

## I

*(Information)*

## COURT OF AUDITORS

## SPECIAL REPORT No 18/98

concerning the Community measures to encourage the creation of joint enterprises in the fisheries sector accompanied by the replies of the Commission

*(Pursuant to Article 188c (4), second subparagraph, of the EC Treaty)*

(98/C 393/01)

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EXECUTIVE SUMMARY OF SPECIAL REPORT CONCERNING THE COMMUNITY MEASURES  
TO ENCOURAGE THE CREATION OF JOINT ENTERPRISES IN THE FISHERIES SECTOR

The joint enterprise scheme was introduced in 1990 by the Council to contribute towards the reduction of the Community fishing fleet, total capacity of which amounted to 2,3 million tonnes at the time, by helping to seek viable alternatives for the affected fishing vessels. To date, 188 projects have been approved resulting in the removal from the Community fishing register of 290 vessels representing a capacity of 113 710 tonnes, at a cost of ECU 298 million.

Implementation of the scheme has been characterised by the following failures:

- (a) Aid has been miscalculated because vessels have been measured according to different methods (see paragraphs 22-25).
- (b) Deadlines for carrying out repairs and adaptations were not established in the decisions approving the aid (see paragraphs 26-27).
- (c) Aid was approved for vessels which were not active and were therefore ineligible (see point 28).
- (d) Community aid previously paid for the construction or modernisation of the vessels included in the joint enterprises was not always recovered as required, due either to the refusal of the Member State to apply the provisions of the regulations or to weaknesses in the monitoring procedures (see paragraphs 29-33).
- (e) In certain cases, the viability of the joint enterprise projects was not supported by adequate agreements between the partners (see paragraph 36).
- (f) Aid was paid in respect of vessels sunk without investigation, either by the Member States or the Commission, of the circumstances surrounding the accidents; despite the non compliance by the beneficiaries with their obligations, no procedure has been launched with a view to recover or cancel the aid (see paragraphs 39-42 and 53).
- (g) Community aid for joint enterprises projects is equivalent to twice the aid for the export of the vessel concerned. Therefore, the fulfilment by the beneficiaries of their obligations to keep the vessels in activity and to supply fish to the EU market for a minimum time period should have been secured by appropriate guarantees (see paragraphs 59-60).

To sum up, the audit revealed that more rigorous management of the scheme by the Commission and the Member States is necessary to ensure sound financial management.

The Commission should review its monitoring and control procedures and proceed to the recovery of misused EU grants (paragraphs 23, 28, 31-33, 37-38, 41-42).

Concerning the effectiveness of the measure it was noted that:

- (a) of the overall reduction of the fleet capacity since the measure was adopted, one third (113 710 tonnes) can be attributed to the measure. However, it has had practically no effect on the overall fishing activity in Community waters as evidenced by the stability in annual fish landings (see paragraph 57);
- (b) about 90 % of the vessels relating to the projects examined were already fishing in third-country waters; nevertheless, the consequences of redeployment for the International Fisheries Agreements (IFA's) negotiated by the EU were not evaluated (paragraph 58).

## INTRODUCTION

1. From 1983, the Council in a series of successive Multiannual Guidance Programmes (MAGP) set targets for substantial reductions in the fishing fleets of the Member States, because of capacity largely in excess of the available fishery resources. In the latest MAGP IV, the Council, in April 1997, introduced a requirement for further cuts in the fishing effort of up to 30 %, to be implemented during the period from 1 January 1997 to 31 December 2001 <sup>(1)</sup>.

2. The Community has contributed to the reduction of the fishing fleets set out in the MAGP by granting assistance to projects for the permanent withdrawal of capacity, by the scrapping of the vessel, its permanent transfer to a third country or alternatively the permanent re-assignment of the vessel to uses other than fishing. In 1993, the Court adopted a special report on the implementation of the measures for the restructuring, modernisation and adaptation of fishing fleets in the Community <sup>(2)</sup>; a follow-up of this special report was presented in the 1996 Annual Report <sup>(3)</sup>.

3. The ultimate objective of the MAGP is to protect Community fishery resources from over-exploitation, thereby contributing towards the creation of economically viable fishing activity and securing employment prospects in the sector in the medium to long term (see *Table 1*). The creation of the joint enterprises can contribute to this objective. In this respect, it must be considered that for each sea-going job there are about four land-based jobs in both upstream (shipbuilding and maintenance) and downstream sectors (processing and marketing of fisheries products). Furthermore, fishing activities are regionally concentrated and may represent a key element in terms of production and income <sup>(4)</sup>.

4. The European Union (EU) market is a net importer of fishery products (see *Table 2* and *Table 3*).

5. In these conditions, one of the solutions envisaged for the fishery sector was the implementation of measures to encourage the redeployment of fishing vessels to the waters of third countries. When, in the 1980's, a growing number of third countries declared 200 miles Exclusive Economic Zones (EEZ), the Community negotiated the

International Fisheries Agreements (IFAs) in order to obtain fishing rights for its vessels in the waters of these countries.

6. An additional measure is the joint enterprise scheme, introduced in 1990 by Council Regulation (EEC) No 3944/90 modifying Council Regulation (EEC) No 4028/86 <sup>(5)</sup>, whereby Community aid is provided to Community shipowners who agree to the permanent transfer of their vessel to a third country by setting up enterprises with nationals of this country, thus losing their right, in respect of the vessel in question, to fish in Community fishing grounds, or to use fishing rights obtained by means of IFAs negotiated and financed by the EU.

7. The beneficiaries who establish such enterprises undertake to offer fish supplies from the joint enterprise to the Community market on a priority basis.

8. From 1991 to 1997, total financial aid of 298 Mio ECU has been granted to 188 joint enterprise projects (see *Table 4*). During 1997, the Court examined the implementation of the joint enterprise aid scheme in Greece, Spain, France, Italy and Portugal, which together account for 95 % of all Community aid provided under the measure. The audit involved an examination of the administrative and control procedures put in place by the Commission and the Member States. A total of 50 projects approved under the measure, representing some 33 % of total Community financial support, were examined in terms of legality and regularity as well as the soundness of the financial management (see *Table 5*).

## DESCRIPTION OF THE AUDITED ACTIVITIES

*Regulatory Framework*

9. Council Regulation (EEC) No 3944/90, which modified Council Regulation (EEC) No 4028/86, introduced the joint enterprise aid scheme in 1990. Similar national measures had existed in Spain and Portugal for some 10 years before their accession to the Community in 1986. The measure was first implemented during the period 1991-1993 through the application of Commission Regulation (EEC) No 1956/91 <sup>(6)</sup>. The measure was directly managed by the Commission in that it received the applications for the individual projects,

<sup>(1)</sup> Council Decision 97/413/EC of 26 June 1997 (OJ L 175, 3.7.1997, p. 27), and Commission Decision 98/119/EC to 98/131/EC of 16 December 1997 (OJ L 39, 12.2.1998, p. 1).

<sup>(2)</sup> Special Report No 3/93 (OJ C 2, 4.1.1994).

<sup>(3)</sup> OJ C 348, 18.11.1997.

<sup>(4)</sup> Special Report No 3/93, paragraph 1.2.

<sup>(5)</sup> Council Regulation (EEC) No 3944/90 of 20 December 1990 (OJ L 380, 31.12.1990, p. 1), amending Council Regulation (EEC) No 4028/86 of 18 December 1986 (OJ L 376, 31.12.1986, p. 7).

<sup>(6)</sup> OJ L 181, 8.7.1991, p. 1.

selected the projects to be granted Community financing, paid the aid directly to the beneficiaries and was responsible for the monitoring and follow-up of the projects. This system still applies to projects approved at that time but not yet completed.

10. Council Regulation (EEC) No 3944/90 defined a joint enterprise as 'a company incorporated under private law comprising one or more Community shipowners and one or more partners from a third country with which the Community maintains relations, associated under a joint enterprise agreement set up for the purpose of exploiting and, where appropriate, using the fishery resources of waters falling within the sovereignty and/or jurisdiction of such third country, primary consideration being given to the supply of the Community market' (7).

11. In order to be eligible for Community aid, vessels must have a minimum length of 12 metres, be technically suitable for the fishing operations planned, have been in operation for more than five years (with certain exemptions) (8), fly the flag of a Member State and be registered in a Community port. The vessels are to be transferred definitively to the third country concerned by the joint enterprise.

12. The financial aid may consist of:

- (a) a capital subsidy granted in one or more instalments; and/or
- (b) a reduction in the interest rate charged on loans granted by national or international finance institutions; and/or
- (c) a capital contribution towards the formation of guarantee funds for loans contracted for the implementation of the joint enterprise in question.

As with the other measures for the permanent reduction of fishing capacity, the amount of Community aid is established on the basis of the age and capacity of the vessel, measured in terms of Gross Registered Tonnage (GRT). Member States were required to pay an amount of between 20 % and 50 % of the Community financial contribution.

13. Priority is to be given to projects involving:

- (a) vessels which are active in heavily exploited Community waters, or in non-Community waters where access to fisheries resources is difficult;

(7) Article 21 bis of Council Regulation (EEC) No 4028/86, as amended by Council Regulation (EEC) No 3944/90.

(8) Article 21 ter, paragraph 2, of Council Regulation (EEC) No 4028/86, as amended.

- (b) third countries offering satisfactory guarantees for Community investments and which have significant fisheries resources of interest to the Community market.

14. Applications for payment must be made to the Commission via the Member States authorities which are required to give an opinion on the validity of the claim and to retain appropriate supporting documentation.

15. Periodic reports on the activities of the joint enterprise, including copies of its accounts and of the official documents relating to the fishing, landing and transshipment operations, must be submitted by the beneficiaries to the Commission every 12 months for the first three consecutive years of operations.

16. With the adoption of Council Regulations (EEC) No 2080/93 (9) and (EC) No 3699/93 (10), the management and financing of the joint enterprises has been integrated into the Financial Instrument for Fisheries Guidance (FIFG). Consequently, in accordance with the subsidiarity principle, Member States are now responsible for the selection of projects to be financed within the limits of their global allocations set out in their corresponding Operational Programmes. Member States are also responsible for the administration and control of projects, including making payments to the beneficiaries and the follow-up of approved projects. The Commission's role, once Operational Programmes have been approved, has been limited to participation in the Monitoring Committees and to the payment of global advances to the Member States, on the basis of approved financial plans and declarations of Member States.

17. In accordance with the subsidiarity principle governing the Community Structural Funds, the regulatory provisions under the FIFG are less detailed than those previously applicable under the provisions of Council Regulation (EEC) No 4028/86. The amount of the aid is still determined on the age and the tonnage of the vessel, but the tonnage is now measured either in GRT or in GT (Gross Tonnage); Member States have to contribute at least 25 % of the total public aid in respect of projects approved in Objective 1 regions, and at least 50 % in respect of projects approved in other regions.

18. Since 1993 the joint enterprise aid scheme has been introduced into the so-called 'second generation' IFAs. To date, however, such projects (31 vessels transferred until the end of 1997) have only been implemented in the

(9) OJ L 193, 31.7.1993, p. 1.

(10) OJ L 346, 31.12.1993, p. 1.

context of the agreement with Argentina, which was approved by Council Regulation (EEC) No 3447/93<sup>(11)</sup>. Administrative and control procedures for such projects involve the submission of proposals to the Commission by the Member States, the selection of projects for financing by a EU-Argentina joint committee and their subsequent approval by the Commission and by the Argentinian authorities. The joint committee is also charged with controlling the projects and with supervising the use of the financial assistance.

19. In respect of the joint enterprise projects approved under the agreement, Community aid, determined on the basis of the tonnage, measured in GRT, and the age of the vessel, has been increased by 20 % compared with the aid payable under Regulation (EEC) No 4028/86 and by 30 % compared with the aid payable under Regulation (EC) No 3699/93. The Community pays, via the Argentinian authorities, a further amount of aid granted as working capital to the joint enterprises and equivalent to 15 % of the amount paid to the Community shipowner. No co-financing by Member States is foreseen under the agreement.

20. The audit covered each of the three management systems. The aid granted under each of them is set out in *Table 4*.

#### BUDGETARY RESOURCES

21. As shown in *Table 4*, total financial aid of ECU 298 million has been granted for the period 1991-1997 to 188 joint enterprise projects, of which ECU 234 million have been paid. Under Regulation (EEC) No 4028/86, the appropriations are allocated on budget heading B2-1 100 (Objective 1 regions), irrespective of the region concerned. This allocation has already been criticised on several occasions by the Court<sup>(12)</sup>. The projects approved under Regulation (EC) No 3699/93 are financed under budget heading B2-1 100 for Objective 1 regions and budget heading B2-1 101 for Objective 5a regions. According to the Structural Funds regulations, commitments and payments are made by annual instalments. The amounts actually paid for the individual projects are only detailed in the annual implementation reports submitted by the Member States to the Commission<sup>(13)</sup>. The EU-Argentina agreement is financed on budget heading B7-8 000 (International Fisheries Agreements).

<sup>(11)</sup> OJ L 318, 20.12.1993, p. 1.

<sup>(12)</sup> Annual report concerning the financial year 1996, paragraph 9.4 (OJ C 348, 18.11.1997, p. 221).

<sup>(13)</sup> Article 2 of Commission Regulation (EC) No 1796/95 of 25 July 1995 (OJ L 174, 26.7.1995, p. 11).

#### RESULTS OF THE AUDIT

##### *Management in the Member States*

##### Calculation of the Vessel Tonnage

22. The registered tonnage of the vessels, which is one of the key elements determining the amount of Community aid, may be expressed either in GRT (as established by the Convention for a uniform system of tonnage measurement of ships, signed in Oslo in 1947) or in GT (as established by the Convention on tonnage measurement of ships, concluded in London in 1969). There is an important difference between the two units of measurement, with GT being established on the basis of the total volume of the vessel, whereas the GRT measurement is less, since it excludes certain spaces which are deemed to be non-productive.

23. It was found that significant confusion arose in the Member States between GT and GRT measurements: as a result, for projects SM/GR/3/91, SM/IT/2/94, SM/IT/3/94 and ARG/IT/SM/20-94, GT measurements were taken as GRT measurements, which resulted in the approval of a higher amount of aid. The Commission, in coordination with the Member States, should re-examine these projects with a view to establishing the corresponding GRT measurements, modifying the decisions granting the aid and recovering the overpayments which occurred.

24. The problem was compounded in certain instances because national measurement methods which were different from both GRT and GT were accepted as being equivalent to GRT. The Court has already observed that, in the Community, many heterogeneous measuring units are still used<sup>(14)</sup>; in fact, certain Member States such as Spain, Portugal and Italy never signed the Oslo Convention, but applied nationally-adopted measurement methods (e.g. the Moorsom Ton) until the methods foreseen in the London Convention were adopted by the EU.

25. In the Community register of the fishing fleet, the national measuring units are filed separately from GRT and GT, but, when approving the aid, these national measurement methods have been assimilated to GRT. However, the audit did not always provide assurance that they are equivalent to GRT; for example, the excluded spaces permitted by the Italian regulation are smaller

<sup>(14)</sup> Annual Report concerning the financial year 1996, paragraphs 9.35-9.36.

than those allowed by the Oslo Convention, with the risk that the tonnage measured on the basis of this national regulation is bigger than GRT and so is the aid granted.

#### Suitability of Aided Vessels for the Planned Fishery Operations

26. An important requirement of the governing regulations is that the aided vessels must be technically suitable for the planned fishery operations. In reality, significant adaptations may be required and, in the case of the numerous old vessels grant-aided, major overhauls may be necessary to provide navigational security and economical viability after redeployment.

27. The audit showed that in every Member State and even in cases where the vessels concerned were over 30 or even 45 years old (projects SM/IT/3/93, SM/PO/5/91, SM/PO/FIFG/542, SM/PO/8/93), the repairs and adaptations needed before the redeployment were not specified and the necessary financing arrangements were not indicated in the projects submitted for approval. Moreover, no precise deadline for adaptation had been established. In the case of project SM/PO/FIFG/542, the vessel proved to be unsuitable for the planned fishing activities subsequent to its transfer to the new fishing grounds leading to technical and financial difficulties for the grant-aided joint enterprise.

#### Vessels Eligibility

28. Another key condition is that the vessels approved for Community aid should be active at the time of approval of the aid<sup>(15)</sup>. The reason for this condition is to ensure that the measure would have a positive effect on the real fishing capacity, rather than on the theoretical but unused capacity. In Spain, however, it was noted in respect of certain projects (projects SM/ES/12/91, ARG/SM/ES/25-94, ARG/SM/ES/26-94, ARG/SM/ES/28-94, ARG/SM/ES/33-95, ARG/SM/ES/34-95, ARG/SM/ES/53-96), that at the date of their approval, the vessels in question had been inactive for a considerable period of time, tied up in port, due either to owners' financial difficulties or to legal proceedings against them. The related expenditure is ECU 16,7 million.

<sup>(15)</sup> Article 21 ter, paragraph 2 of Council Regulation (EEC) No 4028/86; Article 2, paragraph 3 of Commission Regulation (EEC) No 1956/91 of 21 June 1991 (OJ L 181, 8.7.1991, p. 1); point 1.2.(a) of Annex III to Council Regulation (EC) No 3699/93 of 21 December 1993 (OJ L 366, 31.12.1993, p. 1).

#### Non-Recovery of Community Aid for Construction and Modernisation

29. Article 38 of Council Regulation (EEC) No 4028/86 stipulates that vessels which have benefitted from Community aid cannot be sold outside the Community during a period of ten years in the case of aid for construction and five years in the case of aid for modernisation. A similar restriction was already included in the regulation previously in force<sup>(16)</sup>. Consequently, when a vessel which has received such Community aid is exported, the aid must, in principle, be recovered. With the adoption of the FIFG in 1993, the concept of the recovery of such aid *pro rata temporis* was explicitly incorporated into the governing Community regulation<sup>(17)</sup>.

30. As the Court has previously pointed out<sup>(18)</sup>, the Commission does not yet dispose of an appropriate interface between its databases allowing it to detect all the assistance granted to a given ship. In the circumstances, its management and control systems are inadequate to determine if aid for construction and modernisation has been paid and should be recovered in respect of individual vessels included in joint enterprise agreements. In fact, to this end the Commission still relies on voluntary declaration either by the Member State or the beneficiary.

31. The Spanish authorities consider that the recovery procedure should not be applied to vessels exported, before the above mentioned deadlines, in the context of joint enterprises approved under the provisions of Council Regulation (EEC) No 4028/86 and the agreement with Argentina, on the grounds that such a provision was not expressly included when the procedures relating to joint enterprises were adopted. Because of the lack of specific details at the Commission concerning prior assistance granted to vessels grant-aided under these joint enterprise projects, the total amount to be recovered could not be established.

32. In France (SM/FR/2/91), two of the three vessels included in a joint enterprise (see also paragraph 37), which had received Community aid amounting to ECU 2,3 million for construction and modernisation between 1987 and 1992, were exported in 1992 without a *pro rata temporis* recovery of that aid.

33. The non-recovery of previously paid Community aid in the case of Spanish and French projects gives rise to an

<sup>(16)</sup> Article 16 of Council Regulation (EEC) No 2908/83 of 4 October 1983 (OJ L 290, 22.10.1983, p. 1).

<sup>(17)</sup> Point 1.2.(b) of Annex III to Council Regulation (EC) No 3699/93.

<sup>(18)</sup> Annual report concerning the financial year 1996, paragraphs 9.39-9.40.

unequal application of Community regulations, since a *pro rata temporis* recovery of the aid, under similar circumstances, has been made for Greek and Italian projects. These inconsistencies in the application of the provisions of Community regulations should oblige the Commission to review all the joint enterprise projects approved, particularly for Spain and France, in order to determine cases where such recoveries are necessary.

### The *Bona Fides* of Particular Joint Enterprises

34. In accordance with Community regulatory provisions, the joint enterprise must be established between one or more Community shipowners and a national of the third country where the vessel is exported<sup>(19)</sup>. The joint enterprise should be a bona fide commercial arrangement, economically and financially viable and offering reasonable assurances that the vessels transferred will continue to have access to that third country's territorial waters for the foreseeable future. The audit revealed the instances set out below where such conditions were not present, either at the date of the approval of the project or in the initial years of activity.

35. For one project in Spain (ARG/ES/SM/53-96), for which an amount of ECU 2,5 million was granted, the Community shipowner had become the sole proprietor of the joint enterprise less than one year after its constitution. In another project (ARG/IT/SM/20-94), involving Community aid totalling some ECU 2 million, the Community partner had increased his participation to more than 98 %, before the payment of the balance of the aid. In both instances only the form, not the substance of a joint enterprise, can be said to have existed. No deadline was set to re-establish the joint enterprise by associating another local partner, nor were steps taken to cancel the aid.

36. The Commission and Member State files (SM/IT/2/91, SM/GR/3/91, SM/GR/8/92, SM/GR/10/92, SM/GR/3/93, SM/PO/FIFG/542) provided no evidence that adequate capital contributions had been made by the partners to ensure the viability of the joint enterprises. In practice, the EU partner makes available to the joint enterprise its only tangible asset, namely the vessel transferred. The acquisition of the asset by the joint enterprises is normally financed by a debt due to the EU partner, which has to be serviced in priority to any other

net returns from the joint enterprises. The main disadvantage of these procedures is that the third country partner does not commit himself financially to the success of the joint enterprise.

### Modifications of Joint Enterprise Projects

37. The approved joint enterprise arrangements were sometimes changed without notification to or the approval of the Commission. In a case detected in France (SM/FR/2/91), the joint enterprise involved the transfer to Senegal of three vessels, belonging to two Community shipowners. After the first year of operations, when it became evident that the project was not as successful as envisaged, one of the vessels was sold to a third party while the two remaining were transferred to a new joint enterprise in Peru. While the details of the establishment of a new joint enterprise were communicated to the Commission prior to the payment of the balance of Community aid, there was no official approval of the revised arrangements. The sale of the third vessel was never communicated to the Commission. The Commission should reexamine this project (aid paid ECU 4,4 million) and determine the amount that should be recovered.

38. In the case of a joint enterprise in Angola, involving both Spanish and Portuguese beneficiaries (project SM/ES/17/91-SM/PO/1/91), a number of important inconsistencies and non-respect of the conditions for Community aid were noted. In this case, a Spanish and Portuguese shipowner each presented a proposal to participate in a joint enterprise to their respective national authorities, each party seeking Community aid in respect of the vessels included in the joint enterprise. An audit of the two files revealed that:

- (a) the joint enterprise accounts presented by each of the participants to their respective national authorities showed material differences as regards the carrying values of assets as well as the reported operating results;
- (b) the joint enterprise had been dissolved by mutual agreement between the participants, following the sinking of one of the vessels, but no decision modifying the original project was adopted;
- (c) the remaining vessels were transferred to other joint enterprises without the prior approval of the Commission.

<sup>(19)</sup> Article 21 bis of Council Regulation (EEC) No 4028/86; Article 9 paragraph 3 of Council Regulation No 3699/93; Article 2 (e) of the agreement with Argentina.

The Community aid involved (ECU 2,7 million) should be recovered to the extent that the beneficiaries have not fulfilled their commitments.



### Grant-Aided Vessels lost in Maritime Accidents

39. During the audit it was noted that six vessels, five concerning Portuguese beneficiaries (SM/PO/2/91, SM/PO/7/91, SM/PO/8/92, SM/PO/4/93, PO/2.1.SG/1265/1/95) and one a Spanish project (SM/ES/17/91), were subsequently lost in maritime accidents. Project SM/PO/2/91 had already been fully paid before the sinking, which occurred in April 1996. At the time of the Court's audit, the national authorities were unable to trace the whereabouts of the beneficiary and the Commission was unaware of the sinking. Only one activity report had been sent by the beneficiary in 1994.

40. For the other projects, the sinkings occurred prior to the payment of the balance of Community aid. The full amount outstanding was paid for projects SM/PO/7/91 and SM/ES/17/91. At the time of the audit, a decision on the payment of the balance of aid was still outstanding for projects SM/PO/8/92, SM/PO/4/93 and PO/2.1.SG/1265/1/95.

41. The Community aid is granted under the condition that a fishing activity is to be maintained by the vessel for a minimum period of three years. The risk that a vessel may sink or suffer an accident must be carried by the joint enterprise, in which the EU partner has, by definition, a significant influence. Sound management considerations should have obliged the EU partner to ensure that:

- (a) the vessel is covered by an adequate insurance contract, and
- (b) in case of an accident, the joint enterprise will fulfil its commitments towards the Community as required by the regulations, by either replacing the vessel or reimbursing the aid *pro rata temporis*.

42. No evidence was found in five of the six cases that compensation for the lost vessels was paid by the insurance companies. Moreover, although none of the vessels had been replaced in order to ensure the minimum three-year fishing activity, no decision to recover the aid from the beneficiaries has been taken by the Commission and/or the national authorities concerned.

### Management by the Commission

#### General

43. The preceding paragraphs illustrate significant weaknesses in the management of the joint enterprise aid

scheme in the Member States. However, many of these weaknesses have occurred because of the failure by the Commission services to adequately control and monitor the implementation of the measure. Furthermore, the Commission failed to take corrective action even in cases where it was subsequently informed of the non-application of the regulatory provisions, as instanced when the Spanish authorities indicated their intention not to recover previously paid Community aid (see paragraph 31). The audit revealed:

- (a) inadequate evaluations of aid applications prior to approving Community aid;
- (b) a failure to clarify the very basis of calculating the aid payable, namely the standardisation of the measurement of the vessels;
- (c) persistent inaccuracies and omissions in the Community register of the fishing fleet;
- (d) lack of follow-up of activity reports;
- (e) a failure to investigate cases thoroughly where Community-aided vessels had been lost in maritime accidents;
- (f) a complete absence of visits to the Member States to verify data presented by beneficiaries.

### Evaluation of aid applications

44. A more comprehensive evaluation of applications prior to the approval of joint enterprises, with greater attention accorded to supporting documentation presented, would have highlighted anomalies in applications, such as discrepancies in registered tonnages (see paragraphs 22-25), lack of current fishing activities (see paragraph 28), and lack of indication of a deadline, and of financing for refitting and adaptation of the vessels (see paragraphs 26-27). The audit revealed errors and omissions which careful analysis, at Member State or Commission level, should have detected.

### Evaluation of vessel tonnage information

45. A serious shortcoming in the Commission's management of the measure was the failure to identify inaccurate tonnage measurement data of grant-aided vessels. This resulted in the miscalculation of the amount of aid paid for projects SM/GR/3/91, SM/IT/2/94, SM/IT/3/94 and ARG/IT/SM/20-94 (see paragraph 23).

46. Regulations have been adopted stipulating that all vessels must have a GT measurement certificate by 2003 or by 1995, if they are more than 24 m in length<sup>(20)</sup>. In fact, heterogeneous measuring units have traditionally been used in the different Member States<sup>(21)</sup>. The Commission has simply assimilated these national measuring units to GRT but its files do not provide any evidence of the correctness of this assimilation. Appropriate conversion coefficients should, therefore, have been applied to determine the correct rate of aid.

### The Community register of the fishing fleet

47. The Community register of the fishing fleet is intended to contain the key updated information on all the Community fishing vessels. This should allow the Commission to check data transmitted in the project files. However, as the Court has already observed<sup>(22)</sup>, a number of inaccuracies and omissions still exist in this essential Commission management tool. The audit revealed cases for which the measurement data contained in the Community register were inaccurate or incomplete. A significant number of errors in the national fleet registers, for instance concerning the utilisation of GRT and GT, were subsequently transcribed into the Community fleet register.

48. Italy, in particular, has encountered considerable problems in the implementation and management of its national fleet register, which is still not compatible with the Community register. The most recent communication of the Italian authorities was in August 1995 and the information furnished was deemed to be inaccurate by the Commission<sup>(23)</sup>. As a consequence, the condition that Community aid should be paid only after the definitive cancellation of the vessels from the Community register<sup>(24)</sup> was not respected by projects SM/IT/3/93, SM/IT/2/94, SM/IT/3/94, SM/IT/6/94 and ARG/IT/SM/20-94, with aid totalling 10,568 Mio ECU.

49. In the case of Greece, Spain and Portugal, there were also some delays before vessels, already transferred to third countries, were cancelled from the register.

<sup>(20)</sup> Council Regulation (EC) No 3259/94 (OJ L 339, 29.12.1994, p. 11), modifying Council Regulation (EEC) No 2930/86 (OJ L 274, 25.9.1986, p. 1); Commission Decision 95/84/EC (OJ L 67, 25.3.1995, p. 33).

<sup>(21)</sup> Annual report concerning the financial year 1996, paragraphs 9.35-9.36.

<sup>(22)</sup> Annual report concerning the financial year 1996, paragraphs 9.29-9.33.

<sup>(23)</sup> COM(96) 305 final.

<sup>(24)</sup> Article 5, paragraph 1 of Commission Regulation (EEC) No 1956/91.

50. Given its management and control responsibilities the Commission should ensure, in coordination with the national authorities, that the procedures for recording and communicating information from the national authorities are reliable, accurate and timely.

### Evaluation of the activity reports

51. In order to monitor the operation of grant-aided fishing vessels, activity reports must be transmitted to the Commission for a minimum period of three years. Such reports are essential to verify, *inter alia*, that the Community-aided joint enterprise continues to operate. Despite their importance, no sanctions are foreseen in cases where shipowners fail to respect this requirement, nor has the Commission taken steps to ensure compliance with the regulations. Even when the reports are received, no analysis is routinely undertaken of the accounts of joint enterprises and the technical data contained in the reports (e.g. catches, landings, exports etc.). No comparisons are made between the results declared in the activity reports and the planned results. A more thorough examination of these reports would have brought to light cases identified in the present report where the conditions for the receipt of Community aid have not been respected.

52. The three-year activity rule, provided for in Council Regulation (EEC) No 4028/86, was reproduced under the FIFG in all the Member States examined, except Portugal. The Portuguese implementation regulation provides that only one report, covering the first year of activity, must be submitted. In the absence of such reports, neither the Commission nor the national authorities have the means to monitor the activities of the joint enterprises. In such circumstances, a joint enterprise constituted by a Portuguese beneficiary could be dissolved immediately after the payment of the balance of the aid, the national authorities and the Commission not being in a position to demand the reimbursement of the aid. The Commission should have ensured that beneficiaries throughout the Community are treated equally.

### Evaluation of maritime accidents

53. If grant-aided fishing vessels sink within the minimum three year operational period, an evaluation of associated insurance claims — particularly, if rejected — could provide the Commission with useful information for making its own assessment of the circumstances surrounding a sinking. However, even when there was a

balance of aid to be paid in respect of a boat which had sunk, the Commission has never sought information about the outcome of possible insurance claims (see also paragraphs 39-42).

#### Controls on the spot

54. The Commission services have undertaken very few verification visits to the Member States to establish the reliability of data transferred and, by means of visits to beneficiaries, the reality of proposed projects.

#### IMPACT AND EFFICIENCY OF THE MEASURE

55. The principal objective of the joint enterprise measure is to diminish the capacity of the Community fleet, thereby contributing towards the establishment of a better balance between available resources and fishing activities. Community aid is given, therefore, in return for the removal of the aided vessel from the Community fishing register and its incorporation into the fishing register of a third country.

56. During the implementation of MAGP from 1991 to 1997, the joint enterprise arrangements represent approximately 36 % of the total capacity reduction of some 300 000 tonnes (see *Table 6*).

57. However, the results are less impressive than they seem. About 90 % of the vessels for the projects audited were already fishing outside Community waters and had little prospect of operating within Community waters. Their definitive removal from the Community register has, therefore, had practically no effect on fishing activity in Community waters. Furthermore, EU fish landings have been stable (see *Table 2*). Overall, the joint enterprises scheme is an expensive option, compared with export, for removing vessels from the Community fishing register.

58. Furthermore, there is no evidence in the Commission files that, after the redeployment of the vessels, their fishing rights under IFAs have been reallocated to other EU vessels, or that a corresponding reduction in the amounts paid by the EU budget to the third countries concerned under such IFAs was obtained. Indeed the available evidence suggests that the successive IFAs result in increasing expenditure by the Community

in return for ever diminishing fishing possibilities. The Court has already drawn attention to the escalating costs of IFAs <sup>(25)</sup>.

59. The aid paid is exactly the same for both the scrapping measure and for the joint enterprise, and these are double the aid for exporting the vessel, or re-assigning it to uses other than fishing. In the case of scrapping, the shipowner is compensated for the loss of the asset, whereas, in the case of a joint enterprise the asset remains intact and the shipowner retains the possibility of continuing to benefit from the associated income stream. Thus, while the overall objectives of the joint enterprises arrangements may be valid, the incentives offered are over-generous relative to the available alternatives. Furthermore, under the present arrangements there are inadequate guarantees to ensure that the significant Community financial resources, which the joint enterprise scheme requires, are protected.

60. The payment of capital grants to shipowners cannot be considered the most effective way to ensure that aid was used for the purposes of continuing fishing activities. The other, unused, regulatory options, an interest subsidy or a capital contribution towards the formation of guarantee funds, would have better ensured that the ongoing fishing activities of the joint enterprise could be monitored and controlled as required by the regulations.

#### CONCLUSION

61. The major failures detected were due, in no small measure, to poor monitoring and control procedures by the Member States and the Commission (see paragraphs 22-42 and 43-54). In particular, the Community fleet register still needs significant improvement in order to be completely reliable (see paragraphs 47-50). Because of the high rate of aid payable, which is equivalent to the rate payable for the scrapping of the vessel and frequently represents a multiple of the insured value of the vessel, the Community financial interest, that the vessel performs its fishing activities in compliance with the regulations, should have been adequately protected (see point 59).

62. The Commission should take immediate steps to review its monitoring and control procedures and, in instances such as those stated in this report (see paragraphs 23, 28, 31-33, 37-38, 41-42), it should

<sup>(25)</sup> Annual Report concerning the financial year 1992 (OJ C 309, 16.11.1993).

proceed to the recovery of EU grants, where appropriate.

63. As managed to date by the Commission and the Member States, the payment of a capital grant to the shipowner is not the most effective means of supporting the joint enterprise activities. The other options provided by the regulations, but never implemented up to now — an interest subsidy or a capital contribution towards the formation of a guarantee fund — would better ensure the protection of the Community financial interests (see paragraph 60). If capital grants should continue to be paid, the Commission should take the necessary steps in order to ensure that the beneficiaries provide sufficient guarantees (e.g. bank guarantees) to cover their

obligations to maintain activity and supply to the EU market for the minimum period required.

64. Although the measure has contributed to one third of the reduction of the Community fishing fleet since 1991, some 90 % of the vessels included in the projects audited were already fishing outside Community waters and had little prospect of operating within Community waters in the future. The removal from the Community register has, therefore, had practically no effect on fishing in Community waters. Furthermore, EU fish landings have been stable (see paragraph 57). No evidence was found in the Commission files that, in the context of the IFAs, the redeployment of these vessels has led to a reallocation of their fishing rights to other EU vessels, or to a reduction of the expenditure paid by the EU budget to the third countries (see paragraph 58).

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 7 October 1998.

*For the Court of Auditors*

Bernhard FRIEDMANN

*President*

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Table 1

## Direct employment in the fisheries sector (1990-1995)

Member State	1990	1991	1992	1993	1994	1995	Variation 1995/1990
Belgium <sup>(1)</sup>	845	818	762	720	652	624	-26,15 %
Denmark <sup>(2)</sup>	6 945	6 682	7 277	5 491	5 275	5 055	-27,21 %
Germany <sup>(3)</sup>	4 812	4 291	4 377	4 142	4 979	4 979	3,47 %
Greece <sup>(4)</sup>	39 124	40 164	40 164	40 164	40 164	40 164	2,66 %
Spain	87 351	84 838	82 299	79 369	77 962	75 009	-14,13 %
France	32 622	30 953	29 588	28 306	27 598	26 879	-17,60 %
Ireland <sup>(5)</sup>	7 905	7 910	7 805	7 700	7 700	5 500	-30,42 %
Italy <sup>(6)</sup>	41 429	39 171	45 620	45 000	45 000	45 000	8,62 %
Netherlands <sup>(7)</sup>	3 502	3 932	2 876	2 834	2 796	2 752	-21,42 %
Portugal <sup>(8)</sup>	40 610	38 745	36 337	34 454	31 721	30 937	-23,82 %
United Kingdom <sup>(9)</sup>	24 230	23 820	23 410	23 000	20 766	19 928	-17,75 %
<b>EUR-12</b>	<b>288 530</b>	<b>281 324</b>	<b>280 515</b>	<b>271 180</b>	<b>264 613</b>	<b>256 827</b>	<b>-10,99 %</b>
Finland <sup>(10)</sup>	3 046	2 884	2 739	2 750	2 372	2 792	-8,34 %
Sweden <sup>(11)</sup>	3 823	3 549	3 275	3 000	3 500	3 400	-11,06 %
<b>EUR 15</b>	<b>295 399</b>	<b>287 757</b>	<b>286 529</b>	<b>276 930</b>	<b>270 485</b>	<b>263 019</b>	<b>-10,96 %</b>

Source: DG XIV, OCDE (fishermen employed full- and part-time unless otherwise stated).

<sup>(1)</sup> Source: Belgian Ministry of Agriculture 1986-1993.

<sup>(2)</sup> Source: Danish Ministry of Fisheries for 1990, 1991 and 1992.

<sup>(3)</sup> Source: German Ministry of Agriculture for 1994.  
1994 figures for 1995.

<sup>(4)</sup> Source: Greek National Statistical Service, Agricultural statistics.  
1991 figures for 1992-1995.

<sup>(5)</sup> Sources: 1991 Report, SEC(91) 2288 final.  
Regional socio-economic study in the fishing industry — DG XIV for 1991.  
Figures for 1990 and 1992 estimated by linear interpolation.

<sup>(6)</sup> Source: ISTAT 1989-1992, 1993 figures for 1994-1995.

<sup>(7)</sup> Source: Regional socio-economic study in the fishing industry — DG XIV for 1990.  
Produktschap Vis for 1994-1995 (1995 provisional).

<sup>(8)</sup> Source: Ministry of Agriculture, Rural Development and Fisheries.  
FAO for 1995.

<sup>(9)</sup> Source: Regional socio-economic study in the fishing industry — DG XIV for 1990.  
Figures for 1991 and 1992 estimated by linear interpolation.

<sup>(10)</sup> Source: Statistical Yearbook of Finland for 1992.  
OECD for 1994, professional sea-fishermen only.

<sup>(11)</sup> 1991 and 1992 figures estimated by linear interpolation.

Table 2  
Total landings

Q: 1 000 tonne  
V: ECU million

Member State	1990		1991		1992		1993		1994		1995	
	Q	V	Q	V	Q	V	Q	V	Q	V	Q	V
Belgium <sup>(1)</sup>	37,5	83,7	36,3	90,5	33,4	75,4	32,3	76,2	30,2	75,5	35,6	92,1
Denmark	1 458,5	443,4	1 728,0 <sup>(5)</sup>	460,0 <sup>(5)</sup>	1 930,0 <sup>(5)</sup>	426,2 <sup>(5)</sup>	1 593,0 <sup>(5)</sup>	338,9 <sup>(5)</sup>	1 872,7	383,8	1 998,4	412,0
Germany	215,4	156,3	253,9	181,4	265,5	153,7	258,5	147,2	248,6	292,1	276,5	283,8 <sup>(5)</sup>
Greece	154,2	500,0	159,4	527,8	179,2 <sup>(6)</sup>	593,4 <sup>(7)</sup>	179,2 <sup>(8)</sup>	593,4 <sup>(8)</sup>	191,0 <sup>(5)</sup>	379,9 <sup>(5)</sup>	158,9 <sup>(5)</sup>	341,1 <sup>(5)</sup>
Spain <sup>(2)</sup>	887,9 <sup>(5)</sup>	1 831,2 <sup>(5)</sup>	787,3 <sup>(5)</sup>	1 798,2 <sup>(5)</sup>	842,0 <sup>(5)</sup>	1 794,3 <sup>(5)</sup>	795,3 <sup>(5)</sup>	1 510,0 <sup>(5)</sup>	1 291,6	1 700,9	1 462,2	1 965,5
Finland	74,0 <sup>(5)</sup>	33,7 <sup>(5)</sup>	60,2 <sup>(5)</sup>	29,0 <sup>(5)</sup>	79,1 <sup>(5)</sup>	24,7 <sup>(5)</sup>	83,6 <sup>(5)</sup>	21,6 <sup>(5)</sup>	103,4	25,0	133,1	22,6
France	529,8	882,8	524,0	880,3	506,9	848,8	528,0	845,7	867,8 <sup>(5)</sup>	1 229,4 <sup>(5)</sup>	868,4 <sup>(5)</sup>	1 255,3 <sup>(5)</sup>
Ireland	183,6	74,2	159,2 <sup>(5)</sup>	119,9 <sup>(5)</sup>	167,0 <sup>(5)</sup>	115,5 <sup>(5)</sup>	222,6 <sup>(5)</sup>	108,1 <sup>(5)</sup>	297,2	136,0	378,5	141,3
Italy	337,0	1 257,0	368,4	1 307,4	566,7 <sup>(6)</sup>	2 011,1 <sup>(7)</sup>	405,1	1 208,7	413,9	1 168,1	413,9 <sup>(9)</sup>	1 168,1 <sup>(9)</sup>
Netherlands	538,0 <sup>(5)</sup>	465,0 <sup>(5)</sup>	462,0 <sup>(5)</sup>	488,0 <sup>(5)</sup>	412,7 <sup>(5)</sup>	429,6 <sup>(5)</sup>	474,4 <sup>(5)</sup>	441,8 <sup>(5)</sup>	480,2 <sup>(5)</sup>	437,9 <sup>(5)</sup>	462,6 <sup>(5)</sup>	417,0 <sup>(5)</sup>
Portugal <sup>(3)</sup>	309,7 <sup>(5)</sup>	400,0	306,8 <sup>(5)</sup>	400,0	295,7	400,0	289,0	400,0	247,5 <sup>(5)</sup>	319,7 <sup>(7)</sup>	247,5 <sup>(9)</sup>	319,7 <sup>(9)</sup>
Sweden <sup>(4)</sup>	240,7	117,9	227,9	119,3	300,9	98,8	335,7	81,1	376,0	91,2	379,0	94,0
United Kingdom	610,4 <sup>(5)</sup>	547,9 <sup>(5)</sup>	639,6 <sup>(5)</sup>	600,5 <sup>(5)</sup>	458,0 <sup>(5)</sup>	522,1 <sup>(5)</sup>	678,6 <sup>(5)</sup>	544,5 <sup>(5)</sup>	874,9	721,9	912,6	711,7
<b>EUR-12</b>	<b>5 262,1</b>	<b>6 641,6</b>	<b>5 424,8</b>	<b>6 854,1</b>	<b>5 657,1</b>	<b>7 370,1</b>	<b>5 456,0</b>	<b>6 214,5</b>	<b>6 815,6</b>	<b>6 845,2</b>	<b>7 215,2</b>	<b>7 107,7</b>
<b>EUR-15</b>	<b>5 576,8</b>	<b>6 793,1</b>	<b>5 713,0</b>	<b>7 002,3</b>	<b>6 037,1</b>	<b>7 493,6</b>	<b>5 875,3</b>	<b>6 317,2</b>	<b>7 295,0</b>	<b>6 961,4</b>	<b>7 727,3</b>	<b>7 224,2</b>

Source: DG XIV, OCDE unless otherwise stated.

<sup>(1)</sup> Source: Ministère de l'Agriculture belge.

<sup>(2)</sup> Source: Ministerio de Agricultura, Pesca y Alimentacion 1990-1993.

<sup>(3)</sup> Source: Recursos da pesca — Séria Estatística for Q 1990,1991,1994; DG XIV for V 1990.

<sup>(4)</sup> Source: SCB Statistics Sweden 1990-1993.

<sup>(5)</sup> Only national landings in home ports.

<sup>(6)</sup> Source: Eurostat catches.

<sup>(7)</sup> Estimation

<sup>(8)</sup> Data of 1992.

<sup>(9)</sup> Data of 1994.

Table 3  
External trade

*Q: 1 000 tonne*  
*V: ECU million*

	Imports		Exports		Balance	
	Q	V	Q	V	Q	V
1986	3 322	4 593	1 306	1 266	-2 016	-3 327
1987	3 613	5 294	1 237	1 363	-2 376	-3 931
1988	3 548	5 917	1 239	1 372	-2 309	-4 545
1989	3 991	6 390	1 328	1 462	-2 663	-4 928
1990	4 160	6 925	1 220	1 352	-2 940	-5 573
1991	3 998	7 698	1 302	1 471	-2 696	-6 227
1992	4 096	7 655	1 432	1 420	-2 664	-6 235
1993	4 020	7 064	1 478	1 454	-2 542	-5 610
1994	4 723	8 124	1 593	1 682	-3 130	-6 442
EUR-15 1995	4 303	8 271	1 584	1 630	-2 719	-6 641
EUR-15 1996	4 324	8 646	1 509	1 695	-2 815	-6 951

Source: DG XIV, Eurostat-Comext.

Imports: Value cif.

Exports: Value fob.

All fishery products (including meal, oil, waste, etc.).

Table 4

## Joint enterprise projects financed (1991-30.6.1998)

Member State	No Vessels	No Projects	GRT		Aid approved		Aid paid		(g)/(e) (%)
					(million ECU) <sup>(1)</sup>	(%)	(million ECU) <sup>(2)</sup>	(%)	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
<b>Joint Enterprises projects approved under Regulation (EEC) No 4028/86 <sup>(3)</sup></b>									
Denmark	1	4	614	1 %	3,32	2	3,32	3	100
Greece	12	17	4 642	9 %	14,47	9	12,59	11	87
Spain	39	86	28 316	55 %	85,84	56	62,76	53	73
France	5	10	3 454	7 %	10,53	7	9,15	8	87
Italy	11	25	9 332	18 %	24,91	16	18,01	15	72
Portugal	15	20	5 375	10 %	13,29	9	12,57	11	95
<b>Total</b>	<b>83</b>	<b>162</b>	<b>51 733</b>	<b>100 %</b>	<b>152,36</b>	<b>100</b>	<b>118,4</b>	<b>100</b>	<b>78</b>
<b>Joint Enterprises projects approved under the Argentina Agreement (Regulation (EEC) No 3447/93)</b>									
Germany	2	2	3 138	12 %	9,19	12	7,35	12	80
Greece	1	1	436	2 %	2,25	3	0	0	0
Spain	22	23	20 845	77 %	58,4	74	52,62	85	90
Italy	1	1	1 298	5 %	2,02	3	1,64	3	81
Netherlands	1	2	779	3 %	4,26	5	0	0	0
United Kingdom	2	2	524	2 %	3,20	4	0	0	0
<b>Total</b>	<b>29</b>	<b>31</b>	<b>27 020</b>	<b>100 %</b>	<b>79,32</b>	<b>100</b>	<b>61,61</b>	<b>100</b>	<b>78</b>
<b>Joint enterprises approved under FIFG (Regulation (EC) No 3699/93)</b>									
Denmark	1	1	250	1 %	0,46	1	0,37	1	80
Greece	5	6	1 900	5 %	4,00	6	0	0	0
Spain	43	59	24 431	70 %	48,00	72	48,00	88	100
Italy	7	10	2 721	8 %	4,32	7	0	0	0
Portugal	20	21	5 655	16 %	9,50	14	5,90	11	62
<b>Total</b>	<b>76</b>	<b>97</b>	<b>34 957</b>	<b>100 %</b>	<b>66,28</b>	<b>100</b>	<b>54,27</b>	<b>100</b>	<b>82</b>
<b>Totals per Member State</b>									
Germany	2	2	3 138	12 %	9,19	3	7,35	3	80
Denmark	2	5	864	1 %	3,78	1	3,69	2	98
Greece	18	24	6 978	6 %	20,72	7	12,59	5	61
Spain	104	168	73 592	65 %	192,24	65	163,38	70	85
France	5	10	3 454	3 %	10,53	4	9,15	4	87
Italy	19	36	13 351	12 %	31,25	10	19,65	8	63
Netherlands	1	2	779	1 %	4,26	1	0	0	0
Portugal	35	41	11 030	10 %	22,79	8	18,47	8	81
United Kingdom	2	2	524	0 %	3,2	1	0	0	0
<b>Total</b>	<b>188</b>	<b>290</b>	<b>113 710</b>	<b>100 %</b>	<b>297,96</b>	<b>100</b>	<b>234,28</b>	<b>100</b>	<b>79</b>

Source: DG XIV/D2, SINCOM, Annual execution reports FIFG.

<sup>(1)</sup> Sources: SINCOM, internal listings and Member States Annual execution reports.

<sup>(2)</sup> Sources: SINCOM and Member States Annual execution reports.

<sup>(3)</sup> Projects approved in 1994, financed by FIFG, included.



Table 5

## Data on joint enterprise projects financed and examined

Member State	No Projects			No Vessels			GRT			Aid approved (million ECU)			Aid paid (million ECU)		
	Total	Exam.	%	Total	Exam.	%	Total	Exam.	%	Total	Exam.	%	Total	Exam.	%
Germany	2	0	0	2	0	0	3 138	0	0	9,19	0	0	7,35	0	0
Denmark	2	0	0	5	0	0	864	0	0	3,78	0	0	3,69	0	0
Greece	18	8	44	24	12	50	6 978	3 731	53	20,72	10,67	51	12,59	9,91	79
Spain	104	21	20	168	31	18	73 592	19 179	26	192,24	54,63	28	163,38	47,63	29
France	5	1	20	10	3	30	3 454	1 240	36	10,53	3,68	35	9,15	3,68	40
Italy	19	9	47	36	17	47	13 351	5 474	41	31,25	8,8	28	19,65	8,80	45
Netherlands	1	0	0	2	0	0	779	0	0	4,26	0	0	0	0	0
Portugal	35	11	31	41	14	34	11 030	8 009	73	22,79	11,07	49	18,54	8,44	46
United Kingdom	2	0	0	2	0	0	524	0	0	3,2	0	0	0	0	0
<b>Total</b>	<b>188</b>	<b>50</b>	<b>27</b>	<b>290</b>	<b>77</b>	<b>27</b>	<b>11 310</b>	<b>37 633</b>	<b>33</b>	<b>297,96</b>	<b>88,85</b>	<b>30</b>	<b>234,35</b>	<b>78,46</b>	<b>33</b>

Sources: SINCOM; DG XIV.

Table 6

## Evolution of Community Fishing Fleet Tonnage

(Tonnage)

Member State	1991	1997	Difference	%	Reduction due to JE (*)	%
	(a)	(b)	(c)=(b)-(a)	(d)=(c)/(a)	(e)	(f)=(e)/(c)
Belgium	27 732	22 880	-4 852	-17	—	0
Denmark	117 949	98 551	-19 398	-16	-864	4
Germany	92 775	72 910	-19 865	-21	-3 138	16
Greece	129 474	114 587	-14 887	-11	-6 978	47
Spain	788 232	604 901	-183 331	-23	-73 592	40
France	198 801	196 001	-2 800	-1	-3 454	123
Ireland	56 236	58 502	2 266	4	—	0
Italy	274 063	260 603	-13 460	-5	-13 351	99
Netherlands	174 274	177 196	2 922	2	-779	0
Portugal	183 306	123 220	-60 086	-33	-11 030	18
U.K.	252 601	253 924	1 323	1	-524	0
<b>EUR-12 Total</b>	<b>2 295 443</b>	<b>1 983 275</b>	<b>-312 168</b>	<b>-14</b>	<b>-113 710</b>	<b>36</b>

Source: DG XIV, Statistical Bulletins, D2.

(\*) GRT at the moment of approval of aid.

JE = Joint enterprises.

## REPLIES OF THE COMMISSION

### EXECUTIVE SUMMARY OF SPECIAL REPORT CONCERNING THE COMMUNITY MEASURES TO ENCOURAGE THE CREATION OF JOINT ENTERPRISES IN THE FISHERIES SECTOR

Most of the gaps and shortcomings noted in the application of the rules have already been described in a 1995 report by the Directorate-General for Fisheries. The Commission has begun to take steps to solve these problems.

The Commission would stress that, despite the problems encountered in implementing the measures, the joint-enterprise scheme has proved very useful in dealing with the problems of the Community fleet in the 1990s. Joint enterprises have contributed to:

- reducing the capacity of the Community fleet; they account for one third of the total reduction recorded between 1991 and 1997, as the Court of Auditors points out,
- solving the problems of access to third-country resources encountered by Community shipowners,
- consolidating stable and lasting cooperation between the Community and the third countries with which it has relations in the fisheries sector,
- preserving at least some of the jobs on board the transferred vessels and in allied activities,
- supplying the Community market and thereby reducing the Community's dependence on outside supplies.

In view of this contribution to the structural adjustment of the European Union's fishing capacity, the new Financial Instrument for Fisheries Guidance (FIFG) rules will continue to provide for setting up joint enterprises. With this in mind, the Commission has embarked upon an evaluation of the joint-enterprise scheme as a whole, including the joint enterprises financed in the framework of the agreement with Argentina.

A common approach will be introduced to ensure that the scheme remains consistent with and complementary to the policy on fisheries agreements. Joint enterprises constitute an instrument for the development of the fishing industry in the third countries with which the Community has reached an agreement; moreover, a fisheries agreement provides an appropriate legal framework for the monitoring of joint enterprise projects and activities.

When drawing up the new FIFG rules, the Commission will reinforce the legal framework for:

- conditions to be met when a joint enterprise is set up,
- guarantees required of the beneficiary depending on the Community premium,
- monitoring and inspection arrangements.

In the framework of the present rules, the Commission has reminded the Member States of their obligations for the management and monitoring of joint-enterprise projects; it has also launched several measures to reinforce monitoring by its own departments (setting up a database, checking national methods of measurement, intensifying controls).

Finally, in the cases mentioned by the Court, the Commission is making all necessary checks on discrepancies in vessel tonnage, construction and modernisation aid, changes to joint-enterprise projects and sinking of vessels. The Commission will if necessary recover any amounts wrongly paid.

## DESCRIPTION OF THE AUDITED ACTIVITIES

### *Regulatory Framework*

9. While it is true that the joint-enterprise aid scheme under Regulation (EEC) No 4028/86 has been directly managed by the Commission, it should be pointed out that management has been based on prior processing by the Member States, which make a preliminary classification of projects, approve the principle of financing and certify the truth of the information transmitted by applicants with their aid applications and applications for payment.

18. The procedure described under point 9 also applies to the management of joint enterprises in the framework of the agreement with Argentina, except for the final selection of projects, which is up to the EC/Argentina joint committee.

## BUDGETARY RESOURCES

21. As pointed out in the Commission's reply to point 9.4 of the 1996 annual report, it was the budgetary authority that decided to group together all payments for measures with the same aims so as to keep down the number of budget headings.

## RESULTS OF THE AUDIT

### *Management in the Member States*

#### **Calculation of the vessel tonnage**

23. For project SM/GR/3/91, after a request from the Greek authorities, the beneficiary has agreed to see that his vessel is measured in GRT so that the amount of aid can be properly calculated, and any overpayment recovered.

For the three Italian vessels, the Commission has contacted the authorities with a view to carrying out the necessary checks and to solving the problems arising. If necessary, the Commission will recover any overpayments.

24.-25. In order to solve the problem of non-standard methods of measurement the Commission has signed a contract with an expert institute which will verify the working methods of the national measurers and establish a report on how measurement is carried out in the Member States. The expert Institute will deliver this report by mid-1999.

In the light of the recommendations of this report the Commission will take the initiative in proposing possible additional steps with the view to eliminating non-standard measurement.

Re-measurement of all vessels in GT, in accordance with Regulation (EEC) No 2930/86 as amended by Regulation (EC) No 3259/94, is in fact progressing satisfactorily in most Member States. The Commission has recently reminded Member States where sufficient progress has not been made about their obligations. The Commission is considering the possibility of legal action and has sent letters of formal notice to five Member States concerning this subject.

#### **Suitability of aided vessels for the planned fishery operations**

26.-27. Applicants under the joint-enterprise aid scheme must specify the conditions of access to the fishing grounds in the documents they send the national authorities, and in particular indicate whether their vessels are technically adapted to the operations planned. When the application for aid is submitted, the Member States check the accuracy of this information.

The fact that work is carried out on a vessel does not necessarily imply that it was technically unsuitable for the fishing operations planned when the joint enterprise was set up. Vessels are regularly serviced, and when a vessel is to be redeployed, this regular maintenance provides an opportunity for any transformations required to adapt them better to the special conditions of the new fishing grounds, increase their productivity or upgrade equipment for processing catches.

When the new rules are drawn up for the FIFG, the Commission will consider the possibility of requiring that the details of the work to be carried out and the time limit on completing it should be specified when the application is submitted.

### Vessel eligibility

28. The joint-enterprise aid scheme gives priority for financial assistance to vessels operating in non-Community waters where access to resources is difficult.

Some vessels have been obliged to interrupt their fishing activities temporarily after encountering problems in non-Community waters (Namibian and NAFO waters) where they had been fishing in the early 1990s. This temporary interruption did not affect the status of the vessels as active vessels.

Indeed, the Commission has done its best to find fishing grounds for these vessels in the framework of the EC/Argentina agreement. Negotiation of the agreement and subsequent implementing procedures were completed only at the end of 1994. The vessels concerned benefited from the measures from 1995.

In the circumstances, the Commission is not planning to recover the aid.

### Non-recovery of Community aid for construction and modernisation

30. A new database of all the construction and modernisation aid granted since 1983, by vessel, is being set up.

The content of the database will be compared periodically with the fleet register to check that the vessels concerned remained active during the period required by the rules.

Results will be available from the end of 1998.

31. The Commission does not agree with the Spanish authorities, who take the view that the principle of recovery *pro rata temporis* does not apply to vessels having received aid under the joint-enterprise scheme in the framework of Regulation (EEC) No 4028/86 and the agreement with Argentina.

The Spanish authorities have agreed to the Commission's suggestion of holding a technical meeting on this matter.

32. The Commission has contacted the beneficiary, owner of the two vessels in question, with a request for repayment of Community aid amounting to FRF 7 667 740.

However, in view of the reservations expressed by the French authorities regarding the principle of *pro rata*

*temporis* recovery, the Commission will hold a conciliation meeting with them.

33. As soon as the database mentioned in point 30 is operational, the Commission, after exhaustively checking all the data and reaching agreement with the national authorities in all the countries concerned, will proceed with recovery of amounts due.

### The *bona fides* of particular joint enterprises

35. Community rules in force do not specify a minimum holding by any of the partners, but they specify that the Commission may grant priority to projects where several Community shipowners hold a majority of the equity of the enterprise.

The percentage holdings of partners in the joint enterprise, and the minimum duration of the holding, will be considered when new rules are drawn up for the FIFG.

The Commission is examining the matter of the Argentinian partner's participation in the joint enterprise involved in project ARG/ES/SM/53-96.

36. The viability of the joint enterprise is examined by the national authorities before the application for assistance is sent to the Commission.

Partners' contributions of assets to the joint enterprise may be in kind. The Community partner contributes the vessel, and the third-country partner contributes the fishing licence.

The possibility of fixing a compulsory contribution to the capital of the joint enterprise will be considered when the new FIFG rules are drawn up.

### Modifications of joint-enterprise projects

37. Taking the view that the recipient had duly substantiated the pressing reasons for the change in operating conditions, the Commission agreed to the transfer to Peru of the two vessels. In the circumstances, considering that the joint enterprise was continuing its fishing activities, Community aid was not called into question.

The Commission has contacted the beneficiary to clarify the situation of the third vessel and will take the appropriate decisions in the light of the rules in force.

38. The Commission has asked the authorities concerned for an explanation. It will take the appropriate decisions in the light of the rules in force.

#### Grant-aided vessels lost in maritime accidents

39.-42. The Commission has sent several requests to the national authorities for information on the circumstances of the sinking of these vessels, and in particular on insurance cover.

The Commission considers all cases of sinking of vessels as soon as it is informed of an accident; it takes the required measures.

The Commission agrees with the Court. When the new rules are drawn up for the FIG, the Commission will check whether it can impose a requirement for an insurance contract to cover each vessel transferred to a joint enterprise, and will define financial arrangements in case of accident.

#### *Management by the Commission*

##### Evaluation of aid applications

44. Most of the conditions which must be fulfilled by vessels for them to be eligible for the joint-enterprise aid scheme must be checked by the national authorities when they examine the applications lodged by recipients.

Checking of the information sent by the Member States is mainly done at on-the-spot inspections.

Depending on the means available to the Commission, it is planned to intensify checks on the joint-enterprise scheme in 1998.

The Commission has called the Member States' attention to the improvement in the management and monitoring of joint-enterprise projects. The matter will also be raised at control coordination meetings, which have recently been introduced between the Commission and the Member States, to that priority can be given to checking joint enterprise projects.

##### Evaluation of vessel tonnage information

45. The certification of vessel tonnage is a matter for the Member States.

The Commission will ask the Greek and Italian authorities for fuller information on the cases referred to. (See also point 23.)

46. The Commission has already replied to the Court's observations in its reply to points 24 and 25.

#### The Community fishing-vessel register

47. Since the Commission's reply to the Court's observations on the fishing-vessel register in its 1996 report (points 9.29 to 9.33) the situation has considerably improved as a result of the bilateral contacts between the Commission and the Member States to establish the multiannual guidance programmes for 1997-2001 and as a result of the joint control/structural missions undertaken by Commission staff to ensure efficient implementation of these programmes.

48. As regards Italy, a working group has been set up between the Commission and the Italian authorities, whose terms of reference are to review and update the data in the Italian fleet register from 1 January 1992 onwards. The working group will also examine compatibility between the data in the fleet register and those provided by Italy in the framework of its multiannual guidance programme 1992-96. The working group will complete its work by 31 December 1998.

49. The delay in removing the transferred vessels from the Community vessel register was due to administrative procedures; the vessels had been duly removed from the national register.

The Commission has reminded the Member States of their obligation to notify changes in their national registers immediately.

The new draft Regulation on the Community fishing fleet register provides for very short deadlines for Member States to notify data.

50. In relation to the implementation of the multiannual guidance programmes for the period 1997-2001 and the revision of the legislation on the Community fishing fleet register the Commission has repeatedly reminded the Member States about their obligations to communicate the required information.

In the future implementing regulation for the Financial Instrument for Fisheries Guidance, the Commission will propose tighter rules on failure by the Member States to comply with the reporting requirements.

### Evaluation of activity reports

51. The Commission systematically contacts the Member States to request any missing reports.

The reports are examined periodically by the Commission so as to take stock of the measure. A random sample is taken for checking in depth.

The Commission has also decided to make an overall evaluation of the joint-enterprise scheme; the procedure is now being launched. An evaluation of international fisheries agreements, including joint enterprises financed in the framework of the agreement with Argentina, is under way at the moment.

52. The Commission has drawn attention, at Monitoring Committee meetings in Portugal, to the need for Portuguese legislation to introduce a provision requiring aid recipients to present three annual reports.

The Portuguese authorities are at present adapting the law to take account of the Commission's request.

### Evaluation of maritime accidents

53. The Commission's reply to this observation will be found under point 42.

### Controls on the spot

54. When aid applications are sent to the Community, the national authorities certify that the vessel fulfils the conditions required under the rules.

On-the-spot controls, which the Commission undertook in the framework of structural policy on fisheries, were intended mainly for projects involving physical installations such as buildings or aquaculture plant.

However, the Commission has already planned more intensive on-the-spot controls in 1998 for joint enterprises in Spain, Portugal, Italy and Greece.

### IMPACT AND EFFICIENCY OF THE MEASURE

57. In the framework of restructuring the Community fleet, the joint-enterprise scheme has provided new fishing opportunities for Community fishermen, in particular

those who were finding it difficult to gain access to third-country resources.

The scheme is therefore advantageous both as a solution to the problem of the vessels, which are definitively excluded from Community waters, and for the Community market, which they continue to supply.

The stability of EU fish landings is due to technical progress, which gives rise to continuous gains in fishing-fleet productivity.

It is true that the joint-enterprise scheme is a more expensive option than export, but it is justified by major advantages: security of supply on Community markets, conservation of at least some of the jobs on the vessels and in allied activities in the home port (victualling, unloading, vessel maintenance, etc.).

The level of the Community premium to joint enterprises will be reconsidered when the new FIFG rules are drawn up.

58. On the basis of the information at its disposal, the Commission, along with the Member States, ensures that vessels leaving the agreements are replaced.

Financial compensation is renegotiated with the third countries concerned when the agreements are renewed, as a function of the fishing opportunities provided, requests from the Member States and actual utilisation in the lifetime of the previous agreement.

The question of vessels withdrawn from fisheries agreements to set up joint enterprises will be considered when the new FIFG rules are drawn up, and will also be taken into consideration after the current evaluation of fisheries agreements.

59. As mentioned in point 57, the advantages of the scheme are commensurate with the Community premium to joint enterprises.

The guarantees required of the recipient, including payment arrangements, will be examined when the new FIFG rules are drawn up.

60. The various possible forms of financial assistance, and the means to encourage their use, will be considered when the new FIFG rules are drawn up.

## CONCLUSION

Commission will make all necessary checks and recover any sums wrongly paid.

61. The Member States certify the accuracy of the data sent by the beneficiary.

Measures to intensify checks on the joint-enterprise scheme were taken in 1998, as far as Commission resources allowed.

Moreover, the Commission has drawn the attention of the Member States to the need for better management and monitoring of joint-enterprise projects.

The Commission has already taken measures to improve the Community fishing-vessel register, and has reminded the Member States of their obligations.

Inspection and monitoring arrangements, and guarantees to be required of beneficiaries, will be examined when the new FIFG rules are drawn up.

62. The Commission has already taken measures to improve controls on the joint enterprise scheme, including the development of a computer programme to identify vessels that have already received Community aid; preliminary results will be available at the end of 1998.

On the questions of discrepancies in vessel tonnage, construction and modernisation aid, changes in joint-enterprise projects and sinking of vessels, the

63. The various possible forms of financial assistance, along with ways of encouraging recourse to them and of guaranteeing continuity of activities and of Community market supply, will be examined when the new FIFG rules are drawn up.

64. The joint-enterprise scheme has solved the problems of access to third-country resources encountered by Community vessels. Such vessels, which can no longer return to Community waters, now fish freely in third-country waters and continue to supply the Community market.

Landings from Community waters are stable because of technical progress, which is continually increasing the productivity of fishing fleets.

As far as possible, vessels withdrawn from fisheries agreements are replaced, and financial compensation is renegotiated when the agreements are renewed.

The question of vessels withdrawn from fisheries agreements to set up joint enterprises will be considered when the new FIFG rules are drawn up, and will also be taken into consideration after the current evaluation of fisheries agreements.

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