A regulation which lays down a transitional measure for the benefit of fishermen who used a certain fishing technique before the prohibition of driftnets exceeding a given length applies to objectively determined situations and produces legal effects for classes of persons envisaged in a general and abstract manner. It concerns those fishermen only in their objective capacity as fishermen using a certain fishing technique in the same way as any other economic operator in the same circumstances.

ORDER OF THE COURT
24 May 1993 *

In Case C-131/92,

1. **Thierry Arnaud,** residing in L'Ile d'Yeu (France),

2. **Alain Augereau,** residing in L'Ile d'Yeu (France),

3. **Denis Bareyt,** residing in Lege (France),

4. **Jean Luc Bernard,** residing in L'Ile d'Yeu (France),

5. **Michel René Burgaud,** residing in L'Ile d'Yeu (France),

6. **Frédéric Cajean,** residing in Plogoff (France),

7. **Laurent Jean-Pierre Chauvet,** residing in L'Ile d'Yeu (France),

8. **Bruno René Henri Chiron,** residing in L'Ile d'Yeu (France),

9. **Yves Claquin,** residing in Plouhinec (France),

10. **Olivier Delvigne,** residing in Santec (France),

* Language of the case: French.

11. **Francis Favroul,** residing in La Teste (France),

12. **Pascal Flohic,** residing in Moelan sur Mer (France),

13. **Bruno Girard,** residing in L'Ile d'Yeu (France),

14. **Bernard Groisard,** residing in L'Ile d'Yeu (France),

15. **Gilles Gueguen,** residing in Penmarch (France),

16. **Georges Guilcher,** residing in Douarnenez (France),

17. **André Kerloch,** residing in Poullan sur Mer (France),

18. **Christian Le Brun,** residing in Ploenour Lanvern (France),

19. **Jean-Claude Le Coze,** residing in Moelan sur Mer (France),

20. **Jean-Pierre Le Gall,** residing in Douarnenez (France),

21. **René Le Roux,** residing in Plomeur (France),

22. **Jean-Claude Moreau,** residing in Saint Hilaire de Riez (France),

23. **Claude Moriceau,** residing in Tailmont Saint Hilaire (France),

24. **Daniel Pasquon,** residing in Le Château d'Olonne (France),

25. **Joël Penisson,** residing in Noirmoutier (France),

26. **Christian Philippe Rafin,** residing in L'Ile d'Yeu (France),

27. **Eric Patric Rivallin,** residing in L'Ile d'Yeu (France),

28. **Jacques Tadilec,** residing in Douarnenez (France),

29. **Eric François René Taraud,** residing in L'Ile d'Yeu (France),

30. **André Gaston Turbe,** residing in L'Ile d'Yeu (France),

31. **Fernand Gilbert Voisin,** residing in L'Ile d'Yeu (France),

32. **Bernard Guy Zereg,** residing in L'Ile d'Yeu (France),

33. **Yves Le Garrec,** residing in Penmarch (France),

represented by Béatrice Ghelber, of the Paris Bar, and Paul-François Ryziger, *avocat* with a right of audience at the Cour de Cassation and the Conseil d'Etat, with an address for service in Luxembourg at the Chambers of Nicolas Decker, 16 Avenue Marie-Thérèse,

applicants,

v

Council of the European Communities, represented by Jean Paul Jacqué, Manager in the Legal Directorate, and John Carbery, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Xavier Herlin, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard K. Adenauer,

defendants,

supported by

Commission of the European Communities, represented by Robert Caspar Fischer, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION for the annulment of Article 9a(2) inserted into Council Regulation (EEC) No 3094/86 of 7 October 1986 (OJ 1986 L 288, p. 1) by Article 1(8)

of Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources (OJ 1992 L 42, p. 15),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray, (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: C. Gulmann,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 23 April 1992, Thierry Arnaud and 32 other French tuna fishermen ('the applicants') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of Article 9a(2), inserted into Council Regulation (EEC) No 3094/86 of 7 October 1986 (OJ 1986 L 288, p. 1) by Article 1(8) of Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources (OJ 1992 L 42, p. 15).

2 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, the Council adopted Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1).

3 On the basis of Article 11 of the abovementioned Regulation (EEC) No 170/83, the Council adopted Regulation (EEC) No 171/83 of 25 January 1983 laying down certain technical measures for the conservation of fishery resources (OJ 1983 L 24, p. 14), which has been repealed and replaced by the abovementioned Regulation (EEC) No 3094/86.

4 Regulation 345/92 amends for the eleventh time Regulation (EEC) No 3094/86. Article 1(8) of Regulation No 345/92 inserts into Regulation No 3094/86 a new Article 9a which is worded as follows:

'1. No vessel may keep on board, or use for fishing, one or more driftnets whose individual or total length is more than 2.5 kilometres.

2. A derogation shall be granted until 31 December 1993 to vessels that have fished for long-finned albacore tuna with driftnets in the north-east Atlantic during at least the two years immediately preceding the entry into force of this Regulation. These vessels shall be entered in a Community register and may use driftnets whose length may attain 2.5 kilometres, but whose total resulting length may not exceed 5 kilometres. The headline shall be submerged at a minimum depth of two metres. This derogation shall expire on the abovementioned date, unless the Council, acting by a qualified majority on a proposal by the Commission, decides to extend it in the light of scientific evidence showing the absence of any ecological risk linked thereto.

3. Throughout the fishing referred to in paragraph 1, the net must, if it is longer than one kilometre, remain attached to the vessel. However, within the 12 mile

coastal band, a vessel may detach itself from the net, provided it keeps it under constant observation.

4. Notwithstanding Article 1(1), this Article shall apply in all waters, with the exception of the Baltic Sea, the Belts and the Sound, under the sovereignty or jurisdiction of the Member States and, outside those waters, to all fishing vessels flying the flag of a Member State or registered in a Member State.'

5 Since they considered the derogation provided for by Article 9a(2) to be too restrictive with regard both to the period of duration of the transitional system and to the length of the driftnets permitted, the applicants have brought this action.

6 The Council challenges the admissibility of the action primarily by alleging that the contested measure is not of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty.

7 By order of the President of the Court of 18 September 1992, the Commission was granted leave to intervene in support of the form of order sought by the Council. The Commission likewise claims primarily that the contested measure is not of individual concern to the applicants.

8 The applicants, however, point out that they belong to the class of operators of vessels that have fished for tuna with driftnets in the north-east Atlantic during at least the two years preceding the entry into force of Regulation (EEC) No 345/92. They state that the number of these vessels is limited and cannot grow in future, since the condition laid down by the disputed provision relates to the past. The applicants therefore form a closed class of operators whose identity could have been established by the Community authorities. That being so, the contested measure is of individual concern to the applicants.

9 Under Article 92(2) of its Rules of Procedure, the Court may at any time consider whether there exists any absolute bar to proceeding with a case, and give its decision in accordance with Article 91(3) and (4), without opening the oral procedure.

10 As the documents before it contain all the information enabling it to give a decision, the Court has decided to give judgment without hearing oral argument from the parties.

11 The second paragraph of Article 173 of the Treaty allows natural or legal persons to challenge decisions which are addressed to them or which, although in the form of a regulation or decision addressed to another person, are of direct and individual concern to them.

12 As the purpose of this action is the annulment of a provision in a regulation, it must be established whether the contested measure is of direct and individual concern to the applicants.

13 With respect to the question whether the measure is of individual concern to the applicants, the Court has consistently held that the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, for example, Case 123/77 *UNICME* v *Council* [1978] ECR 845).

14 In order for a measure to be of individual concern to the persons to whom it applies, it must affect their legal position by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom it is addressed (see, for example, Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941).

15 It should be noted that the purpose of the contested provision is to lay down a transitional measure for the benefit of albacore fishermen in the north-east Atlantic who used a certain fishing technique before the entry into force of the prohibition on driftnets whose length is more than 2.5 kilometres.

16 That provision applies, therefore, to objectively determined situations and produces legal effects for classes of persons envisaged in a general and abstract manner.

17 It follows that the contested measure concerns the applicants only in their objective capacity as albacore fishermen using a certain fishing technique in a particular area, in the same way as any other economic operator in the same circumstances.

18 That being so, the application must be dismissed as inadmissible.

Costs

19 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have been unsuccessful, they must be ordered to pay the costs. In accordance with the first indent of Article 69(4) of the Rules of Procedure, the Commission, as intervener, must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicants to pay the costs;

3. Orders the Commission, as intervener, to bear its own costs.

Luxembourg, 24 May 1993.

J.-G. Giraud
Registrar

O. Due
President