JUDGMENT OF THE COURT
27 March 1990 *

In Case C-9/89

Kingdom of Spain, represented by Javier Conde de Saro, Director-General for the Coordination of Legal and Institutional Relations with the Communities, and Rosario Silva de Lapuerta, abogado del Estado, of the State Legal Department dealing with matters before the Court of Justice, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6, boulevard Emmanuel-Servais,

applicant,

v

Council of the European Communities, represented by Antonio Sacchettini, Director in its Legal Department, Jacques Delmoly, Principal Administrator in the said department, and Germán-Luis Ramos Ruano, also a member of that department, acting as Agents, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100, boulevard Konrad-Adenauer,

defendant,

supported by

Commission of the European Communities, represented by its Legal Advisers, Robert Caspar Fischer and Francisco José Santaolalla, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

intervener,

and by

* Language of the case: Spanish.

United Kingdom, represented by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14, boulevard Roosevelt,

intervener,

APPLICATION for a declaration that Council Regulation (EEC) No 3483/88 of 7 November 1988 amending Regulation (EEC) No 2241/87 establishing certain control measures for fishing activities (Official Journal 1988, L 306, p. 2) is void,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn and F. A. Schockweiler (Presidents of Chambers), T. Koopmans, G. F. Mancini, R. Joliet, T. F. O'Higgins, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges,

Advocate General: M. Darmon
Registrar: J.-G. Giraud

having regard to the Report for the Hearing and further to the hearing on 31 January 1990,

after hearing the Opinion of the Advocate General at the sitting on 22 February 1990,

gives the following

Judgment

1 By an application lodged at the Court Registry on 13 January 1989, the Kingdom of Spain brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Council Regulation (EEC) No 3483/88 of 7 November 1988 amending Regulation (EEC) No 2241/87 establishing certain control measures for fishing activities (Official Journal 1988, L 306, p. 2) is void.

2 The control measures which form the subject of the present case are those which were adopted pursuant to Articles 10 and 11 of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal 1983, L 24, p. 1). According to Article 1, that regulation was designed to establish a Community system for the conservation and management of fishery resources in order to ensure 'the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions'. For those purposes, the system was to consist, in particular, of conservation measures, rules for the use and distribution of resources, special provisions for coastal fishing and supervisory measures.

3 Following major alterations in the inspection and control of fishing activities, Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (Official Journal 1987, L 207, p. 1) attempted to clarify matters by consolidating the applicable rules. According to the recitals in the preamble to that regulation, those rules must include measures for the inspection and monitoring by the authorities of Member States of all fishing vessels, including the vessels of non-member countries, at sea and in port, and all activities whose monitoring would enable the implementation of the regulation to be verified and steps to be taken to penalize breaches of the applicable rules.

4 Regulation No 3483/88, the legality of which is disputed by the Kingdom of Spain, amends Regulation No 2241/87 by adding to it five new articles. According to the recitals in its preamble, that regulation is based on the need to strengthen the application of the fisheries conservation rules by improving cooperation between Member States in order to prevent overfishing. To that end, it provides for Member States to obtain, at their request, more rapid and more detailed information on catches landed by their vessels in another Member State.

5 Reference is made to the Report for the Hearing for a fuller account of the facts and the procedure, as well as the submissions and arguments of the parties and the interveners, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 The four submissions on which the Spanish Government rests its case relate to Articles 9a, 11a, 11b and 11c which were added to Regulation No 2241/87 by Regulation No 3483/88. It is necessary to consider those submissions in turn.

(a) Article 9a (provision of information)

7 Under Article 9a, the Member State in which fishing vessels are registered or whose flag those vessels fly may request other Member States to supply information on landing or transhipment in their ports or within their maritime waters by those vessels if such information relates to a particular stock or group of stocks subject to a quota allocated to the Member State of registration. The other Member States are required to provide such information within four days and that information must also be sent to the Commission.

8 The Spanish Government complains that this new provision burdens the Member State where landings are made with the cost of the fishery control measures and that it thereby transfers responsibility from the Member State of registration to that of landing. It argues that since quotas are allocated on the basis of the flag or the place of registration of the fishing vessels, each Member State is required to monitor the activity of its own vessels.

9 It should be noted at the outset, as the United Kingdom and the Commission, the interveners, quite correctly pointed out, that the system which applied prior to the entry into force of Regulation No 3483/88 required all Member States, and not solely the Member State of registration, to ensure that the rules limiting catches were complied with. Under Article 1(1) of Regulation No 2241/87, each Member State is required to carry out all necessary monitoring 'within its territory and within maritime waters subject to its sovereignty or jurisdiction'; such monitoring must in particular cover the activities of landing, selling and storing fish and recording landings and sales.

10 Regulation No 2241/87 therefore imposes a joint responsibility on Member States to monitor the system of catch limitations. In the same vein, Article 1(3) of the regulation requires Member States to coordinate their control activities and to

introduce 'measures whereby their competent authorities and the Commission may be regularly informed on a reciprocal basis of the experience acquired'. Article 9a merely adds further details concerning those obligations to provide information.

11 Secondly, it should be noted that the Spanish Government has been unable to adduce any legal reasons which would stand in the way of any change to the system of control as originally laid down in Regulation No 2241/87. It merely referred in its application to the new methods of control and the additional expense which the new provision would entail, without showing how those factors might place the validity of the provision in doubt. During the hearing, the Spanish Government relied on the principle of proportionality, but failed to indicate the degree to which the measures introduced by Article 9a might be more onerous than what is necessary to achieve a coherent system of control.

12 The submission directed by the Spanish Government against Article 9a must therefore be rejected.

(b) Article 11a (monitoring of licences)

13 A Member State which makes the fishing activities of its vessels subject to a licensing system under the quota allocated to it must provide certain information to the Commission and to the other Member States under Article 11a(1). Article 11a(2) provides that 'the catching, retention on board, transhipment or landing of fish under the quota concerned shall be prohibited unless the vessel is licensed to fish under that quota'. Such a prohibition also applies where the licence has been withdrawn or suspended. The task of checking that a particular vessel holds a licence may thus fall on the authorities of the Member State of landing or of that of transhipment.

14 The Spanish Government submits that this new provision appreciably alters the general system of fishing licences in that it requires the Member State of landing to act as monitor of the licensing system established by another Member State. The licensing system is thus in the process of becoming 'communalized'.

15 It ought to be pointed out in this regard that Regulation No 170/83 established, with effect from January 1983, a 'Community system' for the conservation and management of marine resources (first paragraph of Article 1). That system consists, *inter alia*, of conservation measures which may include limits on catches (Article 2(2)(d)). To that end, the total allowable catch for each stock or group of stocks concerned is fixed in order to determine on that basis the volume of shares available to the Community (Article 3). It is that volume which is subsequently 'distributed between the Member States' (Article 4(1)). It is up to the authorities in the Member States to draw up, in accordance with the relevant provisions of Community law, the detailed rules for the utilization of the quotas allocated to them.

16 A licensing system introduced by the Member State of registration represents therefore one of the methods available to Member States to ensure compliance with catch limitations imposed under the Community conservation system. The Council was thus entitled to strengthen compliance with the licensing system by requiring the cooperation of Member States other than that of registration, without thereby infringing any rule under the Treaty or any principle of law.

17 For that reason, the second submission made by the Spanish Government cannot be accepted.

(c) Article 11b (monitoring of certified documents)

18 Article 11b addresses the special problem of vessels which have failed to comply with rules on conservation or with control measures adopted by the Community or by the Member State of registration. Such vessels may for that reason be made subject to additional control measures under which they must, for a maximum period of one year, retain on board a document certified by the Member State of registration and stating that the latter has inspected the vessel in question within the previous two months. Article 11b provides that such vessels may not land or tranship their catches of fish subject to quota in a port or in the maritime waters of another Member State unless they can prove that they have the certified document on board.

19 That additional control measure, in the view of the Spanish Government, precludes the vessel in question from selling its catches in a Member State of the Community unless it has previously returned to the Member State of registration

in order there to undergo an inspection and obtain the certified document which will allow it to land its catches in the port of its choice. A measure of this kind, the Spanish Government submits, makes it difficult to export fish from the Member State of registration and thus constitutes a measure having an effect equivalent to a quantitative restriction on exports as prohibited under Article 34 of the EEC Treaty.

20 It should first be noted, as the Council has already emphasized, that Article 11b does not place any restrictions on exports of fish, but that it relates rather to the possession on board of a document which certifies that the vessel in question has been inspected during the preceding two months. That obligation applies only to vessels which have previously infringed the conservation rules.

21 It should then be pointed out that Article 34, as the Court has already held, concerns only those measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for its domestic market at the expense of the production or of the trade of other Member States (judgment of 8 November 1979 in Case 15/79 *Groenveld* v *Produktschap voor Vee en Vlees* [1979] ECR 3409).

22 The Spanish Government has been unable to show how the obligation imposed by rules of Community law to retain a certified document on board a fishing vessel is liable to restrict specifically the patterns of exports between Member States and might therefore be regarded as a barrier to exports within the meaning of Article 34 of the Treaty.

23 The submission directed against Article 11b must therefore be rejected.

(d) Article 11c (prosecution of infringements)

24 Article 11c deals with the obligations imposed on the authorities of the Member State of landing or of transhipment in the matter of penalties. If those authorities record certain infringements of the rules on catch limitations, they are required to take against the master of the vessel concerned, or against any other person responsible, penal or administrative action such as is likely effectively to deprive those responsible of the economic benefit of the infringement or to produce any other result in proportion to the seriousness of the infringement and effectively discouraging them from committing further infringements of the same kind. The Member State of landing may, however, transfer the prosecution of the infringement in question to the Member State of registration if the latter so agrees. Fish which is illegally landed or transhipped may be counted against the quota allocated to the Member State of landing or transhipment if that State fails to take any penal or administrative action against the persons responsible or fails to transfer such a prosecution to the Member State of registration.

25 The Spanish Government addresses various complaints against that provision, some of which relate to the transfer of responsibilities from the Member State of registration to that of landing. Those complaints must be rejected for the reasons which the Court has already outlined during its examination of the submissions directed against Articles 9a and 11a.

26 The Spanish Government also relies on two new complaints. According to the first of these, the authorities of the Member State of landing have no jurisdiction to penalize activities of foreign vessels which did not take place on their territory, on the ground that a State's power to impose sanctions is, in accordance with the rules of public international law, territorial in its nature. The second new complaint concerns the counting against the quota of the Member State of landing or transhipment of catches which have been illegally landed or transhipped. That measure, the Spanish Government submits, represents a sanction out of all proportion to the objective pursued, which is to ensure that the quota system is properly applied, and contains no guarantees on the procedural level.

27 With regard to the jurisdiction of the Member State of landing to institute proceedings against the captain of a vessel flying the flag of another Member State, it should first of all be noted that while Article 11c is designed to strengthen the system of control, it does not require Member States to extend their juris-

diction beyond the limits laid down by the generally accepted principles governing the distribution of criminal jurisdiction between States. The article itself refers explicitly to the 'relevant provisions of national law'.

28 Next, it must be noted that the exceeding of quotas, which the control system seeks to preclude, is caused, not by catching certain types of fish, but rather by landing or transhipping excess catches. Article 1 of Regulation No 2241/87 makes it clear that the control measures and inspections imposed by provisions of Community law are directed at 'the activities of landing, selling and storing fish and recording landings and sales'. Articles 6 and 7 of that regulation set out the obligations which are imposed on the skipper of a fishing vessel flying the flag of a Member State or registered in a Member State. In particular, those obligations entail the provision by the skipper of declarations and information relating to catches when any fish of a stock or group of stocks subject to a catch limitation are landed or transhipped.

29 The infringements of the quota system which must be penalized by the Member State of landing or transhipment under Article 11c are consequently those which take place when catches are landed or transhipped in a port of that Member State or within the maritime waters under its sovereignty or jurisdiction. The complaint made by the Spanish Government must therefore be rejected.

30 With regard to the counting against the quota of the Member State of landing or transhipment of catches which have been illegally landed or transhipped, the Commission pointed out that this does not represent a penalty against the Member State concerned for its failure to fulfil obligations, but is rather the application of the rule that catches in excess of the quota must be deducted, such deduction being necessary for the proper management of the quota system in view of the total allowable volume of catches. Were it not for Article 11c, that deduction would affect only the Member State of registration, even though it might be in no position whatever to monitor the amount in question by which the quota had been exceeded. In the opinion of the Commission, it is reasonable to react to instances in which quotas have been exceeded due to inadequate monitoring by the Member State of landing by charging such excess amounts against that Member State's quota.

31 The Commission's reasoning on this point must be accepted. The Council was entitled, without infringing the principle of proportionality, to decide that the joint responsibility of Member States to monitor the system of catch limitations should mean not only that the Member State of landing is required to undertake certain inspection and monitoring duties, but also that the reduction in quotas due to their having previously been exceeded need not necessarily operate to the detriment of the quotas allocated to the Member State in which the fishing vessels in question were registered, if the relevant quota was exceeded primarily because the Member State of landing failed to take the necessary control measures. It may in fact be correct to decide that amounts which have been illegally landed or transhipped may be deducted from the quotas allocated to the Member State in which those activities took place, if the authorities of that Member State have failed either to initiate criminal or administrative proceedings or to transfer such proceedings to the Member State of registration.

32 It should also be made clear that a Member State may challenge any decision by the Commission to reduce its quotas by bringing an action for annulment under the first paragraph of Article 173 of the EEC Treaty.

33 It follows from all the foregoing that the application must be dismissed in its entirety.

Costs

34 According to Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the Kingdom of Spain has failed in its submissions, it must be ordered to pay the costs, including those incurred by the Commission. As the United Kingdom did not make any submission concerning the costs of its intervention, it shall bear those costs itself.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Kingdom of Spain to pay the costs, including those incurred by the Commission;

(3) Orders the United Kingdom to pay its own costs.

Due Slynn Schockweiler Koopmans

Mancini Joliet O'Higgins Rodríguez Iglesias Díez de Velasco

Delivered in open court in Luxembourg on 27 March 1990.

J.-G. Giraud
Registrar

O. Due
President