REPORT FOR THE HEARING
delivered in Case 55/86 *

I — Facts

The 'Asociación provincial de armadores de buques de pesca de Gran-Sol de Pontevedra' (the provincial association of fishing boat owners of Gran Sol de Pontevedra, 'Arposol') is an association of 46 Spanish fishing-boat operators. According to Article 7 of its constitution its purpose is to represent and defend the common interests of its members. Pursuant to Article 8 (f) of its constitution Arposol is to represent its members in relations with bodies of every kind, including international bodies and organizations.

A — *The rules concerning fishing established by the Act of Accession of Spain and Portugal to the European Communities*

The rules concerning the conditions of access of ships flying the Spanish or Portuguese flag to the waters of the Community of Ten, access of Spanish vessels to Portuguese waters, access of Portuguese vessels to Spanish waters and access of vessels flying the flag of one of the States of the Community of Ten to Portuguese and Spanish waters is laid down in Articles 154 to 166 and 347 to 353 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community (Official Journal 1985, L 302, p. 9, hereinafter referred to as the 'Act of Accession').

1. *The rules concerning Spanish vessels*

As regards non-specialized fishing Article 158 of the Act of Accession provides that only 300 vessels specified in the 'basic list' set out in Annex IX to the Act may be authorized to fish in the waters of the Member States of the Community of Ten. Article 158 (2), however, states that only 150 of those vessels may be authorized to fish at the same time provided that they appear on one of the lists drawn up periodically by the Commission (the 'periodical lists'). Under Article 163 drafts of the periodical lists are prepared by the Spanish authorities and submitted to the Commission which adopts new lists each month.

As regards Spanish vessels engaged in specialized fishing, Article 160 of the Act of Accession regulates their access to the waters of the States of the Community of Ten. In certain cases basic lists and periodical lists are provided for, while in other cases there are only periodical lists. There is no limitation on the number of vessels which may engage in tuna fishing.

Finally, as regards access of Spanish vessels to Portuguese waters Article 352, which was implemented for the first time by Commission Regulation (EEC) No 3718/85 of 27 December 1985 (Official Journal 1985, L 360, p. 20), provides for basic lists

* Language of the Case: Spanish.

and periodical lists in respect of certain types of fishing and only for periodical lists in respect of others.

2. *Rules concerning Portuguese vessels*

As regards the access of Portuguese vessels to the waters of the Member States of the Community of Ten, Article 349 of the Act of Accession, which was implemented for the first time by Commission Regulation (EEC) No 3715/85 of 27 December 1985 (Official Journal 1985, L 360, p. 1), provides for basic lists and periodical lists in some cases and only for periodical lists in others.

In respect of access of Portuguese vessels to Spanish waters, Article 165 of the Act of Accession, which was implemented for the first time by Commission Regulation (EEC) No 3717/85 of 27 December 1985 (Official Journal 1985, L 360, p. 14), provides for basic lists and for specific periodical lists for certain species of fish.

3. *Rules concerning vessels registered in one of the Member States of the Community of Ten*

As regards access to Spanish waters of such vessels, Article 164 of the Act of Accession provides for basic lists and periodical lists, drawing a distinction between specialized and non-specialized fishing.

As regards access of those vessels to Portuguese waters Article 351, implemented by Commission Regulation (EEC) No 3719/85 of 27 December 1985 (Official Journal 1985, L 360, p. 26) only provides for periodical lists for vessels fishing for albacore tuna.

B — *Council Regulation (EEC) No 3781/85*

According to Article 1, Council Regulation (EEC) No 3781/85 of 31 December 1985 laying down the measures to be taken in respect of operators who do not comply with certain provisions relating to fishing contained in the Act of Accession of Spain and Portugal (Official Journal 1985, L 363, p. 26) lays down the measures intended to ensure compliance with the rules on access to waters and resources contained in Articles 163, 164, 165, 349, 351 and 352 of the Act of Accession.

Under Article 2 of the regulation the competent authorities of Member States must without delay notify the Commission and the flag Member State or the Member State of registration of any infringement of the rules. Article 2 (2) provides that on the basis of a judicial decision notified or in any other case of recorded infringement the Member State may no longer enter the vessel concerned on the draft periodical lists which it submits to the Commission.

Article 3 determines the period of non-entry according to whether or not a first infringement is involved. That period is in any case at least two months.

C — *The application for interim measures*

The applicant made an application to the President of the Court for the suspension of the operation of Council Regulation No 3781/85.

By order of 22 April 1986 the President of the Court dismissed that application on the ground that the applicant had not established the existence of irreparable damage.

II — Conclusions of the parties

In its application lodged at the Court Registry on 26 February 1986 the *applicant* claims that the Court should:

declare void Council Regulation (EEC) No 3781/85 of 31 December 1985.

The *Council of the European Communities* contends that the Court should:

(i) declare the application for the annulment of Council Regulation (EEC) No 3781/85 inadmissible;

(ii) order the applicant to pay the costs, including the costs of the application for interim measures.

By order of 30 October 1986 the Court granted the Commission of the European Communities leave to intervene in support of the Council's conclusions.

By order of 20 May 1987 the Court decided to hear argument on the question of admissibility alone and assigned the matter to the Fifth Chamber.

III — Submissions and arguments of the parties

The Council, supported by the Commission, has raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure of the Court.

It stresses first that Regulation No 3781/85 deals generally with fishing relations between Spain, Portugal and the Member States of the Community of Ten and seeks to ensure that the system established by the Act of Accession is complied with. That system concerns not only Spanish traders but also traders from all the other Member States. The Council infers from that that the disputed regulation is general in its scope and is therefore of a purely legislative nature. Referring to the Court's case-law, in particular the judgment of 5 May 1977 (Case 101/76 *Koninklijke Scholten Honig* [1977] ECR 797), the Council considers that the matter is not of direct and individual concern to the applicant within the meaning of the second paragraph of Article 173 of the EEC Treaty.

Secondly, the Council notes that the disputed regulation affects the general interests of a category of traders, that is to say owners and operators of fishing boats of Member States of the Community. The applicant, acting as representative of a certain number of shipowners, cannot therefore demonstrate that it is individually affected. The Council cites the Court's case-law to the effect that an association, acting as representative of a category of businessmen, is not affected individually by an act affecting the general interests of that category.

Thirdly, the Council stresses that Regulation No 3781/85 does not of itself restrict operators' rights to fish. A vessel may only be deprived of its right to fish if two conditions are fulfilled, that is to say if an infringement has been committed and that infringement has been recorded in due form. If in such a case the owner concerned considers that his rights are infringed and that harm has been caused to him he may take action by instituting the appropriate legal proceedings.

The *applicant* submits first that Regulation No 3781/85 is not applicable in a general manner to fishing relations between Spain and Portugal and Member States of the

Community of Ten. Analysing the relevant provisions concerning fishing the applicant asserts that as regards non-specialized fishing the regulation in fact affects only 300 Spanish, 11 Portuguese and 10 French vessels. For all types of fishing the applicant considers that the regulation affects 1 268 fishing vessels, whether specialized or not, out of the 76 818 vessels or thereabouts which make up the fishing fleet of the 12 Member States of the European Economic Community. The applicant maintains that the vessels affected all appear in the lists provided for by the Act of Accession. The applicant argues that the regulation in dispute cannot therefore be legislative in nature since it is applicable to a fixed number of persons.

Secondly, as regards its legal capacity to bring proceedings, the applicant points out that its constitution provides that it is entitled to represent shipowners in their relations with organizations and bodies of every kind. The applicant also stresses that with regard to sea fishing Spanish law grants legally constituted associations of shipowners capacity to bring proceedings in the name of the undertakings directly and individually affected. The applicant also argues that in the two judgments of the Court of 8 October 1974 (Case 175/73 *Amalgamated European Public Service Union* [1974] ECR 917, and Case 18/74 *Syndicat général du personnel des organismes européenes* [1974] ECR 933) it was held that properly designated professional or trade associations have capacity to bring legal proceedings. In the instant case the applicant represents the vessels which are directly and individually affected by the regulation which is the subject of the proceedings. The applicant stresses, furthermore, that it acted on the express and individual instructions of the 46 undertakings directly and individually affected by Regulation No 3781/85 and not simply on the basis of the general delegation granted by Article 8 of its constitution.

Thirdly, the applicant stresses that there are two distinct means whereby the system instituted by Regulation No 3781/85 may be challenged. The first, which the applicant itelf has followed, consists in bringing an action under the second paragraph of Article 173 of the Treaty against the regulation itself. The second is to bring proceedings before a national court, and any undertaking which has been penalized may do this.

IV — Questions asked by the Court

In reply to two questions asked by the Court the Council supplied a list of the provisions concerning fishing adopted pursuant to the Act of Accession and stressed that of the 75 000 fishing vessels which make up the Community fishing fleet approximately 2 700 are affected by Regulation No 3781/85.

R. Joliet
Judge-Rapporteur