial consequences: it gives rise to disparities (if Denmark had used the same criterion as Germany did, twenty or so vessels accounting for expenditure of about 600 000 ECU would not have been eligible for this Community aid) and confusion as to eligibility for Community reimbursement, since there is always some leeway in the case of older vessels for which there no longer exist any building plans. Given the number of small vessels withdrawn, the financial consequences are considerable and, despite the amendments to Regulation (EEC) No 3944/90 referred to above, this observation is still valid since the lower limit of 12 metres was only abolished as an eligibility criterion for vessels that were actually scrapped.

Fishing activity

4.14. Article 24(2)(b) of Regulation (EEC) No 4028/86 stipulates that the final cessation premium may only be granted to vessels having engaged in fishing activity for at least 100 days during the calendar year prior to the grant application. In practice, there is no Community-level definition of fishing activity. Should it be defined in terms of sales and catch declarations converted into the fishing activity equivalent, or a certain number of fresh fish, the total length of days at sea, the port entry and exit days or the entries in the fishing log, which does not have to be kept by all vessels anyway? The right answer probably depends on the types of fishing and fisheries involved. In any case, what is meant by 'fishing activity' should be pinpointed and given a common definition. In this respect, the fishing log and the information it contains should be a primary source for documenting fishing activity.

4.15. In more general terms, the final cessation aid should be more precisely targeted in respect of its consequences in terms of resource management and fishing activity. For example, deep-sea vessels fishing subject to international agreements or in international waters should not be entitled to final cessation aid, unless, as was observed in Greece, they provide supporting documents to prove that the vessel in question had been contributing to supplying the Community market. In the case of vessels operating in Community waters, it would be useful to be able to take into account the impact of the withdrawal in terms of fishing activity and catches. Ton for ton, one vessel may in fact perform much better than another. In this connection, the current approach seems to be undermining the overall aim of reducing capacities, in that it makes it less advantageous to withdraw a vessel that has undergone some modernization work within the preceding five years and is therefore very likely to have a considerably greater catch potential than a vessel which has not undergone any modernization for a long time. Similarly, a particular case indicated that, when assessing fishing activity, it would be a good idea to take into account the annual turnover of the vessel applying for withdrawal.

The validation criterion

4.16. The Community regulations state that final cessation aid is calculated according to the number of tons, and Decision 88/163/EEC referred to above and the amendments to Regulation (EEC) No 3944/90 specify that this means the gross registered tonnage, i.e. the tonnage

defined by the Oslo Convention (see Annex 1). The observations on the differences between the tonnage units used by the Community fishing fleets (see Paragraphs 2.4 to 2.6) have a direct effect on the implementation of the final cessation aid system, with considerable financial consequences. It is obvious that people involved in the fishing trade are not interested in the aid being paid on the basis of a tonnage that has been underestimated (due to the method of calculation used) compared with the international tonnage. Furthermore, the fact that the Community tonnage defined by the London Convention has not come into force for all vessels (the adjustment period runs until July 1994) and that it has been introduced on different dates in different Member States explains to a large extent the discrepancies between the situations in the different Member States.

4.17. Thus, in all Member States, with the exception of the Netherlands, the aid was paid out on the basis of the tonnage appearing on the existing tonnage certificates. All the vessels withdrawn under the Dutch capacity withdrawal plan were systematically re-measured by 1991 in order to establish the tonnage of the withdrawn vessels in terms of the Community tonnage (the London Convention). A sample of about 40 vessels revealed that this had led to an average increase of 7 % in the tonnage in question. This increase is actually made up of positive and negative differences that vary from vessel to vessel, since there is no mathematical relationship between the two systems of tonnage measurement. In financial terms, this involves an additional cost of approximately 3,2 % (0,25 Mio ECU) to the Community, although, if the Community rules had been implemented (GRT, Oslo Convention tonnage), the discrepancies would have been even greater in the case of certain final beneficiaries.

4.18. In conclusion, given the amount of money involved in even the smallest final cessation operation (450 000 ECU for scrapping a vessel of 100 GRT between 10 and 20 years old, 387 500 ECU if it is over 20 years old), prior to payment of the aid there should be a complete measurement of the vessel carried out by an independent body in accordance with Community rules (length between perpendiculars, tonnage measured in the units stipulated in the regulations). Failing this, it might have been conceivable to pay the aid on the basis of the registered tonnage and to assess eligibility by reference to the identification, registration or specification length referred to in the last tonnage certificate issued before the system of aid came into force, rather than, as Decision 88/163/EEC referred to above and the Community regulations do, having the eligibility criterion deriving from the London Convention — i.e. the length between perpendiculars which has not been determined for the majority of vessels — and a

payment criterion deriving from the Oslo Convention, since this can only lead to confusion and uncertainty in implementation in the real world.

Other observations regarding the implementation of final cessation

Combining the premium with laying-up aid

4.19. Virtually all the vessels receiving final cessation aid in Germany in 1988 and 1989 had also received, subject to compliance with the length between perpendiculars condition, laying-up premiums for the preceding years or for the same financial year for which they were receiving the final cessation aid. The second indent of Annex 1 to Decision 88/163/EEC stipulates that the relevant national authority must certify that none of the vessels making such a fund application have been in receipt of other Community aid of the same type. Given that both the laying-up aid and the final cessation aid are capacity adjustment measures, any amounts paid for the former should be at least noted on the reimbursement application, if not actually deducted. Since this is not specifically stated anywhere, the opportunity of overlapping both types of capacity adjustment aid means that significantly more is spent to achieve the same end result (between 15 and 50 % depending on how much laying-up aid was granted in the years prior to the final cessation). Concern for sound financial management should lead to a strict definition of possible rules regarding overlapping of aid, in order to avoid spending more on capacity withdrawal than is necessary for the intended purpose to be achieved.

Compliance with the 50 % ceiling for Community reimbursement

4.20. Articles 22 (1) and (2) and 26 (1), (2) and (5) of Regulation (EEC) No 4028/86, taken together, state that the Commission refunds up to 50 % of Member States' eligible expenses as defined by the Community scale. In Greece a compulsory *parafiscal* levy of 3.6 % was deducted from payments to the beneficiaries, although it was the gross amount which appeared on the reimbursement statement submitted to the Commission. In the Netherlands the final cessation aid is made up of 1 500 ECU per GRT from public funds and 300 ECU per GRT from a compulsory fisherman's contribution scheme set up by the fishing trade at the same time as the capacity withdrawal plans. The fact that the reimbursement applications related

to the whole amounts paid to the beneficiaries, within the upper limit defined by the Community scale, entailed an extra cost to the Community budget of 300 000 ECU (2,9 % of the total reimbursed by the Commission), which did not correspond to any public money spent by the Member State. Since the regulations fix the Community's contribution to Member States' expenses at 50 %, and in the light of the observations above, there should be a stricter definition of which amounts are actually eligible for Community reimbursement.

Consistency with the aims of the MAGPs and the rule regarding withdrawal connected to new shipbuilding.

4.21. Although the general aim of the MAGPs is the reduction of capacities, the provisions contained in them may specifically allow a certain section of the fleet, defined geographically or in terms of a certain type of fishing, to have its capacity increased. In these particular cases, concern for consistency and the sound allocation of budgetary resources should rule out the possibility of vessels from these sections of the fleet being able to receive final cessation aid at the same time as new shipbuilding is being authorized for the same section of the fleet without any corresponding withdrawals.

4.22. Moreover, the capacity reduction implementation plans should be drawn up in such a way as to prevent the capacities withdrawn with public funds from being replaced by new capacities under any circumstances. For example, in the case of the Netherlands the whole of the physical capacity withdrawn (+ 15 000 GRT and + 43 000 KW) was replaced — in many cases by the very people who had received the final cessation premium — because the beneficiaries held building licences and licences in reserve. The recipient of a final cessation premium should really be obliged to maintain his other fishing capacities at the same level, unless he introduces a new capacity reduction each time a new vessel is registered.

4.23. In more general terms, if, following the implementation of a capacity reduction plan financed from public funds, a fishing fleet falls short of the objectives set out in the MAGP, in the interests of sound financial management a shipowner should be ineligible to receive public aid for a vessel building project, unless it is conditional on some withdrawal of capacity, since otherwise this practice would maximize the cost to public budgets of a structural policy that is supposed to reduce the over-capacity.

5. GENERAL CONCLUSIONS AND RECOMMENDATIONS

Conclusions

5.1. With reference to the audit objectives set out in paragraph 1.38, the Court's findings and observations may be summarized as follows:

(a) Over the period in question the Commission has not made use of all the possibilities provided for in the legislation to speed up the process of standardizing the measurement of the tonnage of Community fishing vessels (see paragraphs 2.5 and 2.6). Furthermore, the absence of any clear position on the derating of engines leads to uncertainty as to the overall KW power of Community fishing vessels (see paragraph 2.9). Inasmuch as the reliability and standardization of units of measurement are prerequisites for operating any structural policy in the area of fisheries, the present lack of precision in this area is an obstacle which must be overcome as soon as possible.

(b) In the current context of overcapacity in the Community fishing fleet, the aid disbursed over the period 1987 to 1990 has not contributed sufficiently to the aim of adjusting the capacities of the Community fishing fleet. This is due firstly to the fact that the withdrawn capacity and the withdrawals associated with the building of new ships represent, in terms of fishing activity, only a small fraction of capacity created (see paragraphs 3.22 to 3.25). Secondly, the modernization measures may on occasion have increased capacity (see paragraph 3.82) and, more significantly, may have contributed to the development of fishing activity, in particular as a result of all the engine-replacement activities. Lastly, as regards the final cessation premium, the bulk of the capacity in question has effectively been relocated (see paragraphs 4.8 and 4.9), which means that, overall, it is still a competing factor vis-à-vis the Community fishing fleet.

5.2. As regards effective methods of on-the-spot implementation, it should be pointed out that in many cases these do not comply with the conditions in the regulations or with the principles of sound financial management. The Commission's inadequate control of the scope and significance of the units of measurement on which eligibility for Community aid and the payment of that aid depends (see paragraphs 2.5, 3.55, 4.12, 4.13, 4.16 and 4.17) provides an initial explanation of the anomalies which were observed. Other factors which entail an extra burden on the Community budget and which could be avoided by the imposition of greater discipline are: a lack of strictness when processing the applications (see paragraphs 3.12 to

3.16 and 3.51), vague supporting evidence for making payments (see paragraphs 3.43 to 3.47), changes of supplier between the processing and implementation stages (see paragraphs 3.48 and 3.49) and adjustments made in mid-project (see paragraphs 3.50 and 3.51). Lastly, unclear regulations (see paragraphs 3.65, 3.75(b) and 4.19 and paragraph 4.19 of the annual report relating to the financial year 1991) and too much leeway [see paragraphs 3.38, 3.39, 3.57 to 3.63 and 3.82(c)] are to a certain extent indicative of a policy on aid or payments which is too generous in the context of the stringency which the overcapacity situation so obviously requires.

Recommendations

Need to intensify efforts to harmonize the units of measurement of fishing capacity for the different Community fleets

5.3. Although there are provisions in the regulations for harmonizing the tonnage units, i.e. the measurement of capacity, the period 1987 to 1990 was characterized by a lack of insistence on compliance, which explains to a large extent the current discrepancies between the ways the capacities of the fishing fleets of the different Member States are expressed. Any public money granted to a fishing vessel should be strictly conditional on the recipient vessel complying with the norms as regards the units of measurement, and where necessary, special financial assistance should be provided for. As regards the registered power of the fishing vessels, any derating activities should be strictly regulated and monitored and should be easily identifiable in the fishing vessel register.

Need to develop the register so that it can be used for all areas of the common fisheries policy

5.4. The Community fishing vessel register constitutes a considerable step forward which has improved the available information on the Community fishing fleet. This does not, however, alter the fact that its use to promote the structural policy needs to be intensified, in particular by consulting it more systematically, as a pre-condition for granting aid from public funds, in order to ensure that the MAGP objectives of modifying capacities are effectively achieved. As regards intra-Community monitoring of fishing vessels, the role of this activity should be developed

and the prior procedures necessary for any entry to be made in the register should be explicitly defined, so that a withdrawal in one Member State is effective in respect of the Community as a whole.

Need to structure the MAGPs so as to establish a stronger link between the aid and the policy on the management and conservation of resources

5.5. The current MAGPs only distinguish the different types of fishing and sections of the fleet in an ad hoc and limited way, whereas in terms of capacity the situation may vary considerably between different types of fishing and the stocks in question. To be more specific, observing the MAGPs' overall capacity objectives means that in most cases projects are deemed eligible for public funds regardless of any selection criteria in respect of the type of fishing or the legal provisions applying to the waters in which the vessels are going to fish. In this respect, the amount of aid could be proportional to how successfully the public authorities manage and conserve stocks.

Need to restrict capacity development aid measures to cases where the available resources may be underfished, rather than excluding them outright.

5.6. Firstly, given that there is an overall surplus of capacity, aid to create new capacity should be restricted to those cases where the new capacity would be used to exploit under-exploited resources. Each aid application file should include precise information, supported by the opinion of a scientific specialist, on the existence and availability of resources which could be fished. The fishing potential that the capacity withdrawn to make way for the new project represents should in all cases be precisely documented in terms of volume of catches, with confirmation from the authorities with responsibility for inspecting landings.

5.7. Secondly, when assessing compliance with the overall objectives of the MAGPs prior to granting financial assistance, no account should be taken of tonnage withdrawn under a capacity withdrawal plan and assistance should only be granted to shipbuilding projects if they are associated with the withdrawal of a clearly larger capacity. As can be seen in Table 6, the aid paid for capacity withdrawal, particularly in the case of shipbreaking, exceeds the assistance granted for building. In practice, an approach to the problem which allows a vessel to receive a final cessation premium and simultaneously allows a new

project to be started without any associated withdrawal of capacity results in a considerable increase in the level of expenditure and does not contribute to the purpose of reducing capacities. In such cases, the overall cost to Community and national public finances as a whole is considerably higher than the cost of building the new ship taken on its own, particularly in cases where the new equipment is eligible for subsidies at the maximum rate authorized by the regulations and the vessel is withdrawn by scrapping.

5.8. Finally, as regards modernization measures, priority, or even exclusive eligibility, should be granted only to those projects which enhance the value of the catch, which encourage more selective fishing and which improve overall working conditions and equipment safety conditions, whilst the eligibility of projects leading to an increase in fishing activity should, just like the building projects, be strictly assessed in the light of the state of fish stocks.

Need to ensure that aid is paid out in strict compliance with the provisions of the regulations and the conditions for granting assistance

5.9. As regards the payment of the aid, the Commission should adopt clearer and more stringent rules so that the actual payments are made strictly in accordance with the regulations and decisions.

5.10. In particular, as regards the building of fishing boats, aid should only be paid for projects which strictly meet the physical criteria on which the decision to grant financial assistance was based. The actual procedures for disbursing the amount of aid should be re-examined, to make them easier to inspect, whilst also ensuring that they are more in line with the purposes and monitoring criteria of the fisheries structural policy. Lastly, the payment of the Community contribution should be conditional on the Member State's actually paying its contribution, and on the overall amount of public assistance received by the project within the limits stipulated in the regulations.

5.11. As regards final cessation aid, the size of the individual sums paid out obviously warrants stringent documentary support proving compliance with the validation criteria (measurement of tonnage in GRT) and the eligibility criteria (length between perpendiculars) by reference to the requirements of the Community regulations, in the form of a certificate issued on the basis of the current international rules governing this matter.

Table 6. — Comparison of shipbuilding aid and final cessation aided in relation to grt and average vessel aided during period 1987-1990

	(1) grt	(2) ECU	(3) ECU	(4) ECU	(5) ECU	(6) ECU	(7) ECU
Belgium	190	1 688	2 321	1 741	1 243	1 036	829
Germany	232	1 241	2 154	1 616	1 154	962	769
Greece	51	2 600	3 486	2 615	1 868	1 556	1 245
Spain	113	2 801	2 949	2 212	1 580	1 316	1 053
France	93	2 869	3 176	2 382	1 702	1 418	1 134
Ireland	28	4 888	3 775	2 750	2 022	1 685	1 348
Italy	72	3 183	3 286	2 465	1 760	1 467	1 174
Portugal	131	2 115	2 736	2 052	1 466	1 221	977
United Kingdom	96	2 544	3 165	2 373	1 695	1 413	1 130

Key:

(1): average tonnage of aided vessels during period 1987-1990.

(2): EEC aid to grt built, for the average vessel built during period 1987-1990.

(3): maximum cost to the EEC, per grt, of scrapping a vessel 10 — 20 years old with a tonnage equivalent to that of the average vessel built in the period 1987-1990.

(4): maximum cost to the EEC, per grt, of scrapping a vessel more than 20 years old with a tonnage equivalent to that of the average vessel built during the period 1987-1990.

(5): maximum cost to the EEC, per grt, of withdrawal other than by scrapping of a vessel less than 10 years old with a tonnage equivalent to that of the average vessel built during the period 1987-1990.

(6): maximum cost to the EEC, per grt, of withdrawal other than by scrapping of a vessel 10-20 years old with a tonnage equivalent to that of the average vessel built during the period 1987-1990.

(7): maximum cost to the EEC, per grt, of withdrawal other than by scrapping of a vessel more than 20 years old with a tonnage equivalent to that of the average vessel built during the period 1987-1990.

Final observation

5.12. The present imbalance between existing fishing capacities and available fish stocks makes it more necessary than in the past for the structural policy to aim for capacity adjustment, i.e. a reduction of capacities. This approach calls, on the one hand, for social welfare measures for all those working in this sector and, on the other hand, for acknowledgement of a temporarily enlarged role for the fishing activity limitation measures. Whilst taking into consideration the international dimension, and the con-

straints arising from the need to supply the Community market with fish, new shipbuilding projects should be undertaken only if they are completely neutral in terms of fishing capacity and pressure on stocks, and subject to a scientific opinion assessing the state of the fish stocks in question. Overall, the structural policy should aim to adjust the existing fishing capacity to a level which would make it possible for catches to continue at a rate that was as little influenced as possible by efforts to restrict fishing activity, at the same time as safeguarding fish stocks over the long term at a level that would allow continuous, regular and economically viable fishing.

This report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 23 April 1993.

For the Court of Auditors

André J. Middelhoeck
President

ANNEX 1

UNITS OF CAPACITY

1. In the Community regulations, two parameters are used to measure the fishing capacity of a vessel: the engine power in kilowatts (kW) and the tonnage. According to Council Regulation (EEC) No 2930/86 of 22 September 1986 the tonnage of a vessel is gross tonnage as specified in Annex 1 to the International Convention on Tonnage Measurement of Ships ('the 1969 London Convention'), whilst the engine power is the continuous engine power determined in accordance with the requirements adopted by the International Organization for Standardization ('ISO standard').

TONNAGE OF FISHING VESSELS

2. As far as tonnage it should be noted that in international law, as well as in practice, several systems of tonnage measurement exist side by side. For example, gross tonnage as defined by the London Convention will only become obligatory for all vessels over 24 metres long after 18 July 1994. Until then, the system of tonnage defined by the Oslo Convention (unit of measurement: 'le tonneau de jauge brute TjB', Gross Register Ton (GRT), 'Brutto Register Ton BRT') will continue to be valid, whilst measuring units defined at national level (sometimes using a simplified formula) may also be used to determine the tonnage of any vessel which can operate without an international tonnage certificate.

3. The Community rules which apply to fishing vessels under Regulation (EEC) No 2930/86 provide:

- (a) that the Community definition of tonnage is to apply to any vessel which entered service or was modified on or after 1 January 1987, but will be applicable to other ships only as from 18 July 1994;
- (b) that the tonnage of a vessel is to be determined as provided in Annex I to the London Convention, which lays down rules for calculating the gross and net tonnage of ships.

4. Whereas under Article 4(1)(b) of the London Convention the scope of the Convention is limited to ships over 24 metres (79 feet) long, the effect of the reference to Annex 1 of the Convention is that the tonnage of all the fishing vessels in the Community fleet is established according to the calculation rules laid down by the London Convention, irrespective of their length. This approach, which goes further than the provisions of general international law in general, means that as of 18 July 1994 the tonnage measurement criterion will apply to all fishing vessels at Community level, provided that the tonnage of the vessels in question is established or recalculated between now and then in accordance with the rules laid down in Annex 1 to the London Convention.

THE POWER OF FISHING VESSELS' ENGINES

5. According to Article 5 of Regulation 2930/86, which defines the characteristics of fishing vessels, the engine power is the total of the maximum continuous power determined in accordance with the requirements adopted by the International Organization for Standardization, taking into account any gearbox incorporated in the engine.

6. The importance of the engine power varies according to the type of fishing (it is very important for trawlers but far less so for liners, which use lines and hooks, and pot vessels, which essentially use posts to catch crustacea), but in recent decades developments in fishing methods and the concerns of those in the trade (partially dictated by safety considerations) have produced a definite trend towards the use of increasingly powerful ships. Having regard to the incidence of this factor on the fishing effort, the aim of the structural policy objective, conversely, is to reduce the overall power of the fleet.

7. In practice, various solutions have been adopted in order to reconcile these conflicting aims, the most common and the most reputable being to fit a governor or derating device to the engine. Although neither the Community regulations nor the International Organization for Standardization recognize such practices, the Commission guidelines for dealing with applications for aid for the construction or modernization of fishing vessels do accept derating, subject to certain conditions and within well-defined limits.

8. To put it in simplified terms, an engine can be derated either when it is being manufactured or during installation at the shipyard. In the latter case the usual method of derating is to modify the injectors by fitting seals which can be removed at any time, especially if there is an emergency at sea. Conversely, if the engine has been derated by the manufacturer, reversing the process is a more complex operation which, for reasons of safety and liability, is normally only carried out by the manufacturer on his own premises.

ANNEX 2

LENGTH BETWEEN PERPENDICULARS

1. Article 2(2) of Regulation (EEC) No 2930/86 defines the length between perpendiculars as follows:

'When the length between perpendiculars is mentioned in Community legislation, it shall be defined as the distance measured between the forward and the after perpendiculars as defined by the International Convention for the Safety of Fishing Vessels.

The length between perpendiculars shall be measured in metres with an accuracy of two decimals.'

2. The International Convention for the Safety of Fishing Vessels (Torremolinos, 2 April 1977) defines the length between perpendiculars as follows (Rule 2, definitions 5 and 6):

'Definition 5

3. The length (L) shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least depth measured from the keel line, or as the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline.

'Definition 6

4. The forward and after perpendiculars shall be taken at the forward and after ends of the length (L). The forward perpendicular shall be coincident with the foreside of the stem on the waterline on which the length is measured.'

5. As a result of combining Rules 5 and 6, the length between perpendiculars is the greater of the lengths (L) mentioned in Rule 5 of the Torremolinos Convention.

6. Rule 8 of Article 2 — Definitions — of the 1969 International Convention on Tonnage Measurement of Ships ('the London Convention') (the Convention which applies to the tonnage of Community fishing vessels pursuant to Article 4(1) of Regulation (EEC) No 2930/86) states, 'Length' means 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline'.

7. The definition of length given in the International Convention on Tonnage Measurement of Ships coincides with the definition of length between perpendiculars given by Rules 5 and 6 of the International Convention for the Safety of Fishing Vessels. Consequently, the length specified in an international tonnage certificate by reference to the 1969 International Convention, which is usually referred to as length 2(8) — referring to the London Convention definition — is, in fact, the length between perpendiculars.

REPLIES OF THE COMMISSION

1. INTRODUCTION

The Commission has no comments on Chapter 1.

2. THE COMMUNITY REGISTER OF FISHING VESSELS AND THE MULTIANNUAL GUIDANCE PROGRAMMES (MGPS): THE INSTRUMENTS OF INFORMATION AND MANAGEMENT

The Community fishing vessel register

The limits of the Community register

2.3. The use of the Community register of fishing vessels, adopted in 1989, has brought to light discrepancies between the data transmitted by the Member States in connection with the MGPs and the data contained in the register. This disparity has entailed a substantial amount of work on revising figures on capacity in some Member States and alignment on the Community register. This work has given the Commission a clearer view of the situation with regard to the Member States' fleets. Another beneficial effect of the gradual application of the Community register has been the improvement in the national registers.

Considerable progress was made during the first half of 1992 on updating the Community register, and the situation has improved further since then.

Disparities in tonnage measurements

2.5 – 2.6. The Commission acknowledges the importance of harmonizing tonnage measurements and observance of the rules defining the characteristics of fishing vessels.

The Commission will continue its work on harmonizing units of measurement of capacity of the different fleets, with emphasis on the objective of making all public aid conditional upon standardization.

In connection with the reform of the Structural Funds, the Commission will, in the special rules on the fisheries sector, specify that, as a prerequisite for any Community financing, Member States are to ensure that the Regulation defining characteristics for fishing vessels (Regulation (EEC) No 2930/86) and the Regulation on the Community register (Regulation (EEC) No 163/89) are observed.

The Commission will look into the possibility of financing the cost of remeasuring in connection with modernization schemes.

To ensure that Member States observe the Regulation on technical characteristics the Commission will very shortly be publishing a communication in the Official Journal reiterating the provisions of the Regulation and stressing the obligation to transmit information concerning the characteristics of fishing, in accordance with the Regulation on the Community register.

Under a new draft control system presented by the Commission to the Council on 19 December 1992, which would apply to all the various aspects of the CFP, the Commission proposes measures for monitoring the technical characteristics of vessels ⁽¹⁾. The new Regulation also provides for extending control to structural schemes and for on-the-spot checks — by inspectors designated by the Commission — that structural measures are being observed, and in particular the technical conditions under which operations financed by the Community are carried out and monitored.

Uncertainty regarding the power criterion

2.9. The checking and certification of derating is a matter for the Member States. The Commission would point out, however, that the proposal for a new control system, mentioned in the reply to points 2.5-2.6, lays down that the Member States are to communicate to the Commission without delay information on the verification methods used to check the engine power and tonnage of fishing vessels and the specifications of fishing gear and their number per vessel. In this context, the Member States may impose measures for checking power on the basis, for example, of a new technology (torsionmetry) whereby the actual power of the engine operating at sea can be measured.

Absence of certain useful items of information from the register

2.10. The Commission is looking into ways of including information about derating in the register.

⁽¹⁾ COM(92) 392, 30.9.1992.

In the investigation into the reliability of the register the Commission will check that the information transmitted corresponds to the Community rules.

In connection with the implementation of the new MGPs the Commission will broach the question currently under discussion with the Member States of taking derating into account.

2.11. By creating a single official number for each individual vessel, the Community register now enables links to be made between all computer applications, so the background of each vessel for which Community aid is requested can be traced. The single official number is established by the Member States in connection with the regular transmission of computerized data relating to the Community register to the Commission. This procedure was established for some Member States in 1989 and for all Member States from 1 January 1991.

The multiannual guidance programmes (MGPs)

Implementation

Adjusting to reality

2.19. The Commission would emphasize that the amendments to the MGPs came about after a great deal of work by the Commission in close cooperation with the Member States to adjust the MGPs to the actual situation with regard to fishing fleets. To assess the capacity of the Greek fleet, the Commission is taking the same approach for adjusting to reality as for the fishing fleets of the United Kingdom and Spain.

2.23. The main reason for these amendments is the introduction of the Community register in 1989, which helped to improve the national registers and which, for some Member States, required adaptation of data bases.

2.24. For the United Kingdom the establishment of a register of fishing vessels in 1989, with a switch from an active fleet to a registered fleet, required the complete restructuring, with the assistance of Commission staff, of the original data base. Judgments of the Court of Justice in cases relating to freedom of establishment of Community fishermen ⁽¹⁾ have also substantially increased the capacity of the United Kingdom fleet.

(1) Cases 3/87, 216/87, 221/89 and 246/89.

For other Member States, particularly France and Spain, taking non-operational vessels into account also gave rise to amendments.

As for the exclusion from the Spanish MGP of vessels on the basic list as defined in Article 158 of the Act of Accession, the reason for this was to enable these vessels to acquire a capacity in accordance with the conditions laid down in the Act of Accession.

2.25. See reply to 2.3 and 2.24.

The figures

2.26 – 2.30. The Commission agrees with the Court's analysis of the consequences of the amendments made to the MGPs in terms of fishing capacity in relation to the objectives of the MGPs.

2.31. The Commission would stress that failure to observe the objective of fishing capacity reduction by the Member States mentioned has led to non-financing of aid applications submitted for shipbuilding, above all since the period considered by the Court (1991-92).

The continuance of a degree of heterogeneity

2.32. The new MGPs for the period 1993-96 (OJ No L 401, 31. 12. 1992) cover the entire capacity of the fishing fleets of the Member States and on this basis the new Spanish MGP includes the basic list capacity (see also point 2.24).

2.33. The new MGPs for the period 1993-96 differ from the earlier ones, which were characterized by a global reduction objective, in that the fishing fleets are segmented and fishing effort targets are set per segment.

This makes it possible to tailor the size of the fleets of the individual Member States to levels compatible with the fishing resources available in each fishing zone.

Inadequacy of the existing management instruments

The limits of the present MGPs

2.34. The Commission shares the Court's view that greater segmentation of the MGPs is needed. The Commission wanted to establish programmes featuring

segmentation of the fleet for the period 1992-96, but as the Member States were not in a position to supply reliable data on segmentation transitional MGPs had to be adopted for 1992.

It should, nonetheless, be pointed out that the transitional MGPs did provide for capacity reduction in terms of tonnage and engine power of 2% in one year, which is more than the cuts provided for in the 1987-1991 MGPs, namely 3% in terms of tonnage and 2% in terms of power over a period of five years.

It should also be borne in mind that this reduction was calculated on a more sound statistical basis.

In close cooperation with the Member States, the Commission established segmented MGPs for the first time for the period 1993-96.

The new MGPs (1993-96) take account of the various methods of fishing, fishing zones and resources involved. The reduction in fishing effort overall is greater than in the earlier MGPs.

The segmentation of the fishing fleets is detailed in the 1993-96 MGPs (see OJ No L 401 of 31 December 1992).

Weighting the notion of fishing capacity

2.35 – 2.37. Having regard to the impact of technological progress, which can be put at 2% a year, and having regard to the particularly worrying state of certain fish stocks, the Commission had initially envisaged for the 1993-96 MGPs reductions in fishing effort of 30% for demersal species and 20% for benthic species and no increase for pelagic species. Static gear was to be dealt with by appropriate technical measures.

These initial guidelines were regarded by the Member States as being too costly in social and economic terms, and following a debate in the Council of Ministers, they were amended by the Commission, which agreed that the above-mentioned cuts should be reduced from 30 to 20% and 20 to 15%.

The Commission decision was adopted in December 1992 after detailed and difficult debates in the Standing Committee on the Fishing Industry (SCFI).

The relation between fish stocks and the existing level of fishing capacity

2.39. See reply to points 2.33 and 2.34.

Breakdown by main fishing zones

2.40. The new segmented MGPs make it easier to take the fishing zones into consideration. Segmentation takes account of coastal and Community waters and also international waters and non-member countries.

Compatibility of MGP objectives with the general guidelines for regional development

2.41. The new MGPs are designed to regulate fishing effort for individual fisheries in an equitable manner between Member States. Ireland was given special status in connection with the new MGPs following a Council debate.

The relationship between the Community register and the MGPs

2.42. All the Member States have supplied data on a magnetic medium. To illustrate progress in this area, a demonstration of how the register operates was organized for the European Parliament Subcommittee on Fisheries in Brussels on 25 June 1992, and the Fisheries Ministers attended a similar demonstration in Luxembourg on 9 June when attending a Council meeting.

The reliability of the register is being progressively improved. Most of the Member States had transmitted computerized data on the situation of the fleet register before the demonstrations of the register in June 1992. Some Member States did not send in their data until autumn 1992, and the last Member State transmitted its magnetic medium in January 1993.

2.43. The Commission's efforts to make the Community register operational will make it possible, using the register, to monitor developments with regard to the intermediate objectives of the MGPs, which are a key element in the Commission's decisions on granting building aid.

2.44. Having regard to the improvement in the operation of the Community register, the granting of aid, the volume

of which is small in terms of the overall budget (ECU 8 million in 1991 and ECU 5 million in 1992, equivalent to 2% of the budget for structural operations in 1992), is currently subject to the inclusion of the vessels concerned in the Community register.

The Commission allocates these small amounts for construction under the second tranche.

Other management weaknesses

2.45. As indicated in point 2.11, the Commission has a system of internal numbers for cross-checking between the various aids. The Member States, which have the main responsibility for ensuring that these rules are observed, are systematically refunding certain aids received earlier by beneficiaries failing to comply with the clause on supplying the Community market.

2.46. As indicated above, the Commission now has an official number which enables the appropriate check to be made. As regards the two projects mentioned, the Commission is looking into the first (It 83/87/1). The second project mentioned (MOD IT+196/86) was not carried out.

2.47. The Commission does not share the Court's opinion. It is primarily the responsibility of the Member States to ensure that modernization investments are properly managed.

2.48. Where a vessel having received Community financial aid for definitive cessation of fishing is sold, the Commission sees to it that all the financial and general provisions of Regulation (EEC) No 4028/86 are observed. The Member States, in accordance with national laws, regulations and administrative provisions, take appropriate measures to ensure that the operations financed are actually carried out and carried out properly, to prevent and take action on irregularities and to recover sums lost as a result of irregularities or negligence.

2.49. Provided that a beneficiary of Community financial aid has complied with all the conditions applicable, the Commission does not interfere with any resale or the fixing of the price in such a sale.

2.50. The creation of an official number for each vessel so that all the computerized systems can be linked and the use of the Community register in the monitoring of the MGPs illustrate the effort the Commission has made in the field of integrated management.

3. AID FOR THE CONSTRUCTION AND MODERNIZATION OF FISHING BOATS

Linking the aid to the MGPs

Observance of the primacy of the Community contribution by the national aid scheme

3.4. The Commission would point out that the guidelines for the examination of national aid in the fisheries sector (OJ C 152 of 17 June 1992, p. 2) provides for aid to be granted only in accordance with the aims of the common fisheries policy

Inadequacies in the Commission's decision-taking process

3.5. It is true that during the period referred to by the Court the Commission principally rejected construction projects on the grounds that the budgetary resources were inadequate.

After changes were made to the MGPs following improvements to the information held on the fleets of certain Member States linked to the introduction of the Community index, the Commission refused to contribute to construction projects submitted not only by the United Kingdom but also by several other Member States on the grounds that they did not comply with the aims of the MGPs.

3.6. Since the drafting of MGPs better adapted to the actual situation of the fishing fleets, Community funding for construction projects has been refused on the grounds of non-compliance with the aims of the MGPs.

With regard to the granting of assistance within the limits of its financial resources, the Commission would point out that budgetary commitments for construction aid were reduced to ECU 7,8 million in 1991 (3% of the budget for structural measures).

The Commission granted no Community assistance for construction during the first tranche of 1992 and during the second tranche granted less than in 1991 (ECU 5 million or around 2% of the budget).

3.7. The Commission's approach to modernization is based on projects which do not involve an increase in the fishing effort. In addition, the trend towards a reduction in the budget for modernization was pursued in 1992, although the structural objectives of improving safety on board and increasing the value and selectivity of catches remained unchanged.

Appraising projects for aid for shipbuilding

Appraising aid applications

3.9 – 3.10. It is true that the time elapsing between the submission of the aid application and the decision may seem long in certain cases but this is in line with the current rules.

Under existing rules, decisions on projects can be deferred to subsequent decision dates. The potential beneficiary can commence work as soon as the application is submitted and in certain Member States the beneficiaries do not wait for the Commission decision to begin work.

The Commission will ensure that a link is established between the decision to invest and Community financial assistance as part of the process of bringing the fisheries structural policy within the reform of the Structural Funds.

3.11. The Commission has followed internal rules for the selection of projects since the introduction of the structural policy for the fisheries sector in 1983.

So as to ensure equal treatment for all applications, the Commission informed the Member States, through the Standing Committee on the Fishing Industry, of these internal rules which cover all the elements considered by the Commission when examining applications (conditions for acceptance, conformity of applications, priority technical and economic criteria for selection etc.). The Member States were therefore aware of the guidelines before they sent in their third version in the spring of 1991, the period to which the Court refers.

3.12. The Commission has noted the Court's comments on the projects concerned.

The Commission generally makes a thorough-going appraisal of applications for assistance.

The Commission takes particular care to ensure that projects from different Member States are appraised in the same way and to that end has established a number of procedures such as regular meetings for consultation and coordination, internal guidelines etc.

3.13. The Commission would stress that the annex to each decision shows the amount and nature of all the non-eligible costs to be excluded from the package of Community financial assistance.

Linking shipbuilding aid to the shipbuilding premium

3.14 – 3.16. In a letter of 25 May to the Member States, the Commission stated that only Regulation (EEC) No 4028/86 would apply to national aid for the construction for fishing vessels and not the Directive on shipbuilding.

The guidelines for the examination of national aid in the fisheries sector adopted in 1988 explicitly exclude the granting of national aid under the Sixth Directive on shipbuilding to fishing boats intended for the Community fleet. The guidelines, which were amended in 1992 (OJ No C 152 of 17 June 1992), lay down that the total rate of national aid must not exceed the rate of the Member State's financial contribution laid down in Annex II to Regulation (EEC) No 4028/86.

The Commission examined and approved the Spanish legal framework for the granting of national aid for the construction of fishing vessels in accordance with Regulation (EEC) No 4028/86 and the guidelines.

On the basis of the information at its disposal, the Commission believes that Spanish national aid has not exceeded the threshold since 1989.

The importance of the criterion of associated withdrawal

3.17. The Commission is placing increasing emphasis on withdrawal accompanying any new project. Given the situation with regard to fish stocks, this policy will be pursued even more strictly in the future.

3.20 – 3.21. The Commission would point out that the question of fishing rights and licences for new vessels is the responsibility of the Member States.

3.22 – 3.23. Member States must send the necessary information and confirm and, where appropriate justify, in response to a request from the Commission for further information, that a project submitted to the Commission with a favourable opinion complies with all the Community and national rules including any rules relating to fishing licences.

3.24. As regards the destination of the vessel to be withdrawn, Regulation (EEC) No 970/87 provides for three forms of associated withdrawal without laying down any priority.

3.25. Since, owing to technological progress, withdrawn capacity cannot be replaced with identical vessels, the Commission demands rates of associated withdrawal of more than 100%.

When selecting projects, the Commission establishes an order of priority according to the level of withdrawals.

The contents of the Commission decisions

3.26. Commencing in 1993, the Commission has included information on the power and tonnage of the planned vessel in its decisions. The information on the power of the vessels to be withdrawn is given in kW.

Budgetary implementation

3.31. The Commission sends reminders to the Member States informing them that payment applications must be submitted within six months of the end of the work as specified in the annex to the decision to grant assistance.

3.32–3.33. The basic legislation does not give the Commission an automatic right to cancel assistance when projects are not implemented within the time-limit. The Commission studies these questions on a case-by-case basis and takes appropriate action in accordance with the rules applying.

Observations on the implementation of aid

The geographical concentration of the aid

3.36. In the cases referred to by the Court, the current rules have been applied.

3.37. The Commission would point out that segmentation is a key element of the new MGP for 1993-96.

The existing rules do not provide for the differentiation of the rate of financial assistance between segments.

Compliance with the rules on payments

Implementation of part payments

3.38. The shipyard work schedule attached to the payment request indicates how close to completion is the vessel (as a percentage) but takes no account of the

purchase of equipment. The payment of Community aid is calculated on the basis of total expenditure made, including expenditure on equipment. (See also the reply to point 3.22.).

With regard to the monitoring of projects, the Commission has given the national authorities numerous reminders to encourage them to improve surveillance and monitoring. (See also point 3.33.).

Supporting documents

3.39. (a) and (b) Regulation (EEC) No 1116/88 only provides for the submission of invoices for engines, electronic equipment, fishing gear and invoices relating to differences between work planned and work actually carried out.

It is true that the documents concerned are not attached to the applications submitted by Italy. Since shipbuilding in Italy is almost exclusively carried out on the basis of contracts covering the total job, the invoice sent to the beneficiary is also for the full job and the details indicated in the model 5 cannot be checked owing to the lack of individual invoices.

3.39. (c) Technical data on engines are generally provided in the official attestations attached to the final payment requests and, in particular, in the certificates of seaworthiness.

3.41–3.42. As stated in the final paragraph of the reply to points 2.5–2.6., the Commission has proposed measures to check the specification of fishing vessels.

Documentary evidence of payments made by the aid recipient

3.43. Payment applications must be verified by the national authorities. The certificate from the national authority attached to the payment application attests that the check has been carried out.

Non-uniform settlement of payment files

3.46–3.47. The Commission is reviewing the internal rules on the settlement of payment files. With regard to partial completion of work or adjustments between items, each case is examined and a decision on payment is taken in the light of the explanations supplied by the competent authorities.

If the beneficiary decides not to go ahead with the installation of certain equipment which does not affect the safety of the vessel, the Commission has no power to compel the beneficiary to proceed with the work. Similarly, transfers between items to cover the difference between estimated and actual costs are quite acceptable provided that the work is carried out as planned and the budget is not exceeded.

Monitoring the implementation of the projects

The substitution of estimates between the appraisal and implementation stages

3.48 – 3.49. The procedure for the submission of applications for individual assistance to the Commission is quite long. The file and the estimated costs are first of all examined by the national authority, which then submits it to the Commission. The Commission then takes a decision on financing within twelve months of receipt. Finally, at the end of the procedure, the Commission pays the assistance when the work has been completed.

Differences between the initial estimate and the final invoice are inevitable given the time elapsing, often two to four years, between the calculation of the estimate and the completion of the work.

The Commission has to rely on the examination of the planned aid carried out by the competent authority before and after the work is carried out. The beneficiary must be free to decide to which suppliers to award contracts when the time comes.

Adjustments and modifications to projects in progress

3.50 – 3.51. The Commission acknowledges that changes may be made from time to time during implementation. The Commission can approve them provided they are in accordance with the provisions and procedures laid down by the Commission under Regulation (EEC) No 4028/86.

The Commission notes the Court's observations regarding certain amending decisions and will attempt to ensure compliance with the objectives regarding capacity.

3.52. It is up to the Commission to take the most appropriate decision on a case-by-case basis after examining the file. Although a particular measure may be put forward at the preliminary stages of the examination of the file, a final decision which differs from that initial project may well be taken after reflection.

Implementation certificates

3.54 – 3.55. The Commission can only base its decisions on the attestations submitted by the national authorities. The Commission is looking into the cases raised by the Court.

Member State participation in modernization and construction projects

3.59. (a) The prime responsibility lies with the Member States since it is they who are responsible for appraising the eligibility for national aid and for post facto verification of compliance with the upper limit.

The Commission will look into the possibility of proposing suitable measures to the Member States or, where appropriate, initiating infringement procedures with a view to improving the monitoring of the compliance of national aid with the upper limits.

3.59. (b) See reply to points 3.14 – 3.16.

3.60. The competent national authorities must show all the aid planned for or granted to a project. This is clearly stated in the declarations they submit to the Commission, particularly in model 7 concerning the final payment of aid (OJ No L 112 of 30 April 1988, p. 11).

3.61. To ensure that aid is calculated in a uniform manner, the Commission has sent the Member States an algorithm to enable the competent authorities to calculate the subsidy equivalent of all forms of interest rebates, deferred loan repayments etc.

3.62. The Commission cannot pay out aid until the national authority confirms that it has reduced its aid. There are sometimes very long delays before the national authority makes the reduction or recovers the excess amount. After having given notification that their aid exceeds the ceiling laid down in the regulations and then, at a later date, notifying the Commission that the ceiling is now being respected, no trace of the refund remains in the file held at national level. This area comes under the responsibility of the national authority.

Further aspects

Increased aid for investments by young fishermen

3.64 – 3.65. The provisions on increased aid for investments by young fishermen will be amended in a future regulation.

Discrepancies in the costs of comparable projects

3.66. The Commission is aware of the consequences of the differences in the units used to measure tonnage. Harmonization measures (see reply to point 2.5 – 2.6.) will help to resolve this problem.

Making available and exploitation of post-implementation reports

3.67. As part of the process of examining the monitoring of structural measures, after the inclusion of the fisheries sector under the Structural Funds, now being drafted, the Commission will require monitoring reports from the Member States.

A proposal for a new criterion for the granting of Community aid

3.68. See reply to points 2.5 – 2.6.

The modernization of fishing vessels

Compliance with the Regulations

3.75. (a) Checks to ensure compliance with the provisions on modernization projects are primarily the responsibility of the Member States.

3.75. (b) The Commission will endeavour to verify that a new commitment is not entered into for a new project on behalf of the same beneficiary while payments authorized for a previous commitment have still not been made. The allocation of a single official number to each vessel on the basis of the Community register will be a help in making the verification.

3.76. The Commission ensures that the date on which work begins (modernization) or on which the vessel is put into service (construction) does not precede the date of receipt.

The regulations concerning modernization and construction draw the attention of applicants to the importance of the date on which work is begun.

The acknowledgment of receipt sent to all applicants also expressly refers to this rule. The importance the Commission attaches to this rule is also shown by the number of projects rejected on the grounds that work began before the project was submitted to the Member State (modernization) or to the Commission (construction).

Effect of modernization work on fishing effort and capacity

and

Suitability of modernization measures to achieve the purpose of management of fishing activity

3.81 – 3.83. The Commission would remind the Court of the responsibility of the Member States for the assessment and submission of a package of modernization projects (see reply to point 3.7). The Commission is currently looking into the cases raised by the Court.

The Commission will examine ways of increasing the suitability of modernization measures from the point of view of the fishing effort as part of the current process of drafting the new structural regulation. The Commission will, in any case, continue to give priority to investments in modernization measures to improve safety, product quality and catch selectivity (see reply to point 3.7.).

4. AID FOR THE ADJUSTMENT OF CAPACITIES

Applicable regulation

4.1. The Commission would add that reimbursement to the Member States of their expenditure on final cessation may reach 70% where a vessel is scrapped.

4.2. As the Commission stated in its replies to the 1991 annual report:

'The temporary withdrawal scheme will remain a means of reducing fishing effort in future but, in an overall context, the scheme has to be applied much more selectively and more detailed guidelines are needed.

Owing to the worrying overcapacity of the Community fishing fleets, the Commission, in its structural policy for the fisheries sector, is placing increasing emphasis on the "adjustment of capacity" measures and, in particular, on the permanent withdrawal of fishing vessels.

In terms of the balance between the permanent and the temporary withdrawal schemes, the Commission has always given priority to budgetary allocations for permanent withdrawal, since this scheme directly and durably reduces fishing capacity.'

In future, in order to make better use of Community financial resources, greater priority will be given to final cessation, with aid for temporary withdrawal becoming purely exceptional.

Aid for final cessation

Scope and budgetary implementation

4.4 – 4.5. Budgetary commitments for the adjustment of capacity have increased considerably as compared with the period 1987-90 considered by the Court, when total appropriations committed amounted to just under ECU 100 million and the rate of utilization approached 50%.

In 1991 ECU 120 million was committed and this amount increased again in 1992 to ECU 135 million. This trend is evidence of the Commission's attempts to impose more rigorous management on fisheries capacity.

The introduction of legislation in the Member States means that the rate of utilization of commitment appropriations for the adjustment of capacity has increased considerably (to exceed 75% in 1991).

In this connection, it should be noted that Community support for the adjustment of capacity depends on the willingness of the Member States to make use of it. In its answer to point 5.16 of the Court's 1990 report, the Commission explained that it was sensible for it to revise its estimates in the light of actual results and that the amendment of a decision at the end of the year enables the Member States to provide the most up-to-date information on progress in implementing the measure at national level.

The results

4.9 and 4.10. (a) The rules in force are quite explicit: responsibility for ensuring use for non-fishing purposes or export lies with the Member States.

However, the Commission's proposal for a new control regulation (referred to in its answer to point 2.5 and 2.6), which is currently being considered by the Council, provides for controls to be extended to structural measures, which would enable national authorities to improve their supervision.

Revision of Regulation No 4028/86 (Regulation No 3944/90) states that permanent transfer may not infringe international rules on the conservation and management of fisheries resources.

A Commission fact-finding team visited the Member State most concerned to look at the efforts made by the national administration to prevent illegal fishing in Community waters. The Commission detected no infringements regarding the export of vessels in respect of which a final cessation premium had been paid.

The problems relating to vessels flying a flag of convenience and fishing in international waters are a matter for the international organizations concerned with fishing on the high seas.

The Commission has established a consultation procedure with the Member States concerned in order to exchange information and reach solutions on vessels exported from the Community to non-member countries and carrying out their activities in Community waters.

4.10. (b) The impact of the changes made to the rules in 1990 (Regulation No 3944/90) concerning increased scales should not be overlooked. These increased the rate of Community reimbursement in the case of scrapping from 50% to 70% of the amount eligible. These higher rates make this form of withdrawal more attractive and so the national legislation of many Member States provides only for withdrawal by scrapping.

The Commission will review the scales with a view to making aid for final withdrawal more attractive as part of the integration of the fisheries sector into the Structural Funds.

Eligibility criteria

Length between perpendiculars

and

The payment criterion

4.11 – 4.13 and 4.16 – 4.18. The Commission is aware of the problems created by differences in measuring length and tonnage between the Member States. As it stated in its reply to points 2.5 – 2.6., the Commission will propose solutions to the problems created by differences in measuring practices.

Fishing activity

4.14. The Member States are responsible for verifying fishing activity. As part of the process of implementing the new MGPs for 1993-96, the Commission will propose to the Member States a system for monitoring fishing activity and an existing working party will also consider the problems raised by the Court.

4.15. The Commission is aware of the need to take account of the impact of cessation in terms of fishing effort and catches. Hence the approach to be followed in the new MGPs for 1993-96 will make distinctions on the basis of the fishing efforts actually established.

The Commission does not consider it appropriate to take account of the annual turnover of a vessel applying for withdrawal.

Other observations regarding the implementation of final cessation

Combining the premium with laying-up aid

4.19. The Commission agrees that combination of the two types of withdrawal aid should be avoided. In some cases, the shortages of fisheries resources were initially considered exceptional and temporary but later proved to be more serious and long-term. Accordingly, final cessation was the solution eventually chosen.

As stated in the reply to point 4.2, the Commission's present policy on the financing of temporary withdrawal is very restrictive.

Compliance with the 50% ceiling for Community reimbursement

4.20. The Commission will ensure that the ceiling on the Community reimbursement laid down by the rules is respected.

Consistency with the aims of the MGPs and the rule regarding a withdrawal to be associated with new shipbuilding.

4.21 – 4.23. The Commission is aware of the need for greater consistency between the objectives of the MGPs and the rules on withdrawal associated with new shipbuilding.

The new segmented MGPs for 1993-1996, which contain reductions which, in general terms, exceed those of earlier plans (substantial reductions in demersal and benthic fisheries and no increases in pelagic fisheries) will prevent any increase in capacity.

Furthermore, the Commission will take a very restrictive approach to Community finance for shipbuilding in its proposal for a new regulation on all structural measures in the fisheries sector with a view to its integration into the Structural Funds. It will continue to strengthen its policy on financing the final cessation of capacity, to an even greater extent than provided for by the MGP objectives, so that capacity withdrawn is not replaced by new capacity.

The Commission is also considering whether the final cessation system could be improved so that this instrument is brought under better control. Its conclusions will be reflected in the new rules.

Community aid for shipbuilding will be limited in nature and require specific withdrawal undertakings well in excess of new capacity.

5. GENERAL CONCLUSIONS AND RECOMMENDATIONS

Conclusions

5.1. (a) and 5.3. The main thrust of the Court's special report is the need to harmonize the units in which vessels are measured in order to ensure that the structural policy for fisheries is applied correctly.

The Commission is well aware of the need to improve the existing situation which, in its transitional phase which will last until 1994, is marked by a lack of uniformity in the way the Member States apply the units of measurement.

Its replies to point 2.5 – 2.6. and 2.9. reflect the Commission's determination to put an end to uncertainty about measurements.

5.1. (b) The Commission's aim, pursued with even greater vigour since 1990, was and remains the reduction in fishing effort, including capacity.

The very substantial reduction in aid for shipbuilding, the direction of modernization aid towards goals not entailing an increase in the fishing effort and the increase in aid for final cessation with financial priority given to scrapping constitute positive proof of the Commission's determination to deal with over-capacity in the fishing fleets.

5.2. With regard to the Court's findings on actual implementation, the Commission would refer to its replies to the points listed under this point.

Recommendations.

Need to develop the register so that it can be used for all areas of the common fisheries policy

5.4. The Community register currently carries out the tasks assigned to it by Community rules.

The register will enable the 1993-96 MGPs to be monitored and assist measures to support the structural regulations for the fisheries sector.

Use of the register to monitor structural measures receiving Community financial support is being introduced. This means that a vessel which does not appear on the register will be denied further access to Community aid. At the Council of Fisheries Ministers on 19 December 1992, the Council and the Commission made the following joint statement: 'A precondition for the granting of Community aid, or approving national aids for fishing vessels shall be that all licensed vessels for the Member States concerned are registered in the Community fishing vessels register.'

By allocating each vessel a single official number, the Community register will enable the history of every vessel for which Community aid is sought to be traced.

The register will also give an idea of the concentration of the fishing effort in each region and subsequently of data to assess the areas dependent on fishing activity.

In future, the Community register may provide a basis for the adoption of common parameters for measuring the capacity of vessels and so enable new parameters for the fishing effort to be introduced.

Need to structure the MGPs so as to establish a stronger link between the aid and the policy on the management and conservation of resources

5.5. The MGPs for 1993-96 are structured in a way which will introduce a stronger link with the policy on the management and conservation of resources.

In accordance with the recommendations of the appropriate scientific bodies, these MGP's provide for continuing, and intensified, reductions in capacity. Two new features are introduced: modulation of the reduction objectives depending on the state of the stocks being fished and, following an appropriate segmentation, the introduction of new management parameters so as to deal both with fishing capacity and more generally with the fishing effort, with particular reference to the activity of vessels.

The features of the MGPs for 1993-96 which contrast with earlier plans are the segmentation of fishing fleets and the fixing of fishing effort objectives for each segment.

These objectives will enable the size of fleets of the various Member States to be tailored to levels compatible with the available fisheries resources.

In the new basic fisheries policy regulation, Regulation (EEC)No 3760/92, which replaces Regulation (EEC)No 170/83, the Council, acting on the basis of proposals from the Commission, has laid down objectives and means for the restructuring of the Community fisheries sector in order to secure a balance between resources and exploitation which is likely to be permanent.

Furthermore, in its new proposal on control systems, which has now been generalized in that it entails an extension of these arrangements to structures and markets policies, the Commission suggested that it be given powers to restrict the number of days at sea authorized for certain categories of vessels of a Member State which did not comply with the aim of the MGP. These restrictions would be at least equivalent to the amount by which the aim of the MGP had been exceeded.

Need to restrict capacity development aid measures to cases where the available resources may be underfished, rather than excluding them outright

5.6. The Commission's policy is, and will continue to be, very restrictive with regard to construction aid and impose severe requirements concerning associated withdrawal.

5.7. The Commission is aware of the risk of duplication of Community aid for final cessation and for construction with no associated withdrawal. The Commission will put forward appropriate solutions in its proposal for new structural legislation for fisheries in relation to the Structural Funds (see answer to points 4.21 - 4.23).

5.8. The Commission already gives the highest priority to modernization projects which do not increase the fishing effort but are intended to improve working conditions, safety, hygiene and the treatment and selectivity of catches.

Need to ensure that aid is paid out in strict compliance with the provisions of the regulations and the conditions for granting assistance

5.9-5.10. The Commission has taken note of the Court's recommendations and would point out that horizontal directives will be adopted as part of the integration of fisheries structural policy into the Structural Funds.

Final observation

5.12. Structural policy continues to be based on the adjustment of the fishing effort to the level of stocks. Retention of this objective implies a thorough restructuring of the fisheries sector with socio-economic consequences which will require accompanying measures.

In the future, these will be made possible by the integration of the structural policy for fisheries into the Funds. This will make it possible to introduce conversion measures using the resources of the ERDF and the ESF.

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