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REPORT BY THE COMMISSION TO THE COUNCIL

ON THE ENFORCEMENT OF THE COMMON FISHERIES POLICY

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1. INTRODUCTION

1.1 At the meeting of the Council of Ministers on 4 November 1985 the Commission stated that it would present a report to the Council on the enforcement of the common fisheries policy in the Member States. This statement was made during a debate on a Commission proposal for amendments to Regulation (EEC) No 2057/82 establishing certain control measures for fishing activities by vessels of the Member States (1). The present report therefore addresses primarily the question of the enforcement of those provisions of the common fisheries policy which are designed to ensure the conservation of fishery resources.

1.2 The central importance of such enforcement has been widely recognized. The Commission has stated in its programme for 1986 that it is "imperative to ensure that the policy is effectively implemented and its rules respected". For its part the European Parliament has also given much attention to the enforcement of the common fisheries policy. Without proper enforcement, conservation would be threatened and the Community's international fisheries relations would suffer. Moreover, the many restrictions which Community fisheries legislation places on fishing activities in order to conserve resources in the general interest will only be accepted by fishermen in the longer term on the understanding that they will be equally enforced by all the Member States concerned. A proper level of enforcement is thus not only a legal duty laid upon the Member States but also a political necessity in whose absence the conservation component of the common fisheries policy would lose credibility and respect.

1.3 The basic enforcement system has now been in force for rather more than three years and it is an appropriate moment to review progress in the light of the experience gained.

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(1) Subsequently referred to in this report as the Control Regulation.

- 1.4 The Control Regulation lays on the Member States the primary responsibility for enforcing the conservation provisions of the common fisheries policy. In examining the extent to which the Member States meet their obligations on enforcement it is necessary to consider the individual situations from two viewpoints. Firstly, although Community legislation in this field is directly applicable, each Member State must also have available a legislative, judicial and administrative structure enabling it to meet the obligations imposed by the Community rules, e.g. to provide for sufficiently dissuasive sanctions in case of infringements against the technical conservation measures or to prohibit fishing provisionally in accordance with Article 10 of the Control Regulation. This aspect is referred to in Section 2 of this Report. Secondly, it is necessary for each Member State to devote an adequate amount of human and material resources to the execution of its enforcement duties. The amount of resources nominally devoted to fisheries enforcement by each of the Member States concerned which replied to the Commission's questionnaire on this subject is shown in Annex I - Spain and Portugal have not yet replied.
- 1.5 The real performance achieved by each Member State by the use of these legislative, judicial, administrative, human and material resources is considered in Section 3 of the Report, leading to some general comments on the state of enforcement in the Community.
- 1.6 The report then considers, in Section 4, the part which the Commission plays and should play in the enforcement of the common fisheries policy before drawing some overall conclusions in Section 5.

2. LEGISLATIVE, JUDICIAL AND ADMINISTRATIVE STRUCTURES IN THE MEMBER STATES

2.1. As stated above, Community legislation on conservation and enforcement requires national measures to give it full effect. It is therefore a matter of concern that not all Member States have adopted all the necessary national measures. For example, it appears that the United Kingdom in respect of vessels under 10 m and Belgium in respect of all vessels cannot provisionally prohibit fishing as required by Article 10 of the Control Regulation within the time-scale afforded by their catch-prediction systems. France until recently could not enforce Commission Regulations stopping fishing under Article 10 without a national measure published several weeks after the Commission Regulation. Ireland could not enforce certain provisions of the Council's annual Regulations on fishing by third country vessels in Community waters in 1985 until November of that year.

2.2 The Commission has therefore put in hand a comprehensive inquiry into the adequacy of Member States' national legislation and judicial and administrative structures required for proper enforcement of the Community measures. Meanwhile, the comments about national legislation made later in this report should be regarded as provisional.

3. REAL PERFORMANCE OF THE MEMBER STATES IN ENFORCEMENT

3.1 The importance of the correct enforcement of the common fisheries policy has led the Commission to maintain a close interest in the way in which each Member State concerned organises and carries out its enforcement duties and in its failures and successes. The Commission has been able to examine the various national situations at first hand and over a considerable period, particularly through the missions carried out by its fisheries inspectors and through close contacts between other Commission officials and Member State officials concerned with enforcement.

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3.2 The following pages summarise the position in each Member State according to the information in the possession of the Commission on 30 April 1986. On certain points investigations are continuing and the conclusions expressed may be subject to review. Attention is drawn in particular to apparent weaknesses in Member State enforcement performance.

3.3 Belgium

3.3.1 Although quotas are not distributed among fishing vessels in Belgium, there would not seem to have been any large-scale overfishing, a situation which may, in part, be attributed to the fact that there appears to be no substantial overcapacity in the fishing fleet.

3.3.2 The catch-recording system operates on the basis of figures supplied by the auctions where vessels land their catches. The data are coordinated at the competent ministry, which cross-checks the data supplied by the auctions with the landing declarations.

3.3.3 However, some catches escape recording at the auctions : they are undeclared because they are sold outside the auctions to restaurants and wholesalers. This black market, which, according to the information at the Commission's disposal, frequently concerns sole, is concealed by means of false declarations in the logbooks. Although Belgium has taken steps to stamp it out, a certain black market still exists.

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3.3.4 When a quota is exhausted, Belgium is unable to call a provisional halt to fishing by introducing a national measure as the necessary legislative procedure is too cumbersome. More precisely, Belgium would have to publish a decree which would take one or two months to come into force. Belgium is thus committing an infringement of Article 10(2) of the Control Regulation. It therefore depends on Commission Regulations in order to halt fishing and to impose penalties in the event of failure to comply with the prohibition imposed. However, Belgium usually supplies the relevant information in time for the Commission to adopt the necessary regulation before the quota is exhausted.

3.3.5 The control system is underdeveloped. Belgium intends to set up an independent inspection service but has not yet done so. Responsibility for control is currently shared between various departments and results in a not altogether rational deployment of inspection staff.

3.3.6 Checks at sea focus on fishing for flat fish in the twelve mile zone. The main problems encountered concern illegal fishing by certain beam trawlers exceeding 70 grt or 300 bhp and non-compliance with certain other technical measures such as the use of certain unauthorized attachments. Checks at sea are hampered by the inexperience of the inspection staff, their unfamiliarity with Community rules and ineffective methods of pursuing infringements.

3.4 Denmark

- 3.4.1 The Danish catch registration system is based mainly on sales notes correlated with logbooks. Since there is almost no physical control of the quantity of each species landed by a vessel, the system is very much dependent on the proper and timely forwarding of both documents to Copenhagen and on the amount of cross-checking carried out there. There are indications of problems in this area but the Danish authorities are taking steps to accelerate the transmission of sales data; they maintain in any event that cross-checks with the customs and tax authorities prevent under-declaration of catches.
- 3.4.2 There was a weakness in the case of landings by Dutch vessels in Danish ports to be transported to the Netherlands as no sale took place in Denmark. The registration of such landings relied substantially on information from the harbour authorities which did not carry out checks. Since such transit landings could only be checked with difficulty in the Netherlands they were virtually uncontrolled. The position now appears to have improved somewhat.
- 3.4.3 The lack of spot checks also probably permitted fishermen in the Skaggerak and Kattegat in 1985 to register as other species landings that should have been registered as sprat.
- 3.4.4 Denmark has various systems for managing its quotas and avoiding overfishing such as quarterly sub-quotas, individual vessel quotas and compulsory lay-up periods. Over the past three years Denmark's record for preventing overfishing appears to have improved.
- 3.4.5 However, the overfishing of sprat in ICES area IIIa during 1985 requires comment. The Danish authorities were obliged to allow the quota management system to lapse and were then faced with strong resistance from the industry to enforcement of the quota.

In an apparent attempt to reduce the pressure the authorities permitted a fishery which led to landings of undersized whiting. The proper control of the IIIa sprat fishery will require the careful attention of the national authorities in future.

3.4.6 Generally, the industrial fisheries constitute the major problem facing the Danish authorities in ensuring compliance with the technical conservation measures. Excessive by-catches of mainly immature herring in the west coast sprat fishery in 1983 and more general problems of by-catches in industrial fisheries led Denmark to set up a "flying corps" of inspectors with special responsibility for sampling industrial catches. This appears to have had some success in coping with the problem.

3.4.7 The control at sea appears effective but is limited by deficiencies of equipment and budgetary problems.

3.4.8 Generally, the Danish authorities have shown readiness to enforce unpopular control measures and they have enjoyed some successes.

3.5 Germany

3.5.1 The catch recording system is based on cross-checks between sales notes of the auctions or buyers, landing declarations, logbooks and, for freezer-trawlers, discharge statements. Except in the case of freezer-trawlers there seems to be little physical control of landings but nevertheless this system based on paper appears to work correctly; almost no evidence of incorrect registration has been found. It may be noted, however, that few of Germany's quotas are under pressure.

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3.5.2 The system for preventing overfishing and managing quotas relies on the grant of general or specific licences to fish; the German authorities are able to stop fishing by their fleet within two to three days, a timescale which, in conjunction with the efficient catch recording system, has allowed Germany to show an improvement over the past three years in its record on overfishing.

3.5.3 There is very little problem with breaches of technical measures discoverable in ports and the control is adequate. The position is rather different at sea, particularly in the important fishing area of the German Bight where there are problems with undersized fish, undersized-mesh nets, illegal attachments to nets and unauthorized beam-trawling within twelve miles. In relation to the area of sea to be covered Germany is well provided with fishery protection vessels. However, these vessels appear not to be optimally utilized because of lack of equipment such as net gauges, lack of personnel and lack of training. Further, because of the division of competence between Federal and Länder authorities, Länder vessels, which in principle are limited to patrolling within the coastal band, are also obliged to take responsibility for the waters out towards Heligoland, a task of which they are hardly physically capable. The Federal vessels, which are physically suitable, are permitted to act in part only of this area and only during the flatfish season extending from April to September.

3.5.4 In the past, action taken when infringements at sea were found was relatively weak, e.g. sealing rather than confiscating illegal nets, reporting foreign vessels to their flag states rather than instituting proceedings in Germany. There are indications that enforcement action is becoming more robust.

3.6 Spain

3.6.1 The Commission has devoted its first inspectors' missions to Spain to gaining knowledge of the institutions and structure of control of fishing. At this stage it is not possible to make more than tentative comments.

3.6.2 It is too early to judge the accuracy of catch reporting at port level. The treatment of catch figures by the central authorities is in course of adaptation; so far, no monthly catch figures have reached the Commission.

3.7 France

3.7.1 Quotas are managed both by the professional organizations and by the administration.

3.7.2 There are a number of weaknesses in this relatively unsophisticated system residing inter alia in the fact that the management by the producers' organizations seems to cater more for the requirements of the market than for the demands of conservation and is based mainly on restrictions on landings of certain species rather than of certain stocks. Further, the percentage of logbooks returned seems to be low in certain regions.

3.7.3 Catch figures are obtained mostly from the auctions. After centralization they are forwarded to the Directorate for Fisheries in Paris, which sends them on to the Commission. However, sales also take place outside the auction halls. They may be large and a month may elapse before the declarations relating to these sales are received.

3.7.4 Furthermore, despite the recent restructuring of the system for collecting catch statistics, France is the country which forwards the catch reports required under Article 9 of the Control Regulation to the Commission most belatedly, on average, in 1985, 13 days after the deadline.

3.7.5 France has so far never itself called a halt in the proper manner laid down by the Control Regulation to fishing by its fishermen on a stock the French quota for which was exhausted. Even if such a decision had been taken, the legislative procedure would have been too slow to be effective. Currently, the new law (No 85/842 of 22 May 1985), which has adapted French legislation to the Common Fisheries Policy and which provides for apparently more effective procedures, nevertheless requires decrees, none of which has yet been notified to the Commission. France is therefore still obliged to have recourse to Commission regulations in order to stop fishing.

3.7.6 It also happens that the Commission does not receive the required information concerning the exhaustion of French quotas in good time, which prevents it adopting in time the Community regulations needed in order to apply a ban on fishing throughout the whole Community. Once a Commission Regulation has been adopted, the genuinely dissuasive penalties introduced under Law No 85/542 allow its effective application. In the past, a system of fines for infringements having an immediate and deterrent effect did not exist and each ban on fishing imposed by a Commission Regulation on French fishermen or fishermen of another Member State could only be implemented following the adoption of a ministerial order.

3.7.7 Under Article 12 of the Control Regulation, the Commission has requested France to carry out an administrative inquiry into certain aspects of the system of recording and notifying catches and halting fishing.

3.7.8 The main technical measures laid down in Regulation (EEC) No 171/83 are not complied with along a large part of the coast, particularly as regards minimum landing sizes, minimum mesh sizes, the rules relating to by-catches and the use of attachments. The minimum sizes and minimum mesh sizes commonly used deviate considerably from those imposed by the Community rules.

3.7.9 Confronted with this rather widespread failure to comply with the rules, France made a commitment to the Commission to conduct a campaign in the spring of 1985, the aim of which was to ensure the application in the end of the Community technical measures relating in particular to minimum fish and mesh sizes. However, there is nothing to show that such a campaign has begun.

3.7.10 The checks which France carries out at sea as regards compliance with Community rules by its own nationals are relatively infrequent and ineffective. Checks appear to be mainly directed at Spanish vessels and compliance with national measures, the main aim of which is often to prevent conflicts between different categories of fishermen and to comply with certain market objectives.

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3.7.11 As for the relatively infrequent checks the aim of which is to ensure compliance with Community technical measures relating to conservation, in most cases they resulted in an official report followed by modest fines which hardly served to discourage the infringement. The only progress in this field has been the adoption of the law of May 1985 increasing fines.

3.7.12 Whether carried out at sea or in port, checks by Commission inspectors are impeded in France (visits confirmed or cancelled at short notice, refusal by officials to supply appropriate statistics, refusal to accept more than one inspector on board certain surveillance vessels ...). Furthermore, the advance warning required before visits and the fact that visits cannot involve inspection of anything other than what has been agreed means that checks carried out in the presence of Community inspectors can be "prepared".

3.8 Ireland

3.8.1 The catch recording system in Ireland is based on information provided by the buyers. There is almost no physical control of quantities by the control personnel. The catch area is determined by interviewing skippers or by assuming that the port of landing is indicative of the area. There appears to have been no attempt to compare this with the information available from logbooks.

3.8.2 At first sight Ireland's record for not exceeding its quotas is respectable. Thus in 1983 there were six cases of overfishing, two in 1984 and one in 1985; and of these cases only the overfishing of mackerel in 1983 by 13% (10,375 t. on a quota of 80,000 t.) can be considered significant.

3.8.3 However, closer inspection reveals a less satisfactory position. Firstly, overfishing of the mackerel quota was avoided in 1985 (and probably 1984) only by the obtaining of additional quantities through exchanges at a late stage under Article 5 of the Basic Regulation. Secondly, there are indications that the catch registration system is in fact abused. Thus, in the case of Celtic Sea herring, fished to 99.9% of its quota in 1984 and 1985, there is evidence that the catches were under-declared by at least 15%, precisely because of the lack of physical control of quantities landed.

3.8.4 At the Commission's request an administrative inquiry, in which officials of the Commission participated, has been held under Article 12 of the Control Regulation into the system for catch registration and stopping fishing. The report was requested for 30 April 1986 but had not been received on that date.

3.8.5 Subject to the results of this inquiry, it appears necessary for Ireland to improve its system for controlling quantities landed. For example, it is understood that Irish fishery officers do not have the right to inspect the books of buyers but instead rely on summary information provided to them on an informal basis; the lack of such an elementary inspection power is surprising. Similarly, an obligation on skippers to provide tank calibration tables would simplify the control of pelagic fisheries but the Commission's suggestion to this effect has only just been accepted for possible implementation in the summer of 1986.

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3.8.6 A national measure for controlling transshipments, adopted in September 1985, was not being effectively used at least in the early months of its existence except apparently as a means of limiting mackerel transshipments to processing vessels in the interests of shore processors. However, Community legislation on transshipments has recently been improved by Regulation (EEC) No 3723/85 of 20.12.1985 amending the Control Regulation (1).

3.8.7 The major fisheries enforcement problem in Ireland has probably been the failure to ensure compliance with technical conservation measures such as Council Regulation (EEC) No 171/83. The failure was originally based on the fact that Irish national measures necessary to implement the Community measures were missing; so, for example, fishermen landing undersized fish could not be prosecuted since no fine had been fixed. This defect, which rendered nugatory the Community's technical conservation measures, has now been cured. However, the reason advanced for the absence of adequate national provisions, namely the pressure of work in the office responsible for preparing them, is not acceptable to the Commission.

3.8.8 This absence of national measures and consequent inability to pursue breaches of the technical conservation measures was no doubt one of the reasons why enforcement at sea has in the past been directed mainly at non-Irish vessels. The prosecution of offences discovered at sea was, in 23 out of 24 cases in 1984, in respect of unauthorised fishing by Spanish vessels rather than breaches of technical measures.

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(1) OJ No L 361 of 31.12.1985, p. 42.

3.8.9 Now that the national measures necessary to implement the Community's technical conservation measures are in force there should be no obstacle to effective enforcement. The Irish authorities have claimed that the need to train personnel in inspection techniques going beyond the relatively simple techniques needed to identify vessels fishing without authorization was responsible for some delay in enforcement. It is the Commission's view that infringements in Irish waters are still not yet adequately pursued.

3.8.10 The performance thus far as regards inspection at sea is particularly disappointing given the major investment of Community money in inspection vessels and aircraft for Ireland.

3.8.11 An absence of national measures similarly resulted in an inability to enforce provisions on logbooks and Commission regulations stopping fishing. The Commission understands that the necessary national measures are now in force.

3.9 The Netherlands

3.9.1 The catch registration system is based on sales information obtained from auctions or first-hand buyers and compared with landing declarations and is supplemented by physical checks and more intensive control of business papers in the case of certain fisheries. The flow of information originally passed through a semi-public professional organisation but is now managed by the relevant Ministry's General Inspection Service.

3.9.2 The record of the Netherlands in failing to prevent overfishing of its quotas is the poorest of all the Member States (11 cases in 1983, 17 in 1984, 25 in 1985 and two already in 1986 - provisional figure). The basic cause of the overfishing is no doubt to be found in the overcapacity of important sections of the fleet in relation to the quotas. In these circumstances the catch registration system and the system for preventing overfishing have proved inadequate for their task despite the fact that in 1984 the Netherlands apparently prosecuted more of its fishermen than did any other Member State and that increasing numbers of staff appear to have been devoted to enforcement.

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3.9.3 The catch registration system has failed to register catches accurately for the following reasons :

- a) the "grey market". Under this system catches were sold through the auctions but a significant proportion of sole, plaice and cod in particular was not recorded as such and was sold on the "grey market"; information on these sales was not passed to the Ministry for transmission to the Commission. Various methods were used to disguise which vessels were involved in grey market sales. Under pressure from the Commission the Netherlands, with some delay, took administrative and legal action with the result that, so far as can be ascertained, the grey market has now been virtually eliminated;
- b) the black market. This term covers direct sales by fishermen to merchants of parts of landings which are not registered. It seems possible that a proportion of what were formerly grey market sales is now black market sales; the Commission is looking into this;
- c) false attribution of catch areas ("dumping" of catches). Thus catches of fish from a stock which is under pressure are attributed to another stock where the Netherlands has either a small or no quota. As a result the Netherlands overfishing, as shown by its official figures, probably appears worse than it is because of the apparent overfishing of a large number of small or zero quotas. In fact the fish concerned has largely been taken elsewhere, usually in the North Sea. This problem may be reduced in 1986 since the Netherlands has transferred a number of small quotas to another Member State and taken a national measure to prevent false claims of catches in certain areas;
- d) false declaration of species. The best-known example of this concerns declarations of mackerel as horse-mackerel; the Commission ordered an administrative inquiry into this in 1984 which revealed that 90,650 tonnes of mackerel had been landed by 30 April 1984 but only 27,550 tonnes had been declared. Although the Netherlands authorities have since been carrying out checks of cold store records in order to prevent a repetition the Commission has again obtained evidence in 1986 of the same infringement and has once again requested an administrative inquiry, which has begun.

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3.9.4 In response to the intense pressure on certain stocks resulting from the over-capacity of the fleet the Dutch authorities have made efforts to ensure a more effective distribution of the national quotas, enforce longer periods of lay-up for the fleet and increase minimum fish sizes. In theory the Community measures and the comprehensive national measures should be sufficient to prevent the overfishing. However, some overfishing continues and it must be concluded that fishermen are not being effectively restrained by the risk of being caught or by the penalties applied if they are convicted.

3.9.5 Despite the effort which has to be devoted to preventing overfishing, control of technical conservation measures on land appears to be good.

3.9.6 Sea-going inspection is carried out by units of the Royal Navy and of the police. There are fairly generalized breaches of the rules on attachments to nets and on beam-trawling within twelve miles. Despite an increasing effort at training, the lack of knowledge and experience of Community legislation and fishing practices results in a relatively ineffective control at sea which does little to help the control effort on land.

3.9.7 The possible privatisation of at least one important fish auction in the Netherlands is under consideration; it would be important to ensure that any such development did not adversely affect enforcement.

3.10 Portugal

3.10.1 As with Spain, the first visits by Commission inspectors can suggest only tentative conclusions and the position is again complicated by current changes in responsibilities of the various government bodies concerned with enforcement.

3.10.2 Registration of catches passing through the auctions seems to be adequately organized at port level although there appear to be problems further along the chain. Monthly catch figures have not yet reached the Commission. Catches which do not pass through the auction system appear to be quite large and it is not clear to the Commission that these are registered.

3.10.3 Quota management is not yet practised. The limited observation which has been made so far suggests that more effort may be devoted to enforcing minimum mesh sizes than minimum fish sizes.

3.11 United Kingdom

3.11.1 The catch recording system is based on landing declarations or sales notes supplemented by comparison with logbooks, physical spot checks and interviews with skippers. For the most part the system appears to be functioning properly. However, there was until recently a significant under-registration of whitefish landings in Scottish ports. The under-registration resulted from the fact that boxes of fish in these ports were rarely weighed but were deemed to contain an average weight; this deemed average weight was in fact less than the real average weight as discovered by checkweighing. The deemed average weight has now been increased to the level required by the results of checkweighing. The same problem has on occasions been noticed in other United Kingdom ports but on a much less significant scale.

3.11.2 It is also likely that there is some inaccurate registration of landings in the south and south-east of England due to the large number of ports with relatively small landings. Extra resources have been provided to correct such inaccuracy.

3.11.3 The United Kingdom deploys a wide range of measures to avoid overfishing based mainly on the system of pressure stock licences which allows flexible and responsive control. In 1983 there were nevertheless nine cases of quotas being overfished, in 1984 seventeen and in 1985 ten (provisional figure). However it was not considered that the pattern of overfishing, when more closely analyzed, gave grounds for serious concern.

3.11.4 The United Kingdom does not fully comply with article 10(2) of the Control Regulation (provisional prohibition of fishing by Member State upon a quota being exhausted) since its normal procedure for halting a fishery, the suspension of licences, does not cover vessels under ten metres.

3.11.5 A considerable amount of resources is devoted to enforcement at sea as shown by Annex I; this appears to have a significant deterrent effect on the commission of breaches of the technical conservation measures by vessels of all flags fishing in the U.K. fishery zone. Most of the few breaches observed in port have been the subject of penal or administrative action. An exception to this is Northern Ireland where little action appears to be taken about landings of undersized nephrops tails.

3.12 General comments

3.12.1 Certain general comments can be made on the basis of the above account of the enforcement situation in the Member States.

3.12.2 On the basis of the catch figures notified by the Member States, the incidence of declared overfishing in the Community is generally decreasing. However, the performance of the Member States is very uneven, and some of the officially-declared catch figures may be understatements. The Commission's aim is the complete elimination of all overfishing and, bearing in mind the practical difficulty of stopping fishing exactly on a quota, there is still evident need for improvement before an acceptable situation is reached.

3.12.3 However, overfishing, although a breach of the relevant provisions of the Council's annual Regulations on TACs and quotas, is more importantly a symptom of deeper ills, such as faults in the catch registration or quota management systems. For example, it is noticeable that there is very little physical counting of landings by the control authorities of the Member States. Again, the inability after three years of most Member States to provide their monthly catch figures by the fifteenth of the following month as required by article 9(2) of the Control Regulation suggests that they have not yet mastered the situation.

3.12.4 A particular word needs to be said about the logbooks/landing declarations introduced by Regulation (EEC) No 2807/83 as from 1 April 1985 for the Ten (1). These, it is hoped, will make a useful contribution inter alia to the catch registration systems of the Member States. The Commission undertook to review the use of the logbooks and landing declarations two years after their introduction and it is not intended to preempt this review here. All Member States decided to give their fishermen a period in which to adjust to the new requirements but some though not all Member States have apparently now started to enforce the use of these documents. In order that the review should not be devalued by any Member State's failure to enforce the logbook measures the Commission will be giving special attention during the rest of 1986 to checking on their application.

(1) and to be used by Portuguese and Spanish vessels from 1 July 1986.

3.12.5 The Commission's inspectors frequently witness breaches of the technical conservation measures. There appear to be cases where the breaches are so widespread that they are endangering conservation and putting at serious risk the principle referred to in the Introduction, i.e. that restrictions must be enforced equally in all the Member States concerned. Sometimes the Member States have made serious efforts to curb these widespread evasions even at considerable political cost. Sometimes, however, a Member State has made virtually no effort at enforcement and has given the Commission little help in its attempts to pursue the matter. More generally, Member States make some effort at enforcement but this effort is not adequate to eliminate the breaches.

3.12.6 A particular facet of the problem of the enforcement of technical measures is that detection of offences often needs to take place at sea, in particular for mesh sizes and attachments to nets. This is an expensive method of control of which the standard varies greatly from one Member State to another. Most sea-going control is carried out by vessels belonging to government departments whose main priority is not fisheries. The standard of training, the design of the vessels, the degree of priority and the efficiency of the control are not always commensurate with the task.

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3.12.7 Finally, it should be said that the Commission understands that Member States have different geographies, different problems, different resources and different traditions and these need realistically to be taken into account by the Commission in assessing their performance. The Commission cannot, however, accept the argument that a Member State is entitled to wait for other Member States to come up to its level before it improves its own enforcement or that weaknesses in one Member State justify the relaxation of standards achieved in another Member State. The process of harmonisation upwards of the standard of enforcement which has begun needs to be pursued vigorously.

4. ROLE OF THE COMMISSION

4.1 Monitoring of Member State enforcement of conservation measures

4.1.1 Article 12 of the Control Regulation states the role of the Commission's inspectorate (details of which are given in Annex II) by defining its powers. This Article has to be read in the context of Article 155 of the Treaty of Rome.

4.1.2 The inspectors began to make visits to the Member States in autumn 1983. The Commission wishes to make a number of observations in the light of experience gained in the intervening period.

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4.1.3. Despite the weaknesses of application which have been identified, the current basic policy, under which the Member States are responsible for enforcement in their territory and in waters coming under their jurisdiction and the Commission is responsible for ensuring that this duty is properly discharged, is sound and should be continued.

4.1.4. The Commission does not seek direct powers of enforcement against private citizens in this field. Its preference is that its inspectors should continue to operate by accompanying national inspectors or other national officials who remain responsible for inspections.

4.1.5. Existing Community legislation is nevertheless inadequate to enable the Commission properly to discharge its task of verifying the implementation of the Control Regulation. There are the following deficiencies :

- not all national inspectorates inspect or are empowered to inspect all the areas, operations and activities whose inspection can be useful or necessary in order to ensure compliance with the conservation and control regulations. To take an example mentioned earlier, the inspectors of one Member State appear to have no power to inspect the books of fish buyers. Since the Commission inspectors operate by accompanying national inspectors such weaknesses prevent the Commission from properly discharging its own task of verifying the implementation of the Control Regulation.

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- the effectiveness of Commission inspectors limited to accompanying national inspectors can be significantly reduced by lack of full co-operation from the Member State or the national inspectorate - if, for example, an appropriate inspection programme cannot be agreed or if, during a visit, the national inspector fails to appear or is unwilling to inspect a particular catch or vessel. Again, Commission officials may be shown only situations specially prepared for them. Moreover, some Member States have objected to Commission inspectors visiting ports not on their programme but which are accessible to the public or speaking to fishermen in the absence of national inspectors.

4.1.6 These problems were raised by the Commission during the Council's discussions in autumn 1985 of the proposal to modify the Control Regulation (COM(85) 490 final of 17 September 1985). Certain Member States suggested that the problems were adequately dealt with by the Commission's right to require an administrative inquiry under Article 12 of that Regulation or to institute proceedings under Article 169 of the Treaty. However, this suggestion does not take account of the fact that both the above procedures presuppose that the Commission has evidence of "an irregularity" (Article 12) or of "a failure to fulfil an obligation" (Article 169). The Commission cannot necessarily obtain such evidence in the circumstances outlined above.

4.1.7 The Commission wishes to emphasize that on most occasions it has been granted the utmost co-operation by the national control authorities and indeed by the fishermen themselves. However, the Commission must also be equipped to deal with those cases where co-operation has not been forthcoming and where obstacles have even been placed in its way.

4.1.8 The Commission, therefore, considers that it is necessary to provide in general that it can require that a mission by Commission inspectors should take place in a certain region, port, or institution at a given time and that therefore national inspectors should be available, whom the Commission inspectors would accompany. The power would also be available at a detailed level, during the course of a mission, to enable Commission inspectors to require, if necessary, that a particular catch be inspected, a particular net measured.

4.1.9 The Commission further considers that it is necessary for the Member States to ensure that their inspectorates have the powers required to enable them to inspect and monitor all operations and activities whose inspection and monitoring are calculated to ensure compliance with the whole range of conservation and control measures. Member States need also to ensure that the right of Commission inspectors to accompany national inspectors can be enforced, if necessary, against unwilling citizens.

4.2 Need for stricter application of Community rules on markets

4.2.1 The Commission takes this opportunity of drawing the attention of the Council to the problem of compliance with certain provisions of the Community rules governing the markets in fishery products which have to be applied correctly and uniformly by all the Member States if the EEC market organization is to operate efficiently.

4.2.2 In the course of their control duties, the Commission inspectors have identified certain cases where the rules have not been applied in full (provisions relating to EEC marketing standards and the various intervention schemes, etc.). Attention has also been drawn to some of these cases by the Court of Auditors in its special report on the market organization (1).

4.2.3 The Commission takes the view that compliance with these rules requires more thorough inspection. While noting that responsibility for such inspection lies primarily with the Member States, the Commission feels that there is an imperative need to ensure the full and uniform application of the provisions relating to the EEC market organization, notably by means of inspections of a Community character to be performed by agents of the Commission by methods to be determined.

4.2.4 The Commission reserves the right to return to this subject.

(1) OJ No C 339 of 31 December 1985.

5. CONCLUSIONS

5.1. The prime importance of the enforcement element of the common fisheries policy was demonstrated in the Introduction to this report.

5.2. The Community's fisheries conservation policy was adopted rather more than three years ago. The intervening period can be regarded as having been a transitional period involving a learning process for both the Commission and the Member States. In so far as enforcement is concerned, the Commission has made an effort to show particular understanding of the real enforcement difficulties arising from the various situations of the Member States. Accordingly, it has concentrated its efforts on persuading the Member States that effective operation of the policy is in their interest and in that of the fisheries sector. It has eschewed the pursuit of procedures under Article 169 of the Treaty in all but the most flagrant cases of violation. The Commission has also made proposals to the Council for the reinforcement of Community legislation where this has appeared necessary. Unfortunately, the Council has only adopted part of the proposals put before it.

5.3. This report has shown that since January 1983 the Member States have made discernible but uneven progress towards improved enforcement. However, there are still significant weaknesses and clear differences in enforcement performance as between the Member States. The weaknesses include :

- the lack in several Member States of adequate national measures to render Community legislation effective ;
- differences as between Member States and weaknesses in material provision for enforcement, to a degree difficult to explain by differences in geography or in the structure of the various fleets ;
- a range of deficiencies, many of them serious, in real enforcement performance ;
- lack of sufficient cooperation on some occasions by the national authorities with the Commission inspectorate.

5.4. This situation cannot be allowed to continue. The Commission is of the view that the transitional period mentioned above must be considered to be at an end. The Member States should now be in a position to fulfil their obligations and to ensure the effective operation of the policy. To this end, the Commission will continue to cooperate closely with the Member States in pursuing the necessary improvements. It will also make the maximum use of the various means available to it for ensuring the high level of enforcement which the maintenance of a credible common fisheries policy requires. These means include :

- calling for administrative inquiries by the Member States under Article 12 of the Control Regulation ;
- the presentation of proposals for improvements in Community legislation concerning the duties of the Member States and the powers of the Commission in relation to enforcement, including consideration of a complementary rôle for the Commission in the enforcement of certain market regulations. The Commission looks to the Council as legislator to ensure speedy adoption of all its proposals.

In addition, where the circumstances require, the Commission will not hesitate to use the powers provided under Article 169 of the Treaty to require Member States to comply with their Community obligations.

	Belgium	Denmark	Germany	Spain	France	Ireland	Netherlands	Portugal	United Kingdom
Staff on land Official bodies and staff at their disposal	Min.Agric.: 6 Watersch.: 4 Customs : 8 Min.Def.: 4 Local police Gardes-pêche Gendarmerie	Ministry of Fisheries: 109	Min.Agr. 9 Fin.Min. 28 Land*au- thor. 7+		Aff.Marit. Interior Ministry Customs Navy	Dpt. Fishe- ries : 31 Dpt.Defence: 2 Police : 10 Customs and Excise : 80	Min.Agr. 74 Police 100 Navy 14		Min. Agriculture and Fisheries England and Wales : 28 Dpt. Agriculture and Fisheries Scotland : 62 Dpt. Agriculture Nor- thern Ireland : 12
<u>Maritime surveillance</u> Number of vessels over 15m	4	8	18		8+	7	10		1) Min. A.and F. 16 2) Dpt.A and F.Scotl. 7 3) "Salmon patrol vessels" 5
Annual number of engine hours	2.721	12.170	35.461+		14.066+	24.240	3.786+		1) 40.080 2) 24.162 3) 16.572
Number of hours devoted to surveillance of fishe- ries	694 (25%)	7.315 (60%)	11.964+ (33%)		12.322 (88%)	23.028 (95%)	1.683 (44%)		1) 100% 2) 100% 3) 100%
<u>Aerial surveillance</u> Number and types of air- craft	1 Alouette				-	2 Beechking	3 Cessna		1) 1 Cessna 2) 1 Islander 3) various Nimrods 4) 1 Cessna 404 Titan
Annual number of flying hours	700				-	990	930		Total hours flight : 4.216
Number of hours devoted to surveillance of fishe- ries	14 (2%)				408+	763 (77%)	594 (64%)		4.216 (100%)

THE COMMISSION'S INSPECTORATE

The Commission's inspectorate currently consists of 13 inspectors, recruited mainly from the national inspectorates on temporary contracts. The inspectors come from the following Member States : one from each of Belgium, Denmark, Germany, Spain (to be appointed), Ireland and Portugal; two from each of France and the Netherlands; three from the United Kingdom.

In its preliminary draft budget for 1986 the Commission proposed an increase in the number of inspectors to 21. During consideration of the draft budget the Fisheries Sub-Committee of the European Parliament tabled an amendment proposing an increase in DG XIV's personnel, including these eight extra posts for the inspectorate. However, this amendment was not accepted by the Budgetary Committee.

Since autumn 1983, 130 missions have been carried out, generally lasting between one and two weeks. By Member State the breakdown is as follows :

Belgium	10
Denmark	16
Germany	12
Spain	4
France	26
Ireland	15
Netherlands	17
Portugal	4
United Kingdom	26