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COMMISSION OF THE EUROPEAN COMMUNITIES

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2008/0063 (CNS)

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 423/2004 as regards the recovery of cod stocks and
amending Regulation (EEC) No 2847/93**

{SEC(2008) 386}

{SEC(2008) 389}

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The objective of this proposal is to amend Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks, the so-called cod recovery plan.

The overall objective of Regulation (EC) No 423/2004 is to ensure the safe recovery of the cod stocks to the precautionary stock sizes advised by scientists within a time frame of five to ten years.

Scientific advice from the Scientific, Technical and Economic Committee for Fisheries (STECF), based on the advice of the International Council for the Exploration of the Sea (ICES) has indicated that the reductions arising from the collective effect of total allowable landings (TACs), technical measures (e.g. mesh size, landing compositions, area closures) and complementary effort management regulations have been far from sufficient to reduce fishing mortalities to levels required to allow the cod stocks to rebuild. Out of the four cod stocks in the plan, only the North Sea cod has shown some sign of recovery (a year class higher than those of previous years) while none of the other cod stocks show clear sign of recovery.

The slow progress towards the achievement of the recovery of cod stocks makes it necessary to revise the terms and conditions of the plan. The experience gained in the implementation of Regulation (EC) No 423/2004, as well as of the effort management regime associated (implemented since 2003 in the annual TAC and quota regulation), together with the opinions of stakeholders summarized in the symposium on cod recovery, held in March 2007, allow for the identification of the main aspects where the plan needs to be modified to improve effectiveness.

The main new elements to introduce, justifying this amendment are the following:

- *The need to revise the objectives*

The current evidence on the effect of global warming makes it necessary to revise long term objectives of recovery plans. Rather than targeting specific biomass levels that may no longer be achievable under changing oceanic conditions, the plan must concentrate on achieving the optimum exploitation rate that will guarantee the highest sustainable yield that the new conditions can provide.

- *The simplification of the effort management system*

The effort management system implemented in an annex of the annual TAC and quota regulation has become so complex, notably due to the many derogations that it has become difficult to implement, to monitor and to control. A new system, based on effort ceilings to be managed domestically by Member States is necessary to provide greater simplification of the regulation, more flexibility for Member States, and more efficient implementation.

- *The adaptation of the plan to different levels of recovery*

The plan needs to recognize that when stocks are getting better, more gradual approaches can be applied. For this reason, the amended plan introduces a modular approach, where the adjustment of fishing mortality is a function of the level of recovery achieved.

– *The provision for harvest rules in data-poor situations*

The recent experience also shows that scientists have often failed to provide the parameters to strictly apply the current plan, due to the low quality of data. This has led to ad hoc decisions by Council. It is necessary to provide clear rules to apply when and where scientists cannot provide precise estimates of stock status.

– *The need to reduce cod discards*

The reduction of discards must be a significant part of the revised plan. New mechanisms must be introduced, to encourage fishermen to engage in cod-avoidance programmes.

– *The incorporation of the Celtic Sea cod stock*

This stock was excluded from the 2004 cod recovery plan on the basis of its better conservation status. However, recent evaluations confirm that this stock is in a similar status of overexploitation as the other cod stocks in Community waters. Thus the need to include it in the recovery plan.

In this context, the control provisions must also be adapted to the new structure and provisions.

It is therefore necessary to amend the existing cod recovery plan, in order to make it more complete, updated to recent developments, simpler, more efficient and easier to implement, monitor and control.

In view of the proposed amendments to the cod recovery plan, certain control measures laid down in Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, should be improved to ensure compliance with the measures laid down in the amended cod recovery plan.

• **General context**

During the 2002 reform of the Common Fisheries Policy, the Commission and Council agreed to implement progressively multi-annual plans and recovery plans concerning fisheries resources of interest to the Community. Plans have been established concerning most stocks of cod in Community waters, two stocks of hake, two stocks of *Nephrops*, two stocks of sole and the stocks of plaice and sole in the North Sea.

Also in 2002, the Member States were signatories to the Implementation Plan of the World Summit on Sustainable Development (Johannesburg). That Implementation Plan includes a commitment to exploit fisheries according to maximum sustainable yields (MSY) by 2015.

The cod stocks in Community waters were the first case where a multi-annual recovery plan was implemented. Even though more recovery and management plans have been adopted, the cod recovery remains an essential component of the Common Fisheries Policy as reformed in 2002.

The importance of cod fisheries, the implications of cod fishing on fisheries targeting other species, the high economic and social interests at stake and the value of cod as a symbolic species make it necessary to ensure that cod recovery is a success. For this reason, the weaknesses of the current plan, identified by scientists and stakeholders alike, must be addressed through an amendment to the current plan.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, sets the general framework for sustainable exploitation of fisheries resources, and identifies the situations in which the Council shall adopt management plans and recovery plans.

Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks.

- **Consistency with the other policies and objectives of the Union**

The proposal's objective of sustainable development is consistent with the Community's environmental policy, especially the elements of that policy dealing with protecting natural habitats and preserving natural resources.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The proposal is based on several consultations with Member States as well as representatives for stakeholders in the Regional Advisory Committees.

The Commission provided a technical non-paper for the RACs and Member States in May 2007, which was based on the idea that cod can (and should) recover if fishing mortality is reduced sufficiently. The non-paper explored two approaches to achieving such reductions. One approach, based on generalised reductions in fishing effort in many fisheries catching cod, was widely rejected. The alternative, which was to find ways to "decouple" cod fishing from other fisheries and to reduce those activities, was supported in principle but few specific measures to achieve that in practice were suggested.

The RACs have stated a preference for a stock-specific approach; however, few specific management measures have been recommended.

The main contributions from RACs are: a voluntary system of temporary closures imposed at short notice (so-called "real-time" closures), and a commitment at the level of individual vessels to avoid catching cod ("cod avoidance plans").

As far as effort management is concerned, the Commission discussed with Member States and with RACs the possibility of a new approach based on the setting of ceilings of fishing effort expressed in kW-days. During the year 2008 Member States administrations and professional organisations may introduce the necessary

administrative arrangements for the new system becoming operational in 2009.

Summary of responses and how they have been taken into account

- **Collection and use of expertise**

Scientific/expertise domains concerned

ICES and STECF have been requested to provide scientific advice on the long-term management of the fisheries where possible. STECF provided its report on cod recovery in March 2007.

Summary of advice received and used

The main points are:

- the reductions arising from the collective effect of total allowable landings (TACs), technical measures (e.g. mesh size, landing compositions, area closures) and complementary effort management regulations have been far from sufficient to reduce fishing mortalities to levels required to allow the cod stocks to rebuild and none of the four cod stocks show clear sign of recovery.
- STECF advises an immediate reduction in fishing pressure on cod rather than to focus on the difficult definition and achievement of long term targets. Such long-term targets are estimated to be exploitation rates in the region of 50% or less than those estimated for recent years. Any reduction in fishing effort to reduce fishing pressure on cod should be consistent with other management measures and implemented in a way, which does not allow the remaining effort to be focused on cod.
- The effort management system should be made area-specific and should include measures to penalise those fisheries exerting the highest mortalities on cod.

The proposal is based on the advice received.

Means used to make the expert advice publicly available

The advice from ICES and STECF is publicly available on their respective websites (www.ices.dk and fishnet.jrc.it/web/stecf).

- **Impact assessment**

The impact assessment is based notably on two kinds of input:

- The scientific analysis, carried out notably by the Scientific, technical and Economic Committee for Fisheries (STECF) which since 2005 has analysed in detail the implementation of the existing plan, and has illustrated quantitatively how the recovery is making progress on the biological side.
- The consultations with stakeholders, starting by a symposium on cod recovery, held

in Edinburgh in March 2007, with a wide participation of all stake-holders, and the subsequent opinions by the concerned Regional Advisory Councils, aided by a detailed non-paper on options and alternatives prepared by the Commission services following the above symposium.

These elements provided for a clear analysis of the reasons why the current plan is not achieving its objectives, and identified a number of alternatives to explore. The main ones were:

- Replace biomass objectives by fishing mortality objectives;
- Ensure a gradual approach, proportional to the status of conservation of the different stocks
- Favour a regionally-based approach
- Provide for greater flexibility to manage the fishing effort;

De-couple cod from associated species in order to avoid general reductions in fishing effort for fisheries where cod is just a by-catch species.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Legal basis**

The legal basis of Regulation (EC) No 423/2004 is Article 37 of the Treaty establishing the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

However, the amendment proposed provides for greater decentralisation to Member States, notably as regards the management of fishing effort among vessels flying their own flag. This decentralisation provides for more flexibility to member States and contributes to simplify Community legislation.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

It is an amendment of an existing regulation. Its' objective is to improve and update certain aspects of an existing plan, in the light of new evidences and based on the experience gained in the implementation of the existing plan..

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Review/revision/sunset clause**

The proposal includes an Article providing for evaluation of management measures each three years from the date of entry into force of the Regulation.

- **Detailed explanation of the proposal**

The proposed target fishing mortality rates are based on scientific advice from STECF and ICES and reflect the current biological situation. An evaluation clause is included in the proposal to ensure that the target fishing mortality rates can be amended if appropriate in the light of new scientific information and advice.

(Explanatory memorandum validated – 10.881 characters - complying with DGT norm.)

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 423/2004 as regards the recovery of cod stocks and
amending Regulation (EEC) No 2847/93**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks¹, and in particular Article 6(4) thereof,

Having regard to the proposal from the Commission²,

Whereas:

- (1) Recent scientific advice from the International Council for the Exploration of the Sea (ICES) has indicated that the reductions in cod catches arising from the collective effect of total allowable landings (TACs), technical measures and complementary effort management measures have been far from sufficient to reduce fishing mortalities to levels required to allow the cod stocks to rebuild and none of the four cod stocks covered by Regulation (EC) No 423/2004 show clear signs of recovery.
- (2) The objective of the current cod recovery plan should be considered to be achieved for a stock when, for two consecutive years, the quantity of mature cod has been greater than that laid down in the Articles 3 and 5 as being within safe biological limits. That objective has not been achieved.
- (3) According to recent scientific submissions, in particular on long-term trends of marine ecosystems, desirable long-term levels of biomass cannot be fixed with accuracy. As a consequence, the objective of any cod recovery plan should be changed from a biomass-based target to a fishing mortality-based target, which should also be applied to permitted levels of fishing effort.
- (4) Cod in the Celtic Sea should be covered by the cod recovery plan in view of the deterioration of the state of this stock since 2005.

¹ OJ L 70, 9.3.2004, p. 8

² OJ C, p.

- (5) New mechanisms must be introduced, to encourage fishermen to engage in cod-avoidance programmes.
- (6) In the event that STECF is not able to advise on a TAC due to lack of sufficiently accurate and representative information, provisions should be established to ensure that a TAC can be set in a consistent manner even under data poor conditions.
- (7) In order to ensure the attainment of fishing mortality targets and to contribute to minimize discarding, fishing opportunities in terms of fishing effort need also to be fixed at levels which are consistent with the recovery strategy. Such fishing opportunities should, as far as possible, be defined by types of fishing gear on the basis of current fishing practices.
- (8) Control measures in addition to those laid down in Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy³, as last amended by Regulation (EC) No 2846/98⁴ should be improved to ensure compliance with the measures laid down in this Regulation.
- (9) Regulation (EC) No 423/2004 should therefore be amended accordingly.
- (10) Regulation (EEC) No 2847/93 should be adjusted to the changes made to the recovery plan,

HAS ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EC) No 423/2004

Regulation (EC) No 423/2005 is amended as follows:

- (1) Chapter I is replaced by the following:

"CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject-matter

This regulation establishes a recovery plan for five cod stocks (hereinafter referred to as "depleted cod stocks") corresponding to the following geographical areas:

- (a) cod in the Kattegat;
- (b) cod in the North Sea, in the Skagerrak and the eastern Channel;

³ OJ L 261, 20.10.1993, p. 1

⁴ OJ L 358, 31.12.1998, p.5

- (c) cod to the west of Scotland;
- (d) cod in the Irish Sea;
- (e) cod in the Celtic Sea.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) the definitions laid down in Article 3 of Regulation (EC) No 2371/2002;
- (b) "effort group" means a set of vessels flying the flag of a Member State which fish in one of the areas set out in Article 1 using fishing gear belonging to one of the groupings of gears set out in Annex I;
- (c) "catch per unit effort" (cpue) means the quantity of fish caught and expressed in weight by one unit of fishing effort expressed in kW days during one year.

Article 2a

Geographical definitions

For the purposes of this Regulation, the following geographical definitions of geographical areas shall apply:

- (a) 'Kattegat' means that part of Division IIIa, as delineated by the International Council for the Exploration of the Sea (IECS), that is bounded on the north by a line drawn from the Skagen lighthouse to the Tistlarna lighthouse and from this point to the nearest point on the Swedish coast and on the south by a line drawn from Hasenore to Gnibens Spids, from Korshage to Spodsbjerg and from Gilbjerg Hoved to Kullen;
- (b) 'North Sea' means ICES Subarea IV and that part of ICES Division IIIa not covered by the Skagerrak and that part of ICES Division IIa which lies within waters under the sovereignty or jurisdiction of Member States;
- (c) 'Skagerrak' means that part of ICES Division IIIa bounded on the west by a line drawn from the Hanstholm lighthouse to the Lindesnes lighthouse and on the south by a line drawn from the Skagen lighthouse to the Tistlarna lighthouse and from that point to the nearest point on the Swedish coast;
- (d) 'Eastern Channel' means ICES Division VIId;
- (e) 'Irish Sea' means ICES Division VIIa;
- (f) 'West of Scotland' means ICES Division VIa and that part of ICES Division Vb which lies within waters under the sovereignty or jurisdiction of Member States.

- (g) 'Celtic Sea' means ICES divisions VIIe to VIIk inclusive.

Article 2b

Calculation of fishing effort

For the purposes of this Regulation:

- (a) the capacity of a vessel shall be measured in kilowatt;
- (b) the activity of a vessel shall be measured in days present within a geographical area as set out in Article 1. A day present within an area shall be any continuous period of 24 hours (or part thereof) during which a vessel is present within the area and absent from port.

Article 3

Objective of the plan

1. The plan referred to in Article 1 shall ensure the sustainable exploitation of the cod stocks on the basis of maximum sustainable yield.
2. The objective set out in paragraph 1 shall be attained while maintaining the fishing mortality on cod at 0,4 on ages two to four years.
- (2) Chapter II is deleted.
- (3) Chapter III is replaced by the following:

"CHAPTER III

TOTAL ALLOWABLE CATCHES

Article 5

Minimum and precautionary levels

The minimum level and the precautionary level for each of the depleted cod stocks shall be as follows:

Stock	Minimum Levels in tonnes	Precautionary Levels in tonnes
Cod in the Kattegat	6 400	10 500
Cod in the North Sea, Skagerrak and Eastern Channel	70 000	150 000
Cod to the West of Scotland	14 000	22 000
Cod in the Irish Sea	6 000	10 000

*Article 6***Procedure for Setting TACs**

1. Each year, the Council shall decide on the TAC for the following year for each of the depleted cod stocks. The TACs shall, based on the advice of STECF, satisfy all of the following conditions:
 - (a) if the size of the stock in the year prior to the year of application of the TAC is below the minimum level established in Article 5, the fishing mortality rate shall be reduced by 25% in the year of application of the TAC as compared with the fishing mortality rate in the prior year;
 - (b) if the size of the stock in the year prior to the year of application of the TAC is below the precautionary level set out in Article 5 and above or equal to the minimum level established in Article 5, the fishing mortality rate shall be reduced by 15% in the year of application of the TAC as compared with the fishing mortality rate in the prior year; and
 - (c) if the size of the stock in the year prior to the year of application of the TAC is above or equal to the precautionary level set out in Article 5, the fishing mortality rate shall be reduced by 10% in the year of application of the TAC as compared with the fishing mortality rate in the prior year.
2. If the application of paragraph 1(b) and (c) would, based on the advice of STECF, result in a fishing mortality rate lower than 0,4 on age-groups 2, 3 and 4, the Council shall set the TAC at a level resulting in a fishing mortality rate of 0,4 on those age-groups.
3. When giving its advice in accordance with paragraphs 1 and 2, STECF shall assume that the stock is fished, in the year prior to the year of application of the TAC, with a reduction in fishing mortality equal to the reduction maximum allowable fishing effort that applies in that year.
4. Notwithstanding paragraph 1(b) and (c) and paragraph 2, the Council shall not set the TAC at a level that is more than 15% below or above the TAC established in the previous year.
5. The TAC shall be calculated by deducting the following quantities from the total removals of cod that are forecast by STECF as corresponding to the fishing mortality rates referred to in paragraphs 1 and 2:
 - (a) a quantity of fish equivalent to the expected discards of cod from the stock concerned;

- (b) as appropriate a quantity corresponding to other relevant sources of cod mortality to be fixed on the basis of a proposal from the Commission.

Article 6a

Procedure for setting TACs in data poor conditions

Where, due to lack of sufficiently accurate and representative information, STECF is not able to give an advice allowing the Council to set the TAC in accordance with Article 6, the Council shall decide as follows:

- (a) where STECF advises that the catches of cod should be reduced to the lowest possible level, the TAC shall be set according to a 25% reduction compared to the TAC in the previous year;
- (b) in all other cases the TAC shall be set according to a 15% reduction compared to the TAC in the previous year.

Article 7

Evaluation of management measures

1. Each three years from the date of entry into force of this Regulation, the Commission shall request STECF to evaluate the progress of each of the depleted cod stocks towards recovery.
2. In the event that STECF advises that any of the depleted cod stocks is failing properly to recover, the Council shall take a decision
 - (a) setting the TAC for the relevant stock at a level lower than that provided for in Articles 6 and 6a;
 - (b) setting the maximum allowable fishing effort at a level lower than that provided for in Article 8a,
 - (c) establishing associated conditions as appropriate.
3. In the event that STECF advises that the minimum and precautionary levels in Article 5 or the level of fishing mortality rate given in Article 6(2) are no longer appropriate in order to maintain a low risk of stock depletion and a maximum sustainable yield, the Council shall decide on new values for these levels."

- 4) Chapter IV is replaced by the following:

"CHAPTER IV

Fishing effort limitation

Article 8

Fishing effort regime

The TACs set out in Articles 6 and 6a shall be complemented by a fishing effort regime whereby fishing opportunities in terms of fishing effort are allocated to Member States on an annual basis.

Article 8a

Fishing effort allocations

1. Each year, the Council shall decide on the maximum allowable effort for each effort group by Member State.
2. The maximum allowable fishing effort shall be calculated by means of a baseline established as follows:
 - (a) for the first year of application of this Regulation the baseline shall be established as the average effort in kW-days spent during the years 2005, 2006 and 2007, based on the advice of STECF.
 - (b) for the subsequent years of application of this Regulation the baseline shall be equal to the maximum allowable fishing effort of the previous year.
3. For effort groups which on the basis of the annual evaluation of the fishing effort management data submitted in accordance with Articles 18, 19 and 20 of Regulation (EC) No xxx/2008⁵ have contributed most to the total catch of cod and whose total catch on basis of that evaluation consists by at least 80% of cod, the maximum allowable fishing effort shall be calculated as follows:
 - (a) where Article 6 applies, by applying to the baseline the same percentage reduction as that set out in Article 6 for fishing mortality;
 - (b) where Article 6a applies, by applying to the baseline the same percentage reduction in fishing effort as the reduction of the TAC.

⁵ Please insert reference to the new Data Collection regulation

4. For effort groups other than those referred to in paragraph 3, the maximum allowable fishing effort shall be maintained at the level of the baseline.

Article 8b

Member State's obligations

1. For the vessels flying its flag, each Member State shall decide on a method for allocating the maximum allowable fishing effort to individual vessels, based on the following criteria:
 - (a) promotion of good fishing practices, including data collection enhancement, discard reduction and minimisation of the impact on juvenile fish;
 - (b) participation in cooperative programmes to avoid unnecessary by-catches of cod;
 - (c) low impact on the environment, including fuel consumption and greenhouse gas emissions;
 - (d) proportionality with respect to allocation of fishing opportunities in terms of fish quota.
2. Each Member State shall issue special fishing permits in accordance with Council Regulation (EC) No 1627/94⁶ for vessels flying its flag which engage in fishing activities in the geographical areas set out in Article 2a.
3. For each effort group, the total capacity expressed both in GT and kW of the vessels having special fishing permits issued in accordance with paragraph 2 shall not be greater than the capacity of the vessels that have been active in 2007 using the gear and fishing in the geographical area concerned.
4. Each Member State shall establish and maintain a list of vessels holding the special permit referred to in paragraph 2 and make it available on its official website to the Commission and other Member States.

Article 8c

Regulation of fishing effort

Member States shall monitor the capacity and activity of their fleet by effort groups and shall take appropriate action if the maximum allowable fishing effort is about to be reached, in order to ensure that the effort will not exceed the set limits.

Article 8d

Exchange of maximum allowable fishing effort between Member States

⁶ OJ L 171, 6.07.1994, p. 7

The maximum allowable fishing effort established in accordance with Article 8a shall be adapted by the Member States concerned in view of:

- (a) exchanges of quotas carried out pursuant to Article 20(5) of Regulation (EC) No 2371/2002; and
- (b) reallocations and/or deductions made pursuant to Article 23(4) of Regulation (EC) No 2371/2002 and Articles 21(4), 23(1) and 32(2) of Regulation (EEC) No 2847/93.

Article 8e

Exchange of maximum allowable fishing effort across effort groups

1. On duly motivated request by a Member State, the Commission may, in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002, amend the effort allocations for that Member State by transferring fishing capacity across effort groups, under the conditions set out in the paragraphs 2 to 4.
2. The transfer shall be allowed between gear groupings but not between geographical areas.
3. The transfer shall only be allowed from a donor gear grouping having shown, for cod, a catch per unit effort (cpue) larger than the cpue of the receiving gear grouping. The Member State requesting the transfer shall provide the necessary cpue information.
4. The transfer shall be made on a 1 kW-day to 1kW-day basis."
- (5) Article 9 is replaced by the following:

"Article 9

Relationship with Regulation (EEC) No 2847/93

The control measures provided for in this Chapter shall apply in addition to those prescribed in Regulation (EEC) No 2847/93.

Article 9a

Logbook checks

1. For vessels fitted with a vessel monitoring system (VMS), Member States shall verify that the information received at the fisheries monitoring centres (FMC) corresponds to activities recorded in the logbook by using VMS data. Such cross-checks shall be recorded in computer-readable form for a period of three years.
2. Each Member State shall maintain and make available on its official website the contact details for the submission of logbooks and landing declarations.

Article 9b

Weighing of cod first landed

The master of a fishing vessel shall ensure that any quantity of cod caught in the areas set out in Article 2a and landed in a Community port shall be weighed before sale or before being transported elsewhere from the port of landing. The scales used for the weighing shall be approved by the competent national authorities. The figure resulting from the weighing shall be used for the declaration referred to in Article 8 of Regulation (EEC) No 2847/93.

Article 9c

Inspection benchmarks

Each Member State with vessels concerned by this Regulation shall set specific inspection benchmarks. Such benchmarks shall be revised periodically after an analysis has been made of the results achieved. Inspection benchmarks shall evolve progressively until the target benchmarks defined in Annex II are reached.

Article 9d

Prohibition on transshipping

The transshipment of cod at sea is prohibited in the geographical areas set out in Article 2a.

Article 9e

Joint surveillance and exchange of inspectors

Member States concerned shall undertake joint inspection and surveillance activities.

Article 9f

National control action programmes

1. Member States with vessels concerned by this Regulation shall define a national control action programme in accordance with Annex III.
 2. Before 31 January each year, Member States with vessels concerned by this Regulation shall make available to the Commission and other Member States concerned by this Regulation on its official website their national control action programmes together with an implementation schedule.
 3. The Commission shall convene at least once a year a meeting of the Committee for Fisheries and Aquaculture to evaluate compliance with and the results of the national control action programmes for cod stocks concerned by this Regulation."
- (6) Chapter VI is replaced by the following:

"CHAPTER VI

Decision-making and final provisions

Article 17

Decision-making procedure

Where this Regulation provides for decisions to be taken by the Council, the Council shall act by qualified majority on the basis of a proposal from the Commission.

Article 17a

Amendments to Annex I

Based on the advice of STECF, the Commission may amend the Annex I to this Regulation in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002 and on the basis of the following principles:

- (a) effort groups should shall be laid down as homogeneously as possible with respect to the biological stocks captured, the sizes of fish captured either as target or as by-catch and the effects on the environment of the fishing activities associated to the effort groups.
- (b) the number and size of effort groups should shall be cost-efficient in terms of management burden relative to conservation needs."

Article 2

Amendments to Regulation (EC) No 2847/93

Regulation (EC) No 2847/93 is amended as follows:

- (1) Article 19j is replaced by the following:

"Article 19j

Each Member State shall notify, without delay, to the other Member States, the identification details of the vessels flying its flag for which the authorisation to carry out fishing activities in one or more of the fisheries referred to in Articles 3 and 6 of Regulation (EC) No 1954/2003 or the special fishing permit issued in accordance with Article 8b(2) of Regulation (EC) No 423/2004 is suspended or withdrawn."

- (2) Article 21a is replaced by the following:

"Article 21a

Each Member State shall determine the date on which the vessels or a group of vessels flying its flag shall be deemed to have reached the maximum fishing effort level in a fishing area as

laid down in the Regulation referred to in Article 11(2) or (3) of Regulation (EC) No 1954/2003 and in Article 8a of Regulation (EC) No 423/2004. As from that date, it shall provisionally prohibit the fishing activities of the said vessels or a group of vessels in that area. The Commission shall be notified forthwith of this measure and shall then inform the other Member States."

(3) Article 21b is replaced by the following:

"Article 21b

Where the vessels or a group of vessels flying the flag of a Member State are deemed to have exhausted 70% of the maximum fishing effort allocated to them in accordance with Regulation (EC) No 1954/2003 and Regulation (EC) No 423/2004, the Member State concerned shall notify the Commission of the measures adopted pursuant to the second subparagraph of Article 7(1) of Regulation (EC) No 685/95."

(4) Article 21c is replaced by the following:

"Article 21c

1. On the basis of the information referred to in Article 19i, the Commission shall ensure that the maximum fishing effort levels as fixed in accordance with Regulation (EC) No 1954/2003 and Regulation (EC) No 423/2004 are complied with.
2. Following notification under Article 21a or on its own initiative, the Commission shall fix, on the basis of available information, the date on which the maximum fishing effort level for the vessels or for a group of vessels flying the flag of a Member State for a fishing area is deemed to have been reached. From that date on, the vessels or a group of vessels flying the flag of that Member State shall not undertake fishing activities in the fisheries concerned."

Article 3
Entry into force

This Regulation shall enter into force on day of its application in the *Official Journal of the European Union*.

It shall apply from 1 January 2009.

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

Done at Brussels,

For the Council
The President

ANNEX

The following Annex is inserted in Regulation (EC) No 423/2004:

"ANNEX I

Effort groups

1. Gear groupings

(1) Bottom trawls (OTB, OTT, PTB) of mesh:

TR.1 equal to or larger than 100mm

TR.2 equal to or larger than 70mm and less than 100mm

TR.3 less than 70mm

(2) Beam trawls (TBB) of mesh:

BT.1 equal to or larger than 80mm

BT.2 less than 80mm

(3) Gill nets, entangling nets (except trammel nets) of mesh

GN.1 equal to or larger than 150mm

GN.2 equal to or larger than 110mm and less than 150mm

GN.3 less than 110mm

(4) Trammel nets (TN.1)

(5) Longlines (LL.1)

2. Groupings of geographical areas:

2.1. For the purposes of this Annex, the following geographical groupings, shall apply:

(a) Kattegat;

(b) (i) Skagerrak;

(ii) that part of ICES zone IIIa not covered by the Skagerrak and the Kattegat;

ICES zone IV and EC waters of ICES zone IIa;

(iii) ICES zone VIId;

(c) ICES zone VIIa;

- (d) ICES zone Via;
- (e) Celtic Sea (ICES zones VIIe to VIIk inclusive).

3. Effort groups:

The transmission of effort data foreseen in Article 19i of Regulation (EC) No 2847/93 shall use the following codes for each effort group:

Gear groupings	Areas				
	(a)	(b)	(c)	(d)	(e)
TR1	TR1a	TR1b	TR1c	TR1d	TR1e
TR2	TR2a	TR2b	TR2c	TR2d	TR2e
TR3	TR3a	TR3b	TR3c	TR3d	TR3e
BT1	BT1a	BT1b	BT1c	BT1d	BT1e
BT2	BT2a	BT2b	BT2c	BT2d	BT2e
GN1	GN1a	GN1b	GN1c	GN1d	GN1e
GN2	GN2a	GN2b	GN2c	GN2d	GN2e
GN3	GN3a	GN3b	GN3c	GN3d	GN3e
TN1	TN1a	TN1b	TN1c	TN1d	TN1e
LL1	LL1a	LL1b	LL1c	LL1d	LL1e

ANNEX II

SPECIFIC INSPECTION BENCHMARKS

Objective

1. Each Member State shall set specific inspection benchmarks in accordance with this Annex.

Strategy

2. Inspection and surveillance of fishing activities shall concentrate on vessels likely to catch cod. Random inspections of transport and marketing of cod shall be used as a complementary cross-checking mechanism to test the effectiveness of inspection and surveillance.

Priorities

3. Different gear types shall be subject to different levels of prioritisation, depending on the extent to which the fleets are affected by fishing opportunity limits. For that reason, each Member State shall set specific priorities.

Target benchmarks

4. Not later than one month from the date of entry into force of this Regulation, Member States shall implement their inspection schedules taking account of the targets set out below.

Member States shall specify and describe which sampling strategy will be applied.

The Commission can have access on request to the sampling plan used by the Member State.

(a) Level of inspection in ports

As a general rule, the accuracy to be achieved should be at least equivalent to what would be obtained by a simple random sampling method, where inspections shall cover 20 % of all cod landings by weight in a Member State.

(b) Level of inspection of marketing

Inspection of 5 % of the quantities of cod offered for sale at auction.

(c) Level of inspection at sea

Flexible benchmark: to be set after a detailed analysis of the fishing activity in each area. Benchmarks at sea shall refer the number of patrol days at sea in the cod management areas, possibly with a separate benchmark for days patrolling specific areas.

(d) Level of aerial surveillance

Flexible benchmark: to be set after a detailed analysis of the fishing activity conducted in each area and taking the available resources at the Member State's disposal into consideration.

ANNEX III

Contents of national control action programmes

National control action programmes shall aim, *inter alia*, to specify the following:

1. MEANS OF CONTROL

Human resources

- 1.1. The numbers of shore-based and seagoing inspectors and the periods and zones where they are to be deployed.

Technical resources

- 1.2. The numbers of patrol vessels and aircraft and the periods and zones where these are to be deployed.

Financial resources

- 1.3. The budgetary allocation for deployment of human resources, patrol vessels and aircraft.

2. ELECTRONIC RECORDING AND REPORTING OF INFORMATION RELATING TO FISHING ACTIVITIES

Description of the systems implemented to ensure compliance with Articles 9a, 10, 11 and 12.

3. DESIGNATION OF PORTS

Where relevant, a list of ports designated for cod landings in accordance with Article 9e.

4. ENTRY INTO OR EXIT FROM SPECIFIC AREAS.

Description of the systems implemented to ensure compliance with Article 11.

5. LANDINGS CONTROL

Description of any facilities and or systems implemented to ensure compliance with the provisions in Articles 9a, 9b, 9c and 15.

6. INSPECTION PROCEDURES

The national control action programmes shall specify the procedures that will be followed:

- (a) when conducting inspections at sea and on land;
- (b) for communicating with the competent authorities designated by other Member States as responsible for the national control action programme for cod;
- (c) for joint surveillance and exchange of inspectors, including specification of powers and authority of inspectors operating in other Member States' waters."