JUDGMENT OF THE COURT
17 October 1995 *

In Case C-44/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Divisional Court of the Queen's Bench Division of the High Court of Justice (United Kingdom) for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Minister of Agriculture, Fisheries and Food,

ex parte National Federation of Fishermen's Organizations and Others,

Federation of Highlands and Islands Fishermen and Others,

on the interpretation of Articles 6, 34, 39 and 40(3) of the EC Treaty, Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products (OJ 1992 L 388, p.1), Council

* Language of the case: English.

Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1) and Commission Decision 92/593/EEC of 21 December 1992 on a multiannual guidance programme for the fishing fleet of the United Kingdom for the period 1993 to 1996 pursuant to Council Regulation (EEC) No 4028/86 (OJ 1992 L 401, p. 33), as well as certain general principles of Community law,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, D. A. O. Edward, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann and H. Ragnemalm, Judges,

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the National Federation of Fishermen's Organizations and Others, by David Vaughan QC, Fergus Randolph, Barrister, and John Wolfe, Solicitor, instructed by Hill Dickinson Davis Campbell, Solicitors,

— the United Kingdom, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, Kenneth Parker QC and Christopher Vajda, Barrister,

— the Commission of the European Communities, by Francisco Santaolalla, Legal Adviser, and Xavier Lewis, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the National Federation of Fishermen's Organizations and Others, the United Kingdom and the Commission, represented by Peter Oliver, of its Legal Service, acting as Agent, at the hearing on 29 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 10 May 1995,

gives the following

Judgment

1 By order of 2 December 1993, received at the Court on 4 February 1994, the Divisional Court of the Queen's Bench Division of the High Court of Justice (hereinafter 'the Divisional Court') referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Articles 6, 34, 39 and 40(3) of that Treaty, Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products (OJ 1992 L 388, p. 1), Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1) and Commission Decision 92/593/EEC of 21 December 1992 on a multiannual guidance programme for the fishing fleet of the United Kingdom for the period 1993 to 1996 pursuant to Council Regulation (EEC) No

4028/86 (OJ 1992 L 401, p. 33) as well as certain general principles of Community law.

2 Those questions were raised in proceedings for judicial review, brought before the High Court of Justice by the National Federation of Fishermen's Organizations (hereinafter 'the Federation') and others against the Minister of Agriculture, Fisheries and Food. In those proceedings, the Federation challenges the validity with respect to Community law of the Sea Fish Licensing (Time at Sea) (Principles) Order 1993 (hereinafter 'the Order'), which regulates the number of days a year that United Kingdom fishing vessels over 10 metres in length can spend at sea, and seeks declaratory relief. By order of 27 May 1994, the High Court of Justice gave leave for the Federation of Highlands and Islands Fishermen and others to be joined as applicants in the case.

3 In order to facilitate structural change in the fisheries sector within the guidelines of the common fisheries policy, Article 1(1) of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7, hereinafter 'the basic regulation') provides that the Commission may grant Community financial aid for measures undertaken in the areas listed in that article. Those areas include the adjustment of fishing capacity by the temporary or permanent withdrawal of certain vessels from fishing activities (Article 1(1)(d)).

4 Council Regulation (EEC) No 3946/92 of 19 December 1992 amending for the third time Regulation (EEC) No 4028/86 (OJ 1992 L 401, p. 1) replaces the phrase 'adjustment of fishing capacity' in Article 1(1)(d) with the phrase 'adjustment of fishing effort'. According to the second recital in the preamble to that regulation,

the concept of 'fishing effort' has been introduced in order to supplement 'the range of measures available to the Member States to attain balance between the fishing capacity of their fleets and the resources available'.

5 The same regulation inserts a new Article 1a in the basic regulation which provides that the national measures intended to restrict fishing effort in order to bring it into line with a balanced exploitation of fishery resources are to combine a reduction in the capacity of the Community fleets and an adjustment of their activity.

6 It is apparent from Article 1(2) of the basic regulation that some of those measures, including that specified in paragraph 1(d) as amended, must form part of the multiannual guidance programmes referred to in Title I.

7 Article 2(1) of the basic regulation defines those multiannual guidance programmes (hereinafter 'MAGPs') as follows:

'For the purposes of this regulation, "multiannual guidance programme" means (...) a set of objectives, together with a statement of the means necessary for attaining them, as a guide for the development of the fisheries sector in the overall long-term context.'

8 As Articles 3 and 4 of the basic regulation make clear, the Member States are to forward programmes to the Commission for approval. Under Article 4(2), 'the

Commission shall consider whether, having regard to foreseeable developments in fishery resources and the market for fisheries and aquaculture products and having regard to the measures adopted under the common fisheries policy and the guidelines for that policy, programmes fulfil the conditions laid down in Article 2 and may constitute a framework for Community and national financial assistance to the sector in question'.

9 By Decision 92/593 the Commission approved the MAGP proposed by the United Kingdom for the period 1993 to 1996 (hereinafter 'the third MAGP'). Article 3 of that decision provides as follows:

'(1) The reduction in fishing effort may result from the combined effect of reductions in capacity and reductions in activity.

(2) At least 55% of the overall objective of the programme, defined as the sum of the partial objectives for each segment, must be achieved by means of reductions in capacity.

(3) The remainder may be achieved by means of measures to reduce activity, such as restrictions in time at sea, provided that they are based on permanent laws and administrative provisions accepted by the Commission and techniques approved by the Commission.

(4) The final objectives for each segment and the annual intermediate indicative objectives shall be determined in accordance with points 2 and 4 of the additional provisions in the Annex.'

10 In the United Kingdom, Section 4 of the Sea Fish (Conservation) Act 1967 establishes a system of licences for fishing vessels. Section 4(6)(c) provides that the grant of such a licence may be subject to a condition restricting the time which a vessel may spend at sea. Section 4(6C) confers on Ministers the power to define any such condition.

11 The Order was adopted on the basis of that section. According to Article 5(1) of the Order, the grant or renewal of fishing licences for United Kingdom fishing vessels is conditional on the number of days spent at sea in each of the years 1993 to 1996 being restricted to the number of days spent at sea in 1991. Article 2(1) of the Order defines a vessel as a fishing boat exceeding 10 metres in length.

12 In the proceedings before the Divisional Court, the Federation alleged that the Order was contrary to Decision 92/593, Regulations No 3759/92 and No 3760/92, Articles 6, 34, 39 and 40(3) of the Treaty, as well as to the principles of equal treatment, proportionality and respect for the right to property and the right to pursue a trade or profession.

13 Since it was uncertain how to interpret those rules, the Divisional Court decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does Commission Decision 92/593/EEC:

(1) enable and/or authorize the United Kingdom to introduce restrictions on days at sea that all British fishing vessels over 10 metres can spend at sea,

such as those calculated in accordance with the Sea Fish Licensing (Time at Sea) (Principles) Order 1993 which, as a general principle, will limit the days that such vessels can spend at sea to the days spent in 1991;

(2) exclude the possibility of using technical conservation measures in order to achieve that part of the overall target (i. e. 45%) which is to be dealt with by measures other than capacity reductions?

2. Is the answer to Question 1 affected by the fact that the United Kingdom did not reduce the capacity of the United Kingdom fishing fleet in accordance with the figures set out in the Annex to Commission Decision 88/141, as amended by the Commission Decision of 1 August 1991?

3. In any event are national measures of the kind referred to in Question 1 contrary to the EC Treaty (in particular Articles 6, 34, 39 and 40(3) thereof) and the regulations establishing the common fisheries policy (in particular Council Regulations No 3760/92 and No 3759/92) and the general principles of Community law (in particular the right to peaceful enjoyment of property, the right to pursue a trade or professional activity, the right to equal treatment and the principle of proportionality)?

4. Are the answers to any of the above questions affected by:

(1) the nature of the stock principally fished for by any such vessels, and in particular whether such stock is subject to total allowable catches or not;

(2) the extent to which such restrictions will affect the normal fishing and other operations of individual fishermen and the market for fish caught;

(3) any derogations the Minister may in future make for particular sectors of the United Kingdom fishing fleet?'

14 Before answering those questions, the first point to note is that, as Articles 1(1) and 4 of the basic regulation show, the Commission's approval of a MAGP is necessary only in order to ensure that the measures provided for by the programme within the limits and on the conditions set by the decision approving the programme can qualify for the grant of Community and, where appropriate, national financial aid.

15 It follows that a Member State is obliged to comply with a MAGP and the terms of the decision which approved it solely for the purposes of obtaining financial aid for the measures it adopts under that programme.

16 It was only pursuant to Article 1(1) of Council Decision 94/15/EC of 20 December 1993 relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1 January 1994 to 31 December 1996 with a view to achieving a lasting balance between the resources and their exploitation (OJ 1994 L 10, p. 20) that securing the reduction in fishing effort, as laid down by

Article 3 of Commission Decision 92/593, became obligatory for the Member States.

Question 1

17 In its first question, the national court seeks in essence to ascertain, first, whether Decision 92/593 enables the United Kingdom to restrict the number of days that fishing vessels over 10 metres in length may spend at sea and, second, whether that decision excludes the possibility of that Member State adopting technical conservation measures, such as an increase in mesh size, in order to achieve the percentage of the overall target which it sets, namely 45%.

18 With regard to the first part of that question, Article 1a of the basic regulation, as amended, makes it clear that fishing effort may be restricted both by reduction in the capacity of the fishing fleets and by adjustment of their activity. Article 3(3) of Decision 92/593 accordingly provides that the overall target of the third MAGP, at least 55% of which, according to Article 3(2), must be achieved by means of reduction in capacity, may for the remainder be achieved by means of measures to reduce activity, such as measures to restrict time at sea.

19 The answer to the first part of the question must therefore be that Decision 92/593 enables the United Kingdom to limit the number of days that vessels over

10 metres in length may spend at sea, in so far as a maximum of 45% of the overall target set in that decision may be achieved by measures other than reductions in the capacity of the fishing fleet.

20 As regards the second part of the question, Article 3(3) of Decision 92/593 permits the Member State concerned to choose the most suitable measures to reduce activity in order to achieve the overall target set therein in so far as its achievement is not secured by reductions in capacity, provided however that those measures are based on techniques approved by the Commission.

21 The answer to the second part of the question must therefore be that Decision 92/593 does not preclude the United Kingdom from adopting technical conservation measures in order to achieve the overall target set in that decision, in so far as that target may be achieved by measures other than reductions in capacity, provided that they have been approved by the Commission.

Question 2

22 In its second question, the national court asks to what extent the answer to the first question is affected by the fact that the Member State concerned did not attain the targets set by the previous MAGP.

23 The Federation claims that during the second MAGP, for the period between 1987 and 1991, the United Kingdom made no effort to reduce the fleet, but allowed market forces to operate freely and maintained in force a wholly unsuitable licensing system. As a result of its inaction, the United Kingdom's obligation to reduce its fleet in the course of the third MAGP has been increased by the extent to which it was not achieved during the second MAGP. Since measures to reduce activity were not acceptable under the second MAGP and were introduced only in order to achieve the targets of the third MAGP, the extent to which they were not attained in the course of the second MAGP ought to have been achieved primarily by reducing capacity rather than by reducing activity.

24 In response to that argument, it should first be noted that, in contrast to the Federation's assertions, the second MAGP, approved by Commission Decision 88/141/EEC of 11 December 1987 on the multiannual guidance programme for the fishing fleet (1987 to 1991) forwarded by the United Kingdom pursuant to Regulation (EEC) No 4028/86 (OJ 1988 L 67, p. 22), was not binding. As paragraph 15 of this judgment makes clear, the United Kingdom was bound to comply with the second MAGP only for the purposes of obtaining financial aid for measures adopted under that programme.

25 The fact that failure to achieve the targets led to the aid being suspended does not, as the Federation asserts, support the argument that there was a binding obligation to achieve them, but is confirmation that it was necessary to attain those targets only for the purposes of financial aid.

26 According to the seventh recital in the preamble to Decision 92/593, the objectives for reducing fleet capacity fixed on 31 December 1991 in the second MAGP

constitute the reference basis for assessing the actual development recorded and the effort still needed to ensure that the objectives are achieved.

27 Moreover, the Federation does not dispute that the reduction of 4.6% in the tonnage of the United Kingdom fleet planned in the second MAGP corresponded to the 1.6% shortfall for the first MAGP.

28 The same must hold true as regards taking account of the shortfall for the second MAGP when setting the targets to be achieved in the course of the third MAGP. It was for the Commission, when it adopted the decision approving the third MAGP, to decide what constraints to impose on a Member State under that MAGP and to set the percentage reduction in fishing effort to be achieved by reductions in capacity and reductions in activity.

29 The answer to the second question must therefore be that the answers to the first question are not affected by the fact that the Member State concerned did not achieve the targets set by the previous MAGP.

Question 3

30 Before the third question can be answered, it should be noted that although the Court may not, in proceedings under Article 177 of the Treaty, give a ruling on the compatibility of national rules with the Treaty, it has jurisdiction to provide the

national court with a ruling on the interpretation of Community law in order to enable it to assess such compatibility for the purpose of deciding the case before it (judgment in Case C-196/89 *Nespoli and Crippa* [1990] ECR I-3647, paragraph 8).

31 Accordingly, the third question must be understood as seeking to ascertain whether Articles 6, 34, 39 and 40(3) of the Treaty, Regulations No 3759/92 and No 3760/92 as well as certain general principles of Community law preclude the adoption by a Member State of national provisions such as those referred to in the first question.

32 Although in Decision 92/593, the validity of which has not been challenged in the proceedings before the national court, the Commission left the Member State concerned free to choose measures, other than reductions in capacity, representing up to 45% of the overall target, that Member State is nevertheless bound, when adopting those measures, to comply with the provisions of the Treaty as well as with the general principles of Community law.

Article 39 of the Treaty and implementing regulations

33 The Federation claims first that the national measures at issue are in breach of the rules on the common fisheries policy, and more particularly of Regulation No 3760/92, in so far as they produce results diametrically opposed to the fundamental objectives of that common policy.

34 In support of its argument, the Federation refers to a Report of the House of Commons Agriculture Committee which shows in particular that as a result of the disputed Order the financial stability and viability of fishing vessels and the particular needs of the regions will be adversely affected, fish stocks will risk destruction and fishing activity will be reduced in distant areas and increased in areas closest to port.

35 The Federation goes on to consider that the national measures in dispute constitute an infringement of the rules on the common organization of the market in fishery products set out in Regulation No 3759/92, in essence because those national measures undermine the quota system.

36 Finally, the Federation considers that, by reason of the effects described above, the measures at issue are contrary to Article 39 of the Treaty.

37 The Court has consistently held that 'in pursuing the objectives of the common agricultural policy, the Community institutions must secure the permanent harmonization made necessary by any conflicts between those objectives taken individually and, where necessary, give any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made' (see, in particular, the judgment in Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 47).

38 In this instance, the Federation concedes that in its basic regulation the Council, while intending to restrict fishing effort, gave priority to the objectives of increasing agricultural productivity, ensuring a fair standard of living and assuring the availability of supplies, so that the alleged infringement of Article 39 arises solely

from the national measures limiting time spent at sea which have an adverse effect on those three objectives.

39 As the Commission has acknowledged, relying on Article 1a of the basic regulation as amended, restricting time spent at sea was a suitable means of achieving the overall target of the third MAGP by a reduction in fishing activities of up to a maximum of 45% of that target.

40 In those circumstances, it must be held that Article 39 does not preclude measures such as those at issue in the main proceedings.

41 The interpretation of Regulations No 3759/92 and No 3760/92 cannot give rise to a different conclusion. Article 4(2)(d) of Regulation No 3760/92 refers to limitation of time spent at sea as one of the Community measures which may be adopted in order to ensure the rational and responsible exploitation of resources on a sustainable basis. Regulation No 3759/92 does not seek to organize the way in which fishing is carried on.

42 In addition, even if it is apparent especially from the summary reports which, pursuant to Article 5 of the basic regulation, are to be sent to the Commission each year by the Member State concerned that the measures adopted jeopardize the aims of the common fisheries policy, it is for the Commission and that State, according to that article, to seek a review of and amendments to the approved

programme. In any event, it is not for the Court to rule on the possible future effects of measures laid down in a national programme approved by the Commission.

43 Accordingly, the answer to the question must be that neither Article 39 of the Treaty nor Regulations No 3759/92 and No 3760/92 may be construed as precluding national measures of the kind referred to in the first question and adopted within the framework of a Commission decision taken on the basis of a Council regulation which is itself intended to achieve the objectives set out in Article 39(1)(a), (b) and (d) of the Treaty.

The principle of equal treatment

44 The Federation considers that the Order at issue is in breach both of the principle of non-discrimination laid down in Article 6 of the Treaty, since United Kingdom fishermen are treated differently from fishermen from other Member States without any objective justification, and of the principle of non-discrimination between producers laid down in Article 40(3) of the Treaty, because it takes no account of the different fishing methods used or the different species of fish caught.

45 As regards Article 6 of the Treaty, the Court has consistently held that the application of national legislation cannot be held contrary to the principle of non-discrimination merely because other Member States allegedly apply rules which are less strict (see the judgment in Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 48).

46 According to the principle of non-discrimination which is enshrined in the second subparagraph of Article 40(3) of the Treaty and incorporates the prohibition of

discrimination laid down in Article 6(1) of the Treaty, comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see the judgment in Case 106/83 *Sermide* v *Cassa Conguaglio Zucchero* [1984] ECR 4209, paragraph 28).

47 The measures contained in the Order provide, for the period from 1 January 1993 to 31 December 1996, for the allocation of a number of days a year at sea equal to that for 1991 and thus are based on a situation which actually existed and which was not brought about by Community or national measures.

48 The fact that no distinction is drawn between different fishing methods cannot therefore be regarded as contrary to the principle of non-discrimination enshrined in the second subparagraph of Article 40(3).

49 Furthermore, as the Advocate General pointed out in paragraph 22 of his Opinion, by thus 'freezing' the situation as it was in 1991, the national legislature has ensured a single rate of zero growth, corresponding to the minimum target, for all segments and has consequently remained within the limits set by Decision 92/593.

50 It follows that Article 6 and the second subparagraph of Article 40(3) of the Treaty do not preclude the adoption of national measures of the kind referred to in the first question.

Breach of Article 34 of the Treaty

51 Although the Federation acknowledges that in principle Article 34 of the Treaty applies only to measures which establish a difference in treatment between the domestic trade of a Member State and its export trade, it submits that different rules apply in the context of the common organizations of the market which are based on freedom to enter into commercial transactions and preclude any national measure liable to hinder intra-Community trade.

52 It is true that Articles 30 and 34 on the abolition of quantitative restrictions and all measures having equivalent effect on imports and exports are regarded as an integral part of the common organization of the market. It follows that once the Community has, pursuant to Article 40 of the Treaty, adopted such legislation in a given sector, the Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it (see the judgment in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraphs 55 and 56).

53 Nevertheless, that finding does not prevent the competent authorities of a Member State from adopting national measures on the terms provided for by Community legislation forming part of a common organization of the market.

54 Article 34 of the Treaty cannot therefore preclude the adoption of national measures of the kind referred to in the first question in so far as they comply with the limits set and conditions laid down in Commission Decision 92/593 which is for its part based on Regulation No 4028/86.

The right to property, the right freely to pursue a trade or professional activity and the principle of proportionality

55 With regard to the alleged breach of those principles, it is settled case-law that both the right to property and the freedom to pursue a trade or profession form part of the general principles of Community law. However, those principles are not absolute, but must be viewed in relation to their social function. Consequently, the exercise of the right to property and the freedom to pursue a trade or profession may be restricted, particularly in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute in relation to the aim pursued a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see the judgment in Case C-280/93 *Germany* v *Council*, cited above, paragraph 78).

56 The national measures at issue, which fall within the Commission's decision approving them, and the validity of which has not been challenged, do in fact correspond to the objectives of general interest pursued by the Community in the fisheries sector since their purpose is the structural improvement of that sector. They do not constitute a disproportionate and intolerable interference impairing the very substance of the rights guaranteed.

57 Nor are those measures contrary to the principle of proportionality. The Commission decision approving the MAGP leaves the United Kingdom considerable freedom to evaluate and choose the measures to be taken in order to implement the plan. When considering whether the exercise of such freedom is lawful, the courts cannot substitute their own evaluation for that of the competent authority, but must restrict themselves to examining whether the evaluation of the latter contains a patent error or constitutes a misuse of power (see, in particular, the judgments in

Case 57/72 *Westzucker* v *Einfuhr-und Vorratsstelle Zucker* [1973] ECR 321, paragraph 14, and Case 78/74 *Deuka* v *Einfuhr- und Vorratsstelle Getreide* [1975] ECR 421, paragraph 9).

58 The national measures at issue do not appear to be manifestly disproportionate to the objective pursued. That conclusion cannot be invalidated by the mere fact that the United Kingdom chose those measures in preference to others, as it was entitled to do by virtue of the discretion conferred on it by the Commission decision.

59 Furthermore, the disputed national measures do not overstep the bounds of the discretion conferred on the United Kingdom by the decision adopted by the Commission in the exercise of its powers in the field of fisheries policy, which have not been challenged in the proceedings before the national court. Nor can doubt be cast on the finding that the disputed measures are proportionate merely because other kinds of measures could have been adopted, since the selection of measures to be taken is a political decision falling within the purview of the Member State concerned, within the limits set by Decision 92/593.

60 The answer must therefore be that the right to property, the right freely to pursue a trade or professional activity and the principle of proportionality do not preclude the adoption by a Member State, in accordance with a Commission decision, of measures limiting the number of days spent at sea.

61 In the light of all the foregoing, the answer to the third question must be that Articles 6, 34, 39 and 40(3) of the Treaty, Regulations No 3759/92 and No 3760/92, the principle of equal treatment, the right to property, the freedom to pursue a trade or professional activity and the principle of proportionality do not preclude the adoption by a Member State of measures of the kind referred to in the first question.

Question 4

62 In its fourth question, the national court seeks essentially to ascertain whether the answers to the previous questions are affected, first, by the nature of the stock caught by a vessel and, more particularly, by the fact that such stock is subject to a maximum limit, secondly, by the extent to which the restriction in question affects normal fishing, other operations of individual fishermen and the market in fish and, lastly, by the opportunity given to a national authority to make derogations in favour of particular sectors of the fishing fleet.

63 As regards the first part of the question, it is sufficient to refer to the answer given to the third question in so far as it concerns Article 40(3) of the Treaty and to note, as indeed the United Kingdom has argued, that Decision 92/593 allows the increase in fishing effort to be restricted in all segments of the fleet.

64 The second part of the question also calls for a negative answer, since it would seem entirely inevitable that measures adopted as part of a restructuring programme should affect fishing, a fisherman's activity and the market in fish.

65 With regard to the last part of that question, it must be held that the fact that the Order at issue allows for the possibility of derogation can in no way affect the answers already given, since the decision by which the minister can avail himself of that possibility must be compatible with the third MAGP within the limits set and on the conditions laid down by Decision 92/593.

66 Consequently, the answer to the last question must be that the answers given to the other questions can be affected by neither the nature of the stock caught by a

vessel, nor the extent to which the restrictions in question affect normal fishing, other operations of individual fishermen and the market in fish, nor the opportunity given to a national authority to make derogations in favour of particular sectors of the United Kingdom fishing fleet.

Costs

67 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Divisional Court of the Queen's Bench Division of the High Court of Justice by order of 2 December 1993, hereby rules:

1. **Commission Decision 92/593/EEC of 21 December 1992 on a multiannual guidance programme for the fishing fleet of the United Kingdom for the period 1993 to 1996 pursuant to Council Regulation (EEC) No 4028/86 must**

be interpreted as enabling the United Kingdom to limit the number of days a year that vessels over 10 metres in length may spend at sea in so far as a maximum of 45% of the overall target set in that decision may be achieved by measures other than reductions in the capacity of the fishing fleet. The decision does not preclude that Member State from adopting technical conservation measures, provided that they have been approved by the Commission.

2. The answers to the first question are not affected by the fact that the Member State concerned did not achieve the targets set by the previous MAGP.

3. Articles 6, 34, 39 and 40(3) of the Treaty, Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products, Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, the principle of equal treatment, the right to property, the freedom to pursue a trade or professional activity and the principle of proportionality do not preclude the adoption by a Member State of measures of the kind referred to in the first question.

4. The answers given to the other questions can be affected by neither the nature of the stock caught by a vessel, nor the extent to which the restrictions in question affect normal fishing, other operations of individual

fishermen and the market in fish, nor the opportunity given to a national authority to make derogations in favour of particular sectors of the United Kingdom fishing fleet.

Rodríguez Iglesias Edward Puissochet Hirsch

Schockweiler Moitinho de Almeida Kapteyn

Gulmann Murray Jann Ragnemalm

Delivered in open court in Luxembourg on 17 October 1995.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President