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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2847/93**of 12 October 1993****establishing a control system applicable to the common fisheries policy**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, pursuant to Article 12 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽⁴⁾, the Council is to introduce a Community control system;

Whereas the success of the common fisheries policy involves implementing an effective system of control covering all aspects of the policy;

Whereas, to achieve this aim, it is necessary to include rules for the monitoring of conservation and resource management measures, structural measures and measures on the common organization of the market, and certain provisions to deal with failure to carry out these measures, which must apply to the entire fisheries sector from the producer to the consumer;

Whereas this system can only achieve the desired result if the industry recognizes that it is justified;

Whereas control is first and foremost the responsibility of the Member States; whereas the Commission should also seek to ensure that the Member States monitor and prevent infringements in an equitable manner; whereas, therefore, the Commission should be provided with the financial, legal and legislative means to carry out this task as effectively as possible;

Whereas experience gained in the application of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽⁵⁾ has

shown that there is a need to strengthen control of the application of the rules governing conservation of fishery resources;

Whereas compliance with measures for the conservation and management of fishery resources requires an increased sense of responsibility on the part of all operators in the fishing industry;

Whereas policy on the management of fishery resources, which is based in particular on total allowable catches (TACs) and quotas and technical measures, is to be supplemented by management of the fishing effort, which involves monitoring fishing activities and capacities;

Whereas, to ensure that all catches and landings are kept under surveillance, Member States must monitor in all maritime waters the activities of Community vessels and all related activities allowing verification of the implementation of the rules concerning the common fisheries policy;

Whereas it is vital that Member States cooperate at the operational level during inspections at sea of fishing activities, in order to permit effective and financially justifiable inspections, particularly of operations carried out in waters outside the jurisdiction or sovereignty of a Member State;

Whereas implementation of the common fisheries policy necessitates measures to monitor vessels flying the flag of a third country present in Community waters, and in particular a system for communicating their movements and the species held on board, without prejudice to the right of innocent passage in the territorial sea and freedom of navigation in the 200-mile fishing zone;

Whereas the implementation of pilot projects applicable to certain categories of vessels by the Member States in cooperation with the Commission will make it possible for the Council to decide, before 1 January 1996, whether a satellite surveillance system or an alternative system should be implemented;

Whereas the management of fisheries by the fixing of TACs requires detailed knowledge of the composition of catches, such knowledge being equally necessary for the other procedures provided for in Regulation (EEC) No 3760/92; whereas this requires the keeping of a logbook by each master of a fishing vessel;

⁽¹⁾ OJ No C 280, 29. 10. 1992, p. 5.

⁽²⁾ OJ No C 21, 25. 1. 1993, p. 55.

⁽³⁾ OJ No C 108, 19. 4. 1993, p. 36.

⁽⁴⁾ OJ No L 389, 31. 12. 1992, p. 1.

⁽⁵⁾ OJ No L 207, 29. 7. 1987, p. 1. Regulation as last amended by Regulation (EEC) No 3483/88 (OJ No L 306, 11. 11. 1988, p. 2).

Whereas it is necessary for the Member State of landing to be able to monitor landings on its territory, and to this end it is appropriate for fishing vessels registered in other Member States to notify the Member State of landing of their intention to land on its territory ;

Whereas it is essential to clarify and confirm at the time of landing the information contained in the logbooks ; whereas, to this end, it is necessary that those involved in the landing and marketing of catches should declare the quantities landed, transshipped, offered for sale of purchased ;

Whereas, in order to provide exemptions from the obligation to keep a logbook or complete a landing declaration by small fishing vessels for which such an obligation would constitute a disproportionate burden in relation to their fishing capacity, it is necessary for each Member State to monitor the activities of such vessels by the implementation of a sampling plan ;

Whereas, in order to ensure the respect of Community conservation and trade measures, all fishery products landed in or imported into the Community should be accompanied, up to the point of first sale, by a transport document identifying their origin ;

Whereas limitations on catches must be managed at both Member State and Community level ; whereas Member States should register landings and notify them to the Commission by computer transmission ; whereas therefore it is necessary to provide for exceptions from this obligation for small quantities landed, the computer transmission of which would constitute a disproportionate administrative and financial burden for the authorities of the Member States ;

Whereas, in order to ensure the conservation and management of all the resources used, the provisions relating to the logbook, the landing and sales declarations and the information concerning transshipments and registration of catches may be extended to stocks which are not subject to a TAC or quota ;

Whereas the Member States must be informed of the results of the activities of their vessels in waters under the jurisdiction of third countries or in international waters ; whereas the masters of these vessels should accordingly be subject to the obligations relating to the logbook and the landing and transshipment declarations ; whereas the information gathered by the Member States should be sent to the Commission ;

Whereas the management of the collection and treatment of data requires the creation of computerised data bases enabling, in particular, cross checking of data ; whereas

therefore the Commission and its agents must have access to these data bases by computer transmission to carry out verification of the data ;

Whereas compliance with the provisions relating to the use of fishing gear cannot be adequately ensured where nets of different mesh sizes are carried on board, unless they are subject to additional control measures ; whereas for specific fisheries it may be appropriate to establish specific rules such as the one-net rule ;

Whereas it is necessary that, when the quota of a Member State is exhausted or when the TAC itself is exhausted, fishing should be prohibited by a Commission decision ;

Whereas it is necessary to repair the prejudice suffered by a Member State which has not exhausted its quota, its allocation of part of a stock or group of stocks when the fishery has been closed following the exhaustion of a TAC ; whereas to this end a system of compensation should be provided for ;

Whereas, in cases where this Regulation has not been respected by those responsible for fishing vessels should be made subject to additional control measures for conservation purposes ;

Whereas it is necessary, in order to guarantee efficient management of the measures adopted, to provide for declaration mechanisms in conformity with the management objectives and strategies as laid down in Article 8 of Regulation (EEC) No 3760/92, applicable to a Member State which has overfished its quota ;

Whereas one of the main aims of the common fisheries policy is to adjust fishing capacities to available resources ; whereas Article 11 of Regulation (EEC) No 3760/92 stipulates that it is the task of the Council to set the objectives and strategies for the restructuring of fishing effort ; whereas it is also necessary that compliance with the measures on the common organization of the market be assured, in particular by persons to whom these measures apply ; whereas, therefore, it is vital that each Member State carry out, in addition to the financial checks already provided for in Community rules, technical checks to ensure that the provisions set by the Council are complied with ;

Whereas it is necessary to establish general rules to allow Community inspectors appointed by the Commission to ensure the uniform application of Community rules and to verify the control carried out by the competent authorities of Member States ;

Whereas, in order to safeguard the objectivity of verifications, it is important that Community inspectors may, in certain conditions, effect missions without prior notice and in an independent way, so as to verify the control operations carried out by the competent authorities of Member States; whereas such missions will in no circumstances imply control of private persons;

Whereas the action taken following infringements may differ from one Member State to another; causing fishermen to feel unfairly treated; whereas the absence of dissuasive sanctions in certain Member States reduced the effectiveness of controls and whereas, in the light of these observations, Member States should take all the necessary non-discriminatory measures to guard against and prosecute irregularities, particularly by establishing a roster of sanctions which effectively deprive the wrong-doers of the commercial gain resulting from their infringements;

Whereas the possibility for the flag Member State to ensure that the rules of the conservation and management of fishery resources are observed is reduced in cases where the Member State of landing does not effectively prosecute irregularities; whereas provision must therefore be made to count catches made illegally against the quota of the Member State of landing if that State has not brought effective proceedings;

Whereas Member States should report regularly to the Commission on their inspections activities and on the measures taken following infringements of Community measures;

Whereas for certain measures laid down by this Regulation it is appropriate to provide for detailed rules of implementation;

Whereas the confidentiality of the data collected in the framework of this Regulation should be guaranteed;

Whereas this Regulation should not affect the national provisions on monitoring, which, while coming within its scope, go beyond its minimum provisions, provided however that such national provisions are in conformity with Community law;

Whereas Regulation (EEC) No 2241/87 should be repealed, exception being made, however, for Article 5 which should remain in force, pending the adoption of the lists referred to in Article 6 (2) of this Regulation;

Whereas it is necessary to provide a transitional period for the implementation of specific provisions contained in certain Articles in order to allow the competent authorities of the Member States to establish and adapt their procedures to the requirements of the new Regulation;

Whereas the provisions of certain Articles, insofar as they concern fisheries operations in the Mediterranean Sea,

where the common fisheries policy has not yet been integrally applied, should enter into force on 1 January 1989,

HAS ADOPTED THIS REGULATION:

Article 1

1. In order to ensure compliance with the rules of the common fisheries policy, a Community system is hereby established including in particular provisions for the technical monitoring of:

- conservation and resource management measures,
- structural measures,
- measure concerning the common organization of the market,

as well as certain provisions relating to the effectiveness of sanctions to be applied in cases where the above-mentioned measures are not observed.

2. To this end, each Member State shall adopt, in accordance with Community rules, appropriate measures to ensure the effectiveness of the system. It shall place sufficient means at the disposal of its competent authorities to enable them to perform their tasks of inspection and control as laid down in this Regulation.

3. The system shall apply to all fishing activities and to all associated activities carried out within the territory and within the maritime waters subject to the sovereignty or jurisdiction of the Member States including those exercised by vessels flying the flag of, or registered in, a third country, without prejudice to the right of innocent passage in the territorial sea and the freedom of navigation in the 200-mile fishing zone; it shall also apply to the activities of Community fishing vessels which operate in the waters of non-member countries and on the high seas, without prejudice to the special provisions contained in fisheries agreements concluded between the Community and third countries or in International Conventions to which the Community is a party.

TITLE I

Inspection and monitoring of fishing vessels and their activities

Article 2

1. In order to ensure compliance with all the rules in force concerning conservation and control measures, each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and investigate all activities thus enabling verification of the implementation of this Regulation, including the activities of landing, selling, transporting and storing fish and recording landings and sales.

2. Fishing vessels, which may exercise activities, flying the flag of third country and sailing in maritime waters subject to the sovereignty or jurisdiction of a Member State shall be subject to a system of communication of movements and of catches held on board.

Member States shall notify the Commission of the measures taken to ensure compliance with these procedures.

3. Each Member State shall monitor, outside the Community fishery zone, the activities of its vessels in cases where such control is required to ensure compliance with Community rules applicable in those waters.

4. In order to ensure that inspection is as effective and economical as possible, Member States shall coordinate their control activities. To that end, they may set up joint inspection programmes to allow the inspection of Community fishing vessels in the waters referred to in paragraphs 1 and 3. They shall take measures to permit their competent authorities and the Commission to be regularly informed on a reciprocal basis of the experience gained.

Article 3

1. In order to improve the effectiveness of surveillance of fishing activities, the Council shall decide before 1 January 1996, according to the procedure laid down in Article 43 of the Treaty, if and to what extent and when a continuous position monitoring system, either land- or satellite-based and using satellite communications for data transmission, shall be installed for Community fishing vessels.

2. In order to assess the technology to be used and the vessels to be included in the abovementioned system, Member States, in cooperation with the Commission, shall carry out pilot projects before 30 June 1995. To this end, Member States shall ensure that a continuous position monitoring system, either land- or satellite-based and using satellite communications for data transmission, is installed for certain categories of Community vessels.

Member States may carry out simultaneously pilot projects with a view to assessing the use of automatic position recorders.

3. When carrying out the pilot projects mentioned in paragraph 2, the Member State whose flag a vessel is flying or in which a vessel is registered shall take the necessary measures to ensure that the data transmitted by or recovered from, its fishing vessels are recorded in computer-readable form, regardless of the waters in which they are operating or the port they are in.

Where its fishing vessels are operating in waters subject to the sovereignty or jurisdiction of another Member State, the flag Member State shall ensure immediate communi-

cation of these data to the competent authorities of the Member State concerned.

4. Detailed rules for the implementation of pilot projects shall be decided in accordance with the procedure laid down in Article 36.

Article 4

1. The inspection and monitoring specified in Article 2 shall be carried out by each Member State on its own account by means of a system of inspection decided by the Member State.

In carrying out the tasks entrusted to them, Member States shall ensure that the provisions and measures referred to in Article 2 are complied with. Moreover, they shall act in such a way as to avoid undue interference with normal fishing activities. They shall also ensure that there is no discrimination as regards the sector and vessels chosen for inspection.

2. The persons responsible for the fishing vessels, premises or transport vehicles inspected shall cooperate in facilitating inspections carried out in accordance with paragraph 1.

Article 5

In accordance with the procedure laid down in Article 36, detailed rules may be adopted for the implementation of Articles 2, 3 and 4, concerning in particular:

- (a) the identification of officially designated inspectors, of inspection vessels and of such other like means of inspection as may be used by a Member State;
- (b) the procedure to be used by inspectors and masters of fishing vessels if an inspector wishes to board a vessel;
- (c) the procedure to be used by inspectors, having boarded a fishing vessel, in inspecting that vessel, its gear or its catches;
- (d) the report to be drawn up by inspectors after each boarding;
- (e) the marking and identification of fishing vessels and their gear;
- (f) the certification of the characteristics of fishing vessels related to fishing activities;
- (g) the recording of data relating to the position of fishing vessels and the transmission of such data to Member States and the Commission;
- (h) the system for communicating movements and fishery products held on board applicable to fishing vessels flying the flag of a third country.

TITLE II

Monitoring of catches

Article 6

1. The masters of Community fishing vessels fishing for a stock or group of stocks shall keep a logbook of their operations, indicating particularly the quantities of each species caught and kept on board, the date and location (ICES statistical rectangle) of such catches and the type of gear used.

2. The species which are to be entered in the logbook pursuant to paragraph 1 shall be those subject to TACs or quotas, as well as others included in lists to be decided by the Council acting by a qualified majority on a proposal from the Commission.

3. The masters of Community fishing vessels shall enter in their logbook the quantities caught at sea, the date and location of these catches and the species referred to in paragraph 2. The quantities discarded at sea may be recorded for evaluation purposes.

4. Masters of Community fishing vessels shall be exempt from the requirements of paragraphs 1 and 3 if the overall length of the vessels is less than 10 metres.

5. The Council may decide by a qualified majority, on a proposal from the Commission, exemptions other than the one mentioned in paragraph 4.

6. Each Member State shall carry out, on the basis of sampling, monitoring of the activities of fishing vessels which are exempt from the requirements specified by paragraphs 4 and 5 in order to ensure respect by these vessels of the Community rules in force.

To this end, each Member State shall establish a sampling plan and transmit it to the Commission. The results of monitoring executed shall be communicated regularly to the Commission.

7. The masters of Community fishing vessels shall register the information required by paragraphs 1 and 3 either in computer-readable form or on paper.

8. Detailed rules for the implementation of this Article shall be adopted in accordance with the procedure laid down in Article 36, including a geographical basis other than the ICES statistical rectangle, in certain specific cases.

Article 7

1. The master of a Community fishing vessel who wishes to utilize landing locations in a Member State other than the flag Member State must inform the competent authorities in that Member State at least two hours in advance of:

— the landing location(s) and estimated time of arrival there,

— the quantities of each species to be landed.

2. The master referred to in paragraph 1 who fails to make these notifications may be subjected to appropriate sanctions by the competent authorities.

3. The Commission, in accordance with the procedure laid down in Article 36, may grant an exemption for certain categories of Community fishing vessels from the obligation stipulated in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account *inter alia*, the distance between the fishing grounds, the landing locations and the ports where the vessels in question are registered or listed.

Article 8

1. The master of each Community fishing vessel having an overall length equal to, or more than, 10 metres, or his representative, shall after each trip and within 48 hours of landing submit a declaration to the competent authorities of the Member State where the landing takes place. The master shall be responsible for the accuracy of the declaration, which shall indicate, as a minimum, the quantities landed of each species stipulated in Article 6 (2) and the area where they were caught.

2. The Council may decide, acting by a qualified majority on a proposal from the Commission, to extend the obligation set out in paragraph 1 to vessels having an overall length of less than 10 metres. The Council may also decide, acting by a qualified majority on a proposal from the Commission, exemptions from the obligation set out in paragraph 1 for certain categories of vessels having an overall length equal to, or more than, 10 metres and pursuing specific fishing activities.

3. Each Member State shall carry out, on the basis of sampling, monitoring of the activities of fishing vessels which are exempt from the requirements specified by paragraph 1 in order to ensure respect by these vessels of the Community rules in force.

To this end, each Member State shall establish a sampling plan and transmit it to the Commission. The results of monitoring executed shall be communicated regularly to the Commission.

4. Detailed rules for implementation of this Article shall be adopted in accordance with the procedure laid down in Article 36.

Article 9

1. Auction centres or other bodies authorized by Member States, which are responsible for the first marketing of fishery products landed in a Member State shall submit, upon the first sale, a sales note, the accuracy of which shall be the responsibility of the said bodies, to the competent authorities of the Member State in whose territory the first marketing takes place. This responsibility shall be limited to the information requested in paragraph 3.

2. Should the first marketing of fishery products landed in a Member State be carried out in a manner different from that laid down in paragraph 1, the fishery products landed shall not be removed by the buyer until a sales note has been submitted to the competent authorities or other authorized bodies of the Member State in whose territory this operation has been carried out. The buyer shall be responsible for the accuracy of the data indicated in paragraph 3 which is contained in the sales note.

3. The sales notes referred to in paragraphs 1 and 2 shall contain as a minimum the following information :

- for all species, where appropriate, the individual size or weight, grade, presentation and freshness,
- the price and quantity at first sale for each species, and, where appropriate, on a individual size or weight, grade, presentation and freshness basis.
- where appropriate, the destination of products withdrawn from the market (by products, human consumption, carry-over),
- the name of both the seller and the buyer,
- the place and the date of the sale.

4. These sales notes shall be completed and transmitted in accordance with the law of the Member State of landing in such a manner and under such conditions of sale to include the following data :

- the external identification and the name of the fishing vessel which landed the products in question,
- the name of the vessel's owner or the master,
- the port and date of landing.

5. The sales notes mentioned in paragraph 1 shall be transmitted within 48 hours of sale to the competent authority or other bodies authorized by the Member State, either by computer or on paper.

6. The competent authorities shall keep a copy of each sales note for a period of one year starting from the year following that in which the information submitted to the competent authorities is recorded.

7. The Commission, in accordance with the procedure laid down in Article 36, may grant an exemption from the obligation to submit the sales note to the competent authorities or other authorized bodies of the Member State for fisheries products landed from certain categories of Community fishing vessels having an overall length of less than 10 metres.

Such exemptions may be granted only in cases where the Member State in question has installed an acceptable monitoring system.

8. A buyer acquiring products which are not thereafter placed on the market but used only for private consumption shall be exempt from the requirements of paragraph 2.

9. Detailed rules governing the implementation of this Article shall be adopted in accordance with the procedure laid down in Article 36.

Article 10

1. (a) Fishing vessels flying the flag of, or registered in, a third country and which are authorised to carry out fishing activities in the maritime waters under the sovereignty or jurisdiction of a Member State shall keep a logbook containing the information described in Article 6.

(b) Each Member State shall ensure that the master of a fishing vessel flying the flag of, or registered in, a third country, or his representative, shall on landing submit to the authorities of the Member State whose landing facilities he wishes to use at least 72 hours in advance of his time of arrival at the port of landing.

(c) The master of a fishing vessel flying the flag of, or registered in, a third country must notify the competent authorities of the Member State whose landing facilities he wishes to use at least 72 hours in advance of his time of arrival at the port of landing.

The master may not carry out any landing operation if the competent authorities of the Member State have not confirmed the receipt of the advance notification.

Member States shall establish detailed rules of implementation of this subparagraph to be notified to the Commission.

2. The Commission, in accordance with the procedure laid down in Article 36, may grant an exemption for certain categories of third country fishing vessels from the obligation stipulated in paragraph 1c for a limited and renewable period, or make provision for another notification period taking into account, *inter alia*, the distance between the fishing grounds, the landing locations and the ports where the vessels in question are registered or listed.

3. The provisions of paragraphs 1 and 2 shall apply without prejudice to the provisions provided for in fisheries agreements concluded between the Community and certain third countries.

Article 11

1. Without prejudice to Articles 7, 8 and 9, the master of a Community fishing vessels who :

- transships to another vessel, hereinafter referred to as 'the receiving vessel', any quantities of catches of a stock or group of stocks subject to a TAC or quota irrespective of the place of transshipment, or
- directly lands such quantities outside Community territory,

shall, at the time of the transshipment or of the landing, inform the Member State whose flag his vessel is flying, or in which his vessel is registered, of the species and quantities involved and of the date of transshipment or of landing and of the location of catches by reference to the smallest zone for which a TAC or quota has been fixed.

2. At the latest 24 hours before the beginning and at the end of a transshipment or a series of transshipments, when this takes place in a port or in maritime waters subject to the sovereignty or jurisdiction of a Member State, the master of the receiving vessel shall inform the competent authorities of that Member State of the quantities of catches of a stock or group of stocks subject to a TAC or quota on board his vessel.

The master of the receiving vessel shall keep details of the quantities of catches of a stock or group of stocks subject to a TAC or quota received by transshipment, of the date of receipt, and of the vessel transshipping such catches to the receiving vessel. This requirement shall be deemed to be met by retaining copies of the transshipment declaration provided in accordance with the detailed rules for recording information on Member States' catches of fish.

At the end of the transshipment or series of transshipments, the master of the receiving vessel shall transmit these details to the competent authorities referred to above within 24 hours.

The master of the receiving vessel shall also keep details of the quantities of catches of a stock or group of stocks subject to a TAC or quota which are transshipped by the receiving vessel to a third vessel, and shall inform the aforementioned competent authorities of such transshipment at least 24 hours before it takes place. Following transshipment, the master shall inform the said authorities of the quantities transshipped.

The masters of the receiving vessel and of the third vessel referred to above shall permit the competent authorities to verify the accuracy of the information and details required by this paragraph.

3. Member States shall take appropriate measures to verify the accuracy of the information received under

paragraphs 1 and 2, and shall, where appropriate, inform the Member State or Member States in which the receiving vessel and the fishing vessel transshipping to the receiving vessel are registered, or whose flag they are flying, of such information and of the results of verification.

4. Paragraphs 2 and 3 shall also apply to a receiving vessel flying the flag of, or registered in a third country.

Article 12

Where transshipment or landing is to take place more than 15 days after the catch, the information required in Articles 8 and 11 shall be submitted to the competent authorities of the Member State whose flag the vessels are flying or in which the vessels are registered not later than 15 days after the catch.

Article 13

1. All fisheries products landed in or imported into the Community, either unprocessed or after having been processed on board and which are transported to a place other than that of landing or import, shall be accompanied by a document drawn up by the transporter until the first sale has taken place.

2. This document shall :

- (a) indicate the origin of the consignment (name of vessel and its external identification);
- (b) include the place of destination of the consignment(s) and the identification of the transport vehicle;
- (c) indicate the quantities of fish (in kilogrammes processed weight) for each species transported, the names of the consignee and the place and the date of loading.

3. Each transporter must ensure that the document cited in paragraph 1 contains as a minimum all the information requested in paragraph 2.

4. The transporter shall be exempt from the obligation fixed in paragraph 1 if one of the following conditions is satisfied :

- (a) the document mentioned in paragraph 1 is replaced by a copy of one of the declarations provided for in Articles 8 or 10 pertaining to the quantities transported;
- (b) the document mentioned in paragraph 1 is replaced by a copy of document T 2 M indicating the origin of the quantities transported.

5. The competent authorities of a Member State may grant exemptions from the obligation fixed in paragraph 1 if the quantities of fish are transported within the compound of a port area or not more than 20 kilometres from the point of landing.

6. Each Member State shall carry out control by means of sampling on its territory in order to verify that the obligations established by this Article are being respected.

7. Member States shall coordinate their control activities in order to ensure that inspection is as effective and economical as possible. To this end, Member States shall particularly exercise surveillance over the movement of merchandise which may have been drawn to their attention as possibly being the subject of operations contrary to Community Regulations.

Article 14

1. Member States shall ensure that all landings in a Member State as mentioned in Articles 8, 9 and 10 shall be recorded. For this purpose, Member States may require that the first marketing be by sale at an auction centre.

2. Where landings of catches are not placed on the market for the first time by sale at auction, as provided for in Article 9 (2), Member States shall ensure that the quantities involved are notified to the auction centres or other bodies authorised by Member States.

3. The information on landings by certain categories of vessels subject to the derogations mentioned in Articles 7 and 8 or on landings in ports which do not have a sufficiently developed administrative structure to register landings may, at the request of a Member State to the Commission, within 12 months of the entry into force of this Regulation, be exempted from the requirement for such information to be processed. Exemption may be agreed if the registration of the requested data would create disproportionate difficulties for the national authorities in relation to the total landings, and if the respective species landed are sold locally. A list of ports and vessels qualifying for such exemption shall be established by each Member State and notified to the Commission.

4. A Member State benefiting from the derogation mentioned in paragraph 3 shall establish a sampling plan in order to evaluate the extent of respective landings in the qualifying ports. This plan must be approved by the Commission before any derogation is applied. The Member State shall regularly transmit to the Commission the results of evaluations.

Article 15

1. Before the 15th of each month, each Member State shall notify the Commission by computer transmission of

the quantities of each stock or group of stocks subject to TACs or quotas landed during the preceding month and shall provide it with any information received under Article 11 and 12.

Notifications to the Commission shall indicate the location of the catches as laid down in Articles 6 and 8 and the nationality of the fishing vessels concerned.

Each Member State shall inform the Commission of a quota consumption forecast with anticipated date of exhaustion in respect of the species for which the catches made by fishing vessels flying its flag or registered there are deemed to have exhausted 70 % of the quota, allocation or share available to that Member State.

Member States shall, where catches of stocks or groups of stocks subject to TACs or quotas may reach TAC or quota levels, provide the Commission, at its request, with more detailed or more frequent information than this paragraph requires.

2. The Commission shall keep available to Member States on computer the notifications received pursuant to this Article.

3. Where the Commission finds that a Member State has not complied with the deadline for transmitting the data on monthly catches as provided for in paragraph 1, it may set the date on which, for a stock or group of stocks, the catches subject to a quota or other form of quantity restriction and taken by fishing vessels flying the flag of, or registered in, that Member State shall be deemed to have exhausted 70 % of the quota, allocation or share available to that Member State and may set the estimated date on which the quota, allocation or available share shall be deemed to be exhausted.

4. Each Member State shall notify the Commission by computer transmission, before the end of the first month of each calendar quarter of the quantities of stocks other than those mentioned in paragraph 1 landed during the preceding quarter.

Article 16

1. Without prejudice to Article 15, Member States shall provide, at the request of the interested Member State, data on landings, offers for sale or transshipments of fishery products carried out in their ports or waters under their jurisdiction by fishing vessels flying the flag of, or registered in that Member State and based on a stock or group of stocks subject to a quota allocated to that Member State.

This information shall consist of the name and the external identification mark of the vessel in question, the quantities of fish by stock or groups of stocks landed, offered for sale or transhipped by that vessel as well as the date and place of landing, offer for first sale or transshipment. This information shall be transmitted within four working days following the date of the request of the interested Member State or within a further period of time which may be determined by that Member State or the Member State of landing.

2. The Member State where the landing, offer for first sale or the transshipment has taken place, shall transmit to the Commission at its request this information at the same time as it is being communicated to the Member State where the vessel is registered.

Article 17

1. Member States shall take the necessary measures to ensure monitoring of the catches of species made by their vessels operating in waters subject to the sovereignty or jurisdiction of third countries and on the high seas, and to ensure verification and recording of transshipments and landings of such catches.

2. The control and verification measures shall ensure compliance with the following obligations on the part of the vessel owners and/or masters :

- a logbook shall be kept on board the fishing vessels in which the masters shall record their catches,
- a landing declaration shall be submitted to the authorities of the Member State of landing during landings carried out in Community ports,
- the flag Member State shall be informed of the details of each transshipment of fish on to third-country fishing vessels and of landings carried out directly in third countries.

3. The provisions of paragraphs 1 and 2 shall apply without prejudice to the provisions of the fisheries agreements concluded between the Community and third countries and International Conventions to which the Community is a party.

Article 18

1. Each Member State shall notify the Commission by computer transmission before the end of the first month of each calendar quarter of the quantities caught in the fishing waters referred to in Article 17 and landed during the previous quarter and of all information received pursuant to Article 17 (2).

2. Four catches made in third country waters the information notified in accordance with paragraph 1 shall be

broken down by third country and stock by reference to the smallest statistical zone defined for the fishery concerned.

Catches made on the high seas shall be notified by reference to the smallest statistical zone defined by the International Convention governing the catch location and by species or group of species for all the stocks in the fishery concerned.

3. Before 1 October each year, the Commission shall make available to the Member States the information it receives pursuant to this Article.

Article 19

1. In order to ensure respect of the obligations laid down in Articles 3, 6, 8, 9, 10, 14 and 17, each Member State shall establish a validation system comprising in particular cross-checks and verification of data resulting from these obligations.

2. In order to facilitate these verifications, each Member State shall create a computerized data base where the data referred to in paragraph 1 are registered.

Member States may create decentralised data bases on condition that these and the procedures relating to the collection and registration of data are standardized so as to ensure compatibility between them throughout the territory of the Member State.

3. In the case where a Member State is unable to conform immediately to the requirements of paragraph 2, for all or part of its fisheries, the Commission may at its request decide to accord a transitional period of up to a maximum of three years from the date of entry into force of this Regulation, in accordance with the procedure laid down in Article 36.

4. A Member State obtaining such derogations shall keep, by means of non-computerized documentation, records of the data referred to in paragraph 1 for a period of three years and shall establish a sampling plan approved by the Commission so as to enable on the spot verification of the accuracy of this data. The Commission may carry out verification on the spot, in its own right, in order to evaluate the effectiveness of the sampling plan.

5. During the twelve months following the entry into force of this Regulation, each Member State shall submit to the Commission a report describing the way in which data is collected and verified, specifying the reliability of such data. The Commission, in cooperation with the Member States, shall draw up a summary of these reports which it shall communicate to them.

6. Detailed rules for implementation of this Article shall be adopted in accordance with the procedure laid down in Article 36.

TITLE III

Monitoring of the use of fishing gear

Article 20

1. All catches which have been retained on board any Community fishing vessel shall comply with the species composition laid down in Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources⁽¹⁾ for the net carried on board that vessel.

Nets on board vessels which are not used must be stowed so that they may not readily be used in accordance with the following conditions:

- (a) nets, weights and similar gear shall be disconnected from their trawl boards and towing and hauling wires and ropes,
- (b) nets which are on or above deck shall be securely lashed to some part of the superstructure.

2. If catches which have been retained on board any Community fishing vessel have been taken with nets with different minimum mesh sizes during the same voyage, the species composition shall be calculated for each part of the catch which has been taken under different conditions.

To that end, all changes from the mesh size previously used as well as the catch composition on board at the moment of any such change shall be entered into the logbook and the landing declaration. In specific cases, detailed rules on the keeping on board of a stowage plan, by species, of products processed, indicating where they are located in the hold, shall be adopted in accordance with the procedure laid down in Article 36.

3. Notwithstanding paragraphs 1 and 2 the Council may, on the basis of a report drawn up by the Commission, decide by qualified majority on a proposal from the Commission, that:

- (a) no Community fishing vessel participating in particular fisheries may carry nets of different minimum mesh sizes during a single fishing trip;
- (b) specific rules shall apply to the use of nets of different mesh size for specific fisheries.

⁽¹⁾ OJ No L 288, 11. 10. 1986, p. 1. Regulation as last amended by Regulation (EEC) No 3034/92 (OJ No L 307, 23. 10. 1992, p. 1).

TITLE IV

Regulation and suspension of fishing activities

Article 21

1. All catches of a stock or group of stocks subject to quota made by Community fishing vessels shall be charged against the quota applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.

2. Each Member State shall determine the date from which the catches of a stock or group of stocks subject to quota made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that stock or group of stocks. As from that date, it shall provisionally prohibit fishing for that stock or group of stocks by such vessels as well as the retention on board, the transshipment and the landing of fish taken after that date and shall decide on a date up to which transshipments and landings or final declarations of catches are permitted. The Commission shall be notified forthwith of this measure and shall then inform the other Member States.

3. Following notification under paragraph 2 or on its own initiative, the Commission shall fix, on the basis of the information available, the date on which, for a stock or group of stocks, the catches subject to a TAC, quota or other quantitative limitation made by fishing vessels flying the flag of, or registered in, any Member State are deemed to have exhausted the quota, allocation or share available to that Member State or, as the case may be, to the Community.

When an assessment of this situation as referred to in the first subparagraph is made, the Commission shall advise the Member States concerned of the prospects of fishing being halted as a result of a TAC being exhausted.

Community fishing vessels shall cease fishing in respect of a stock or of a group of stocks subject to a quota or TAC on the date on which the quota allocated for the stock or group of stocks in question to that Member State is deemed to have been exhausted or on the date on which the TAC for the species constituting the stock or group of stocks in question is deemed to have been exhausted; such vessels shall equally cease retention on board, transshipment, landing or arranging for transshipment or landing in respect of catches of such stocks or group of stocks taken after that date.

4. When the Commission has, by virtue of the first subparagraph of paragraph 3, halted fishing because of the alleged exhaustion of the TAC, quota, allocation or share

available to the Community and it transpires that a Member State has not in fact exhausted its quota, allocation or share of the stock or group of stocks concerned, the following provisions shall apply.

If the prejudice suffered by the Member State for which fishing has been prohibited before its quota was exhausted has not been removed by action in accordance with Article 9 (2) of Regulation (EEC) No 3760/92, measures shall be adopted with the aim of remedying in an appropriate manner the prejudice caused, in accordance with the procedure laid down in Article 36. These measures may involve making deductions from the quota, allocation or share of the Member State which has overfished, the quantities so deducted to be allocated appropriately to the Member States whose fishing activities were halted before their quotas were exhausted. These deductions and the consequent allocations shall be made taking into account as a matter of priority the species and zones for which the annual quotas, allocations or shares were fixed. These deductions or allocations may be made during the year in which the prejudice occurred or in the succeeding year or years.

Detailed rules for the application of this paragraph, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure laid down in Article 36.

Article 22

Should the competent authorities of a Member State establish that the activities of a Community fishing vessel have seriously or repeatedly failed to comply with this Regulation, the flag Member State may subject the vessel in question to additional control measures.

The flag Member State shall inform the Commission and the other Member States of the name and external identifying marks and numbers of the vessel on which the said additional control measures have been imposed.

Article 23

1. When it has been established by the Commission that a Member State has overfished its quota, allocation or share of a stock or a group of stocks available to it, the Commission shall operate deductions from the annual quota, allocation or share of the Member State which has overfished. These deductions shall be decided in accordance with the procedure laid down in Article 36.

2. The Council shall adopt rules by qualified majority, on a proposal from the Commission, for deduction in accordance with the objectives and management strategies set out in Article 8 of Regulation (EEC) No 3760/92 and take into account, as a matter of priority, the following parameters :

- the degree of overfishing,
- any cases of overfishing of the same stock in the previous year,
- the biological status of the resources concerned.

TITLE V

Inspection and control of certain measures to improve and adjust structures in the fisheries sector, including aquaculture

Article 24

In order to ensure compliance with the objectives and strategies set by the Council in accordance with Article 11 of Regulation (EEC) No 3760/92, in particular the quantitative objectives concerning the fishing capacity of the Community fleets and the adjustment of their activities, each Member State shall organize regular checks, in its territory and within the maritime waters under its sovereignty or jurisdiction, of all persons concerned by the implementation of the abovementioned objectives.

Article 25

1. Each Member State shall adopt provisions to verify compliance with the objectives referred to in Article 24. To that end, it shall carry out technical controls, particularly in the following areas :

- (a) restructuring, renewal and modernization of the fishing fleet ;
- (b) adaptation of fishing capacity by means of temporary or definitive cessation ;
- (c) restriction of the activity of certain fishing vessels ;
- (d) restriction of the design and number of fishing gear and of the method by which it is used ;
- (e) development of the aquaculture industry and coastal areas.

2. If the Commission has established that a Member State has not complied with the provisions of paragraph 1, it may, without prejudice to Article 169 of the Treaty, make proposals to the Council for the adoption of appropriate general measures. The Council shall decide by qualified majority.

Article 26

1. Detailed rules for the application of Article 25 may be adopted in accordance with the procedure laid down in Article 36, particularly regarding ;

- (a) verification of the engine power of fishing vessels ;
- (b) verification of the registered tonnage of fishing vessels ;

- (c) verification of the period during which a fishing vessel is immobilized;
- (d) verification of the specifications of fishing gear and their number per fishing vessel.

2. Member States shall communicate to the Commission without delay information on the control methods used, together with the names and addresses of the bodies responsible for carrying out the verification.

Article 27

1. In order to facilitate the monitoring specified in Article 25, each Member State shall establish a system of validation which shall include in particular verification by crosschecking information on fleet fishing capacity and activity contained; *inter alia*:

- in the logbook as specified by Article 6,
- in the landing declaration as specified by Article 8,
- in the register of Community fishing vessels as specified in Commission Regulation (EEC) No 163/89⁽¹⁾.

2. For that purpose, Member States shall establish or complete existing computerised databases containing the relevant information about fleet fishing capacity and activities.

3. The measures referred to in Article 19 (3), (4) and (5) shall apply.

4. Detailed rules for implementation of this Article shall be adopted in accordance with the procedure laid down in Article 36.

TITLE VI

Inspection and control of certain measures concerning the common organization of the market in fishery products

Article 28

1. In order to ensure compliance with the technical aspects of the rules regarding the measures defined in Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽²⁾, each Member State shall organize on its own territory regular checks of all persons involved in the application of the measures.

⁽¹⁾ OJ No L 20, 25. 1. 1989, p. 5.

⁽²⁾ OJ No L 388, 31. 12. 1992, p. 1. Regulation as last amended by Regulation (EEC) No 1891/93 (OJ N. L 172, 15. 7. 1993, p. 1).

2. The checks shall concern the technical aspects of applying:

- (a) the marketing standards, and in particular minimum sizes;
- (b) the price arrangements, in particular;
 - withdrawal of products from the market for purposes other than human consumption,
 - storage and/or processing of products withdrawn from the market.

Member States shall carry out comparisons between the documents relating to the first placing on the market of the quantities referred to in Article 9 and the quantities landed referred to by the documents, particularly as regards their weight.

3. Member States shall notify the Commission of information relating to the Control measures adopted, the competent control authorities, the type of infringements discovered and the action taken.

The Commission, the competent authorities in the Member States and officials and other agents are obliged not to divulge information acquired pursuant to this Article which is covered by professional secrecy.

4. This Article shall not prejudice national provisions concerning the secrecy of legal proceedings.

TITLE VII

Application and verification of monitoring

Article 29

1. The Commission shall verify the application of this Regulation by the Member States by means of the examination of documents and by conducting on-the-spot visits. The Commission may decide if it considers it necessary to carry out verification without prior notice.

In order to carry out on-the-spot visits, the Commission shall issue written instructions to its inspectors indicating their authority and the objectives of their missions.

2. Wherever it is deemed necessary by the Commission, its inspectors can be present at control and inspection activities carried out by national control services. In the framework of these missions, the Commission shall establish appropriate contacts with Member States with a view, wherever possible, to establishing a mutually acceptable inspection programme.

- (a) Member States shall cooperate with the Commission in order to facilitate it in the accomplishment of its tasks. Member States shall, in particular, take all necessary steps to ensure that the inspection missions are not subject to publicity injurious to the inspection and control operations.

Wherever the Commission or its authorized officials encounter difficulties in the execution of their duties, the Member States concerned shall provide the Commission with the means to accomplish its task and give the inspectors the opportunity to evaluate the specific control operations.

- (b) If circumstances found on the spot do not allow the inspection and control operations envisaged in the framework of the initial inspection programme the Commission inspectors, in liaison and agreement with the competent national control service, shall modify the initial inspection and control operation.
- (c) In the framework of sea or air inspection where the competent national services must carry out other priority tasks relating to, in particular, defence and safety at sea, the authorities of the Member State shall reserve the right to defer or redirect the inspection operations the Commission intended to observe. In such circumstances, the Member State shall cooperate with the Commission in making alternative arrangements.

In the case of sea or air inspections, the commander of the vessel or aircraft shall be in sole charge of the operations, taking account of the obligation on the part of his authorities to apply this Regulation. The inspectors authorized by the Commission and participating in these operations shall abide by the rules and procedures laid down by the commander.

3. Where it appears necessary, particularly following missions carried out by Community inspectors in accordance with paragraph 2 showing that irregularities could occur in the application of this Regulation, the Commission may request Member States to notify it of the detailed inspection and control programme planned or fixed by the national competent authorities for a specified period and or stated fisheries and regions. On receipt of this notification, the inspectors authorized by the Commission shall, wherever the Commission deems it necessary, carry out independent inspections in order to verify the implementation of that programme by the competent authorities of a Member State.

When the Community inspectors verify the implementation of that programme, the agents of the Member State shall at all times be responsible for the carrying out of said programme. The Community inspectors may not on their own initiative use the powers of inspection conferred on national agents. The said inspectors shall not have access to vessels or premises unless accompanying agents of a Member State.

Following that verification the Commission shall transmit to the Member State concerned an evaluation report on the programme and, if appropriate, recommend control

measures in order to improve the application of control by that Member State.

4. In the context of inspection missions conducted by aircraft at sea or ashore, the authorized inspectors may not carry out controls with respect to natural persons.
5. In the framework of their visits mentioned in paragraphs 2 and 3, inspectors authorised authorized the Commission may have on-the-spot access, in the presence of the services responsible, to information in specified data bases either in aggregate or individual form and may also examine all documents pertinent to the application of this Regulation.

If national provisions provide for the confidentiality of investigations, communication of this information shall be subject to the authorization of the competent court.

Article 30

1. Member States shall provide the Commission with such information as it may request on the implementation of this Regulation. In submitting a request for information, the Commission shall specify a reasonable time limit within which the information is to be supplied.
2. If the Commission considers that irregularities have occurred in the implementation of this Regulation or that the existing monitoring provisions and methods are not effective it shall inform the Member State or States concerned, which shall then conduct an administrative inquiry in which Commission officials may participate.

The Member State or States concerned shall inform the Commission of the progress and results of the inquiry and provide the Commission with a copy of the report of the inquiry and the main data used in the preparation of the report.

In order to participate in the inspections referred to in this paragraph, Commission officials shall produce written instructions stating their identity and their functions.

3. Where Commission officials participate in an inquiry, that inquiry shall at all times be conducted by the officials of the Member State; Commission officials may not, on their own initiative, use the powers of inspection conferred on national officials; on the other hand, they shall have access to the same premises and to the same documents as those officials.

In so far as national provision on criminal proceedings reserve certain acts to officials specifically designated by national law, Commission officials shall not take part in

such actions. In particular, they shall not participate in searches of premises or in the formal questioning of persons under national criminal law. They shall, however, have access to the information thus obtained.

4. This Article shall not prejudice national provisions concerning the secrecy of legal proceedings.

TITLE VIII

Measures to be taken in the case of non-compliance with the rules in force

Article 31

1. Member States shall ensure that the appropriate measures be taken, including of administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where common fisheries policy have not been respected, in particular following a monitoring or inspection carried out pursuant to this Regulation.

2. The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements or of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind.

3. The sanctions arising from the proceedings mentioned in paragraph 2 may include depending on the gravity of the offence :

- fines,
- seizure of prohibited fishing gear and catches,
- sequestration of the vessel,
- temporary immobilization of the vessel,
- suspension of the licence,
- withdrawal of the licence.

4. The provisions of this Article shall not prevent the Member State of landing or transshipment from transferring prosecution of an infringement to the competent authorities of the Member State of registration with the agreement of the latter and on condition that the transfer is more likely to achieve the result referred to in paragraph 2. The Commission shall be notified of any such transfer by the Member State of landing or transshipment.

Article 32

1. Where an infringement of the provisions of this Regulation is discovered by the competent authorities of

the Member State of landing or transshipment, those competent authorities shall take appropriate action in accordance with Article 31 against the master of the vessel involved or against any other person responsible for the infringement.

2. If the Member State of landing or transshipment is not the flag Member State and its competent authorities do not undertake, in conformity with their national law, appropriate measures including the initiation of administrative action or criminal proceedings against the natural or legal persons responsible, or do not transfer prosecution in accordance with Article 31 (4), the quantities illegally landed or transshipped may be set against the quota allocated to that former Member State.

The quantities of fish to be set against that Member State's quota shall be fixed in accordance with the procedure laid down in Article 36 after the Commission has consulted the two Member States concerned.

If the Member State of landing or transshipment no longer has a corresponding quota at its disposal, Article 21 (4) shall apply *mutatis mutandis*, the quantities of fish illegally landed or transshipped being deemed to be equivalent to the amount of the prejudice suffered, as mentioned in that Article, by the Member State of registration.

Article 33

1. The competent authorities of Member States shall without delay and in compliance with their procedures under national law notify the flag Member State or the Member State of registration, of any infringement of the Community rules referred to in Article 1, indicating the name and the identification marks of the vessel involved, the names of the master and the owner, the circumstances of the infringement, any criminal or administrative proceedings or other measures taken and any definitive ruling relating to such infringement. Upon request, Member States shall notify the Commission of this information in specific cases.

2. Following a transfer of prosecution pursuant to Article 31 (4), the flag Member State or the Member State of registration shall take all appropriate measures as set out in Article 31.

3. The flag Member State or the Member State of registration shall notify the Commission without delay of any measures taken in accordance with paragraph 2 along with the name and the external identification of the vessel concerned.

Article 34

1. Member States shall notify the Commission of any laws, regulations or administrative provisions adopted by them in order to prevent and prosecute irregularities.

They shall notify each year any changes in the minimum and maximum amount to the fines provided for in respect of each type of infringement and the nature of any other sanctions available.

2. Member States shall notify the Commission regularly of the results of inspections or monitoring carried out pursuant to this Regulation, including the number and type of infringement discovered and the action taken. At the request of the Commission, Member States shall notify it of the amounts of the fines imposed for specific infringements.

3. The Commission shall provide the Member States with a summary of the information received in accordance with paragraphs 1 and 2.

TITLE IX

General provisions

Article 35

Before 1 June each year Member States shall transmit to the Commission a report on the application of this Regulation over the previous calendar year, containing an assessment of the technical and human resources used and measures which may help to alleviate any shortcomings discovered. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up an annual report and shall communicate to each Member State the information which concerns it. Having taken due note of the replies from the Member States, the Commission shall publish this report along with those replies and, where appropriate, proposals for measures to alleviate the shortcomings discovered.

Article 36

Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Management Committee for Fisheries and Aquaculture, hereinafter called 'the Committee', set up by Regulation (EEC) No 3760/92, either on his own initiative or at the request of the representative of a Member State.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the said draft within a time limit which the chairman may lay down according to the urgency of the matter under considera-

tion. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit laid down in the preceding paragraph.

Article 37

1. Member States and the Commission shall take all necessary steps to ensure that the data received in the framework of this Regulation shall be treated in a confidential manner.

2. The names of natural or legal persons shall not be communicated to the Commission or to another Member State except in the case where such communication is expressly provided for in this Regulation or if it is necessary for the purposes of preventing or pursuing infringements or the verification of apparent infringements.

The data referred to in paragraph 1 shall not be transmitted unless they are aggregated with other data in a form, which does not permit the direct or indirect identification of natural or legal persons.

3. The data exchanged between Member States and the Commission shall not be transmitted to persons other than those in Member States or Community institutions whose functions require them to have such access unless the Member States transmitting the data give their express consent.

4. The data communicated or acquired in whatever form by virtue of this Regulation is covered by professional secrecy and shall benefit from the same protection accorded to similar data by the national legislation of Member State receiving them and by the corresponding provisions applicable to Community institutions.

5. The data referred to in paragraph 1 shall not be used for any purpose other than that provided for in this Regulation unless the authorities providing the data give their express consent and on condition that the provisions in force in the Member State of the authority receiving the data do not prohibit such use or communication.

6. Paragraphs 1 to 5 shall not be construed as obstacles to the use of the data, obtained by virtue of this Regulation, in the framework of legal actions or proceedings subsequently undertaken for the failure to respect Community fisheries legislation. The competent authorities of the Member State transmitting the data shall be informed of all instances where the said data are utilised for these purposes.

This Article shall not prejudice the obligations pursuant to international conventions concerning mutual assistance in criminal matters.

7. Whenever a Member State notifies the Commission that it has been established after the completion of an inquiry that a natural or legal person whose name has been communicated to it by virtue of the provisions of this Regulation has not been implicated in an infringement, the Commission shall, without delay, inform any party or parties to whom it has communicated the name of the said person, of the outcome of the said inquiry or proceedings. This person shall no longer be treated as being a person implicated in the irregularities in question on the basis of the first notification. The data stored in a form allowing identification of the person concerned shall be deleted without delay.

8. The provisions of paragraphs 1 to 5 shall not be construed as prohibiting the publication of any general data or any studies which do not contain individual references to natural or legal persons.

9. The data referred to in this Regulation shall be stored in a form allowing the identification of the persons concerned only as long as necessary for the fulfilment of the purposes in question.

10. The data received in the framework of this Regulation shall be available upon request to the natural or legal persons concerned.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 12 October 1993.

Article 38

This Regulation shall apply without prejudice to any national control measures which go beyond its minimum requirements, provided that they comply with Community law and are in conformity with the common fisheries policy.

The national measures referred to in the first subparagraph shall be communicated to the Commission in accordance with Article 2 (2) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry⁽¹⁾.

Article 39

1. Regulation (EEC) No 2241/87 shall be repealed on 1 January 1994, with the exception of Article 5, which shall continue to apply until the Regulations establishing the lists mentioned in Article 6 (2) of the present Regulation have entered into force.

2. References to the Regulation repealed by virtue of paragraph 1 shall be construed as references to this Regulation.

Article 40

This Regulation shall enter into force on 1 January 1994.

Member State shall be exempted until 1 January 1996 from the obligation to apply the provisions of Articles 9, 15 and 18 in so far as they concern computer transmission of sales notes and landing registration of sales notes and landing registrations.

Member States shall be exempted until 1 January 1999 from the obligation to apply the provisions of Articles 6, 8 and 19 in so far as they concern fisheries operations in the Mediterranean Sea.

For the Council

The President

M. SMET

⁽¹⁾ OJ No L 20, 28. 1. 1976, p. 19.