Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 21 May 2015 [1]

Joined Cases C-124/13 and C-125/13

European Parliament and European Commission
v

Council of the European Union

(Common fisheries policy — Action for annulment — Council Regulation (EU) No 1243/2012 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks — Legal basis — Scope of Article 43(2) and Article 43(3) TFEU — Technical implementing measures)

1. In broad terms, the cases under consideration reflect the disagreement among the EU institutions as to the role the Parliament ought to play, post-Lisbon, within the procedure leading to the adoption of multiannual plans under the Common Fisheries Policy ('the CFP'). Before the entry into force of the Treaty of Lisbon, the legal basis for measures relating to fisheries (as well as to agriculture) was to be found in Article 37 EC. Under that provision, the Council assumed the main role in adopting measures, whereas the Parliament enjoyed only peripheral significance through consultation. However, that is no longer the case, given that the CFP, too, has now been brought within the sphere of the ordinary legislative procedure.

2. In that context, the Parliament and the Commission have each brought an action for the annulment of Council Regulation (EU) No 1243/2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks ('the contested regulation'). [2] This is because the Council removed two provisions from the original Commission proposal [3] which had been submitted to the Parliament and the Council under the ordinary legislative procedure on the basis of Article 43(2) TFEU. The Council then decided to adopt those two provisions separately in an act based on Article 43(3) TFEU. In accordance with that provision, the Council is empowered to adopt measures on the fixing and allocation of fishing opportunities.

3. The purpose of the present proceedings is to determine whether the Council was right do so.

1 — Original language: English.

2 — Regulation of 19 December 2012 (OJ 2012 L 352, p. 10).

3 — Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks, COM(2012) 498 final ('the Commission's proposal').

I – **Legal framework**

A – *Relevant Treaty provisions*

4. Article 43(2) TFEU states:

‘The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the [CFP].’

5. Article 43(3) TFEU provides:

‘The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.’

B – *The basic regulation*

6. Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the CFP (‘the basic regulation’) [4] sets up the framework for measures to be taken in the field of fisheries and lays down the basic principles governing those measures.

7. Recital 6 in the preamble to the basic regulation states:

‘The objective of sustainable exploitation will be more effectively achieved through a multi-annual approach to fisheries management, involving multi-annual management plans for stocks at or within safe biological limits. For stocks outside safe biological limits, the adoption of multi-annual recovery plans is an absolute priority. In line with scientific advice, substantial reductions in fishing effort may be required for these stocks.’

8. According to recital 7 to the basic regulation:

‘These multi-annual plans should establish targets for sustainable exploitation of the stocks concerned, contain harvesting rules laying down the manner in which annual catch and/or fishing effort limits are to be calculated and provide for other specific management measures, taking account also of the effect on other species.’

9. Article 1 of the basic regulation defines the scope of the CFP as follows:

‘1. The [CFP] shall cover conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag State, nationals of Member States.

2. The [CFP] shall provide for coherent measures concerning:

(a) conservation, management and exploitation of living aquatic resources,

…’

4 — Council Regulation of 20 December 2002 (OJ 2002 L 358, p. 59).

10. Article 2 of the basic regulation defines the objectives of the CFP:

‘1. The [CFP] shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.

2. The [CFP] shall be guided by the following principles of good governance:

…

(b) a decision-making process based on sound scientific advice which delivers timely results;

…

(d) consistence with other Community policies, in particular with environmental, social, regional, development, health and consumer protection policies.’

11. Article 4 defines the types of measure that are to be taken in order to attain the objectives of the CFP. In establishing measures, account is to be taken of available scientific, technical and economic advice and especially of the reports drawn up by the Scientific, Technical and Economic Committee for Fisheries. In particular, those measures may include measures for each stock or group of stocks to limit fishing mortality and the environmental impact of fishing activities by, in accordance with Article 4(2):

‘…

(a) adopting recovery plans under Article 5;

(b) adopting management plans under Article 6;

(c) establishing targets for the sustainable exploitation of stocks;

(d) limiting catches;

(e) fixing the number and type of fishing vessels authorised to fish;

(f) limiting fishing effort;

(g) adopting technical measures, including:

(i) measures regarding the structure of fishing gear, the number and size of fishing gear on board, their methods of use and the composition of catches that may be retained on board when fishing with such gear;

…

(h) establishing incentives, including those of an economic nature, to promote more selective or low impact fishing;

…’

12. Article 5 concerns recovery plans. It states:

‘1. The Council shall adopt, as a priority, recovery plans for fisheries exploiting stocks which are outside safe biological limits.

2. The objective of recovery plans shall be to ensure the recovery of stocks to within safe biological limits.

They shall include conservation reference points such as targets against which the recovery of the stocks to within safe biological limits shall be assessed.

Targets shall be expressed in terms of:

(a) population size and/or

(b) long-term yields and/or

(c) fishing mortality rate and/or

(d) stability of catches.

…

3. …

The recovery plans shall be multi-annual and indicate the expected time frame for reaching the targets established.

4. Recovery plans may include any measure referred to in points (c) to (h) of Article 4(2) as well as harvesting rules which consist of a predetermined set of biological parameters to govern catch limits.

Recovery plans shall include limitations on fishing effort unless this is not necessary to achieve the objective of the plan...

…’

C – *Regulation (EC) No 1342/2008*[5]

13. Regulation No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 (‘Cod Plan’) was adopted by the Council on the basis of a proposal from the Commission and after consultation of the Parliament in accordance with Article 37 EC.

5 — Council Regulation of 18 December 2008 (OJ 2008 L 348, p. 20).

14. Recital 7 to Regulation No 1342/2008 states:

'In order to ensure the attainment of fishing mortality targets, and to contribute to minimising discards, fishing opportunities in terms of fishing effort need also to be fixed at levels which are consistent with the multiannual strategy. Such fishing opportunities should, as far as possible, be defined by types of fishing gear on the basis of current fishing practices. It is appropriate to provide for a periodical review of the effectiveness of the management system and to ensure, in particular, that when cod stocks reach levels that allow for exploitation rendering maximum sustainable yield, the system of regulating fishing effort is reviewed.'

15. Recital 9 to that regulation states:

'The establishment and allocation of catch limits, the fixing of the minimum and precautionary levels of stocks and of the level of fishing mortality rates, as well as the maximum allowable fishing effort for each effort group by Member State and the exclusion of certain groups of vessels from the effort regime laid down in this Regulation are measures of prime importance in [the CFP]. It is appropriate that the Council should reserve for itself the right to exercise implementing powers directly in relation to these specific matters.'

16. In accordance with Article 1 thereof, the regulation establishes a plan for four cod stocks corresponding to four geographical areas, namely the Kattegat, the North Sea, the Skagerrak and the eastern Channel, the west of Scotland, and the Irish Sea.

17. Article 5 of Regulation No 1342/2008 specifies as follows the objective of the multiannual 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 following fishing mortality [of] cod [in] appropriate age groups …

3. For the cod stock in the North Sea, the Skagerrak and the eastern Channel, the objective set out in paragraph 1 shall be attained while maintaining the fishing mortality [of] cod [in the] appropriate age groups referred to in Article 8.'

18. In order to meet the objective set by Article 5, Articles 6 to 10 of Regulation No 1342/2008 lay down specific rules regarding the total allowable catches ('TAC'). Articles 11 to 17 of the regulation set limits to fishing efforts.

19. More specifically, the version of Regulation No 1342/2008 in force before it was amended by the contested regulation contained an Article 9 which provided rules on the procedure to be followed in setting TACs where the default rules under Articles 7 and 8 of the regulation could not be applied because of the lack of the necessary information. Article 12 of that regulation laid down the method for calculating the maximum allowable fishing effort.

D – *The contested regulation*

20. The Commission's proposal to amend a number of provisions of Regulation No 1342/2008 was adopted on 12 September 2012. The proposal was based on Article 43(2) TFEU. Given that a more comprehensive revision of the Cod Plan had been announced for a later stage, the Commission's proposal was designed as an interim solution to resolve some of the most pressing problems

identified.[6] The proposal was sent to the Parliament and the Council, as well as to the European Economic and Social Committee (EESC), on the day of adoption.

21. In addition to the amendments that the Council subsequently decided to adopt in a separate regulation under Article 43(3) TFEU, as explained below, the proposed amendments concerned – in particular, but not exclusively – the methodology that Member States are to employ when calculating fishing effort (amendment to Article 4), the simplification of the procedure for excluding some vessels from the fishing effort regime (amendment to Article 11 and insertion of Articles 11a to 11d), and the Member States' obligations to address high levels of discards and to ensure proper monitoring and control of the incentives provided for by Articles 11 and 13 (amendment to Article 14).

22. The contested regulation was adopted on 19 December 2012 on the basis of Article 43(3) TFEU. By this regulation, the Council amended Articles 9 and 12 of Regulation No 1342/2008.

23. The reason for adopting the contested regulation on the basis of Article 43(3) TFEU, instead of Article 43(2) TFEU, was explained in recital 8 to the regulation:

'Amendments to Articles 9 and 12 establish detailed specific rules for the purpose of fixing fishing opportunities expressed by means of the TAC and of fishing effort limitations. They adapt the currently applicable rules for the fixing of fishing opportunities without amending the objective of the Cod Plan. They are, consequently, measures on the fixing and allocation of the TACs and fishing effort limitations and cannot be considered either as provisions establishing the common organisation of fisheries markets, or as other provisions necessary for the pursuit of the objectives of [the CFP].'

24. The contested regulation replaces Article 9 of Regulation No 1342/2008 and lays down a special procedure for setting TACs:

'1. Where there is insufficient information to set the TACs in accordance with Article 7, the TACs for cod stocks in the Kattegat, the west of Scotland and the Irish Sea shall be set at a level indicated by scientific advice. However, if the level indicated by scientific advice is more than 20% greater than the TACs in the previous year, they shall be set at a level 20% greater than the TACs in the previous year, or if the level indicated by scientific advice is more than 20% less than the TACs in the previous year they shall be set at a level 20% less than the TACs in the previous year.

2. By way of derogation from paragraph 1, where scientific advice indicates that there should be no directed fisheries and that:

(a) bycatch should be minimised or reduced to the lowest possible level; and/or

(b) the catches of cod should be reduced to the lowest possible level;

the Council may decide not to apply an annual adjustment to the TAC in the subsequent year or in subsequent years, on condition that the TAC set is for bycatch only.

3. Where there is insufficient information to set the TACs in accordance with Article 8, the TACs for the cod stock in the North Sea, the Skagerrak and the eastern Channel shall be set by applying paragraphs 1 and 2 of this Article *mutatis mutandis*, unless consultations with Norway result in a different level of the TAC.

6 — The explanatory memorandum accompanying the proposal; COM(2012) 498 final, p. 2 to 4.

4. When scientific advice indicates that the application of the rules set out in Article 8(1) to (4) is not appropriate to meet the objectives of the plan, the Council may, notwithstanding the above mentioned provisions, decide on an alternative TAC level.'

25. Article 12 of Regulation No 1342/2008 was also amended by the contested regulation. In the amended version, paragraphs 4 and 6 of that article provide:

'4. For aggregated effort groups where the percentage cumulative catch calculated according to paragraph 3(d) is equal to or exceeds 20%, annual adjustments shall apply. The maximum allowable fishing effort of the groups concerned shall be calculated as follows:

(a) where Articles 7 or 8 apply, by applying to the baseline the same percentage adjustment as that set out in those Articles for fishing mortality;

(b) where Article 9 applies, by applying the same percentage adjustment in fishing effort as the adjustment of the TAC compared with the previous year.

…

6. By way of derogation from paragraph 4, the Council may, where the maximum allowable fishing effort has been reduced for four consecutive years, decide not to apply an annual adjustment to the maximum allowable fishing effort in the subsequent year or in subsequent years.'

II – **Procedure before the Court and forms of order sought**

26. By its application in Case C-124/13, the Parliament claims that the Court should:

— annul the contested regulation; and

— order the Council to pay the costs.

27. By its application in Case C-125/13, the Commission claims that the Court should:

— annul the contested regulation;

— maintain the effects of the annulled Council Regulation for a reasonable time after the judgment in Case C-125/13, that is to say, for a maximum of one full calendar year starting on 1 January of the year after the judgment; and

— order the Council to bear the costs of the proceedings.

28. By order of the President of the Court of 19 April 2013, Case C-124/13 and Case C-125/13 were joined for the purposes of the written and oral procedure, as well as the judgment. By order of the President of the Court of 11 September 2013, the Kingdom of Spain, the French Republic and the Republic of Poland were given leave to intervene in support of the Council in both cases.

29. In its joint defence to both actions, the Council contends — supported by the intervening governments on several heads of claim — that the Court should:

— dismiss in their entirety, on substantive grounds, the actions brought by the Parliament and by the Commission;

— order the Parliament and the Commission to bear the costs of the proceedings;

— in the alternative, if, and to the extent that, the Court annuls the contested regulation, declare that the effects of the contested regulation are definitive.

30. Written observations have been presented by the Parliament, the Commission and the Council, as well as by the Spanish, French and Polish Governments, all of whom presented oral argument at the hearing on 24 February 2015.

III – **Analysis**

A – *Main arguments of the parties*

31. In Case C-124/13, by its sole plea in law, the Parliament submits that the contested regulation is unlawful as it was adopted on the wrong legal basis. The Parliament argues that, given the aim and content of that regulation, it should have been adopted on the basis of Article 43(2) TFEU, by means of an ordinary legislative procedure with the Parliament acting as co-legislator.

32. In that regard, the Parliament asserts in particular that multiannual plans, such as the plan involved in the present cases, constitute a tool for the conservation and management of fish stocks. Each plan forms a whole and contains only provisions in pursuit of the sustainability and conservation objectives of the CFP. Such plans must therefore be adopted in their entirety under Article 43(2) TFEU.

33. The Parliament also takes issue with the splitting of the Commission proposal. In the view of the Parliament, splitting amounts to an abuse of the procedure and divests of all content the case-law pertaining to the vital relationship between the legal basis for an act and its centre of gravity. Accordingly, by splitting the proposal, the Council was able artificially to choose a separate legal basis for certain elements of the proposed act, whereas all elements of the act would have been accommodated by the single legal basis of Article 43(2) TFEU, had the act been adopted, as initially proposed, as an integral whole.

34. In the Case C-125/13, the Commission bases its application on three pleas.

35. First, as its principal contention and in similar vein to the Parliament, the Commission challenges the purported legal basis for the contested regulation. In the view of the Commission, the Council had no right to split the Commission's proposal and to adopt part of it on the basis of Article 43(3) TFEU. The Commission maintains that the proposal ought to have been based, in its entirety, on Article 43(2), given that the provisions of the contested regulation do not fall within the ambit of Article 43(3) since they impact on policy choices in this field.

36. Second, according to the Commission, in splitting the proposal and adopting the contested regulation, the Council followed a decision-making procedure which contravened the institutional prerogatives of the Parliament and of the EESC, that is to say, it flaunted the Parliament's right to participate and the EESC's right to be duly consulted.

37. Third, the Commission asserts that its own exclusive right of initiative was infringed as a result of the change of legal basis for the contested regulation. That infringement came about, in essence, because the change fundamentally altered the nature of the Commission's proposal.

38. The Council — supported by the intervening governments — disputes the arguments put forward by the applicants. In its view, the contested regulation constitutes a measure on the fixing and allocation of fishing opportunities and as such was correctly based on Article 43(3) TFEU. It argues that the considerations that led it to split the Commission's proposal and to adopt a number of provisions by means of a separate act relate to the aim and the content of the proposal. That is why the Council does not see how the decision to split the proposal could in any way interfere with the Commission's exclusive right of initiative.

B – *Context*

39. In constitutional terms, the importance of the present cases can hardly be overestimated. This is because it turns on the scope to be attributed to Articles 43(2) and 43(3) TFEU respectively for the purposes of adopting measures (legislative and other) in relation to agriculture and fisheries. In that sense, the approach adopted by the Court as to the ambit of each of those provisions will have far-reaching consequences as regards the role played by the different institutions and the decision-making procedures followed in this field. Viewed from that institutional standpoint, it goes without saying that the stakes in the present cases are high indeed.

40. More specifically, the gist of the present cases lies in determining the respective post-Lisbon roles of the EU institutions in adopting measures in the field of fisheries and, in particular, the precise parameters of the Council's competence to act without the Parliament in that field.

41. It is true that the correct legal basis for a particular EU measure must be assessed on a case-by-case basis. It is equally true that the Court has not yet dealt with the line of demarcation between Articles 43(2) and 43(3) TFEU in the context of intra-EU measures. However, the Court has explained how those provisions ought to be construed in the context of EU external relations. In a recent judgment concerning the external competences of the European Union in relation to the grant of fishing opportunities to vessels flying the flag of the Bolivarian Republic of Venezuela in EU waters off the coast of French Guyana,[7] the Court distinguished between those two legal bases.

42. In that judgment, the Court essentially held that the adoption of provisions under Article 43(2) TFEU involves an assessment as to whether those provisions are necessary for the attainment of the objectives of the common policies governed by the FEU Treaty. Importantly, that assessment entails a policy decision that must be reserved to the EU legislature.

43. On the other hand, the Court went on to explain that the situation is different in the context of Article 43(3) TFEU, under which measures on the fixing and allocation of fishing opportunities are to be adopted. Crucially, according to the Court, no corresponding assessment of necessity is required under that legal basis. This is because measures taken under that provision are of a primarily technical nature and are intended to be taken in order to *implement provisions adopted on the basis of Article 43(2) TFEU*.

44. It is certainly true that the present cases differ from the case leading to the *Venezuela* judgment in terms of background and, to a certain extent, legal context. However, a point that cannot be overlooked is that, in those admittedly different circumstances, the Court — sitting in Grand Chamber formation — explained how Articles 43(2) and 43(3) TFEU are to be understood. Now, it is vital to remember that legal and economic actors alike respect the authority devolving from the case-law of this Court and adapt their conduct accordingly. This is so especially in this particular situation, where that case-law plays a crucial role in shaping the law. That is why I believe there to be important

7 — Judgment in *Parliament and Commission* v *Council*, C-103/12 and C-165/12, EU:C:2014:2400, paragraph 50 ('the *Venezuela* judgment').

reasons relating to legal certainty that require the authority of a recent Grand Chamber judgment to be respected and the interpretation of Article 43(2) and Article 43(3) TFEU established therein to be followed. In fact, I see no good reason why that interpretation of those provisions should not be equally valid in the present cases.

45. With that in mind, it is necessary to look at the implications of the *Venezuela* judgment for decision-making pertaining to intra-EU measures. As I will aim to illustrate, it follows from the *Venezuela* judgment that Article 43(3) TFEU is to be understood as providing the legal basis for the adoption of a special type of implementing measure and that, as such, it is hierarchically subordinate to the legal basis provided by Article 43(2) TFEU.

46. Before addressing the contested regulation specifically, I will make some observations regarding the scope of Article 43(2) and Article 43(3) TFEU respectively on a more general level. Lastly, I will briefly deal with other outstanding issues raised by the present cases.

C – *The scope of Article 43(3) TFEU*

1. Article 43(3) TFEU in relation to Article 43(2) TFEU

a) The disagreement between the parties

47. The *Venezuela* judgment was delivered after the written procedure in the present cases had been closed. In the light of the Court's findings in that judgment, it is not surprising that the applicants maintained their positions and the Council attempted to play down the consequences for the outcome of the present proceedings.

48. That being so, both applicants continue to contend that Article 43(3) TFEU is an exception to Article 43(2) TFEU and should therefore be construed narrowly. In essence, the latter constitutes the appropriate basis for any legislative measure necessary for achieving the objectives of the CFP. The former, on the other hand, is a basis only for the implementing measures listed therein and, in particular, for measures that fix and allocate fishing opportunities. However, the Commission adopts a slightly more flexible approach in admitting that Article 43(3) TFEU might also form the appropriate legal basis for the adoption of certain functionally related measures that go beyond mere fixing and allocation of fishing opportunities. In any event, according to the applicants, measures adopted under Article 43(3) TFEU constitute a special kind of implementing measure which is adopted in accordance with a *sui generis* procedure laid down in that provision. The Parliament, in particular, emphasised the fact that any decision entailing political choices must be taken under Article 43(2) TFEU in a legislative procedure involving both the Parliament and the Council.

49. The applicants also take issue with the literal interpretation of Article 43(3) TFEU on which the Council relies. The Council contends that the phrase 'measures on' and its equivalents in different language versions (and, in particular, in French) clearly indicate that that provision is also to cover certain rules that go beyond the mere fixing of fishing opportunities. The Parliament and the Commission argue that no such conclusion can be drawn simply from the wording of that provision, with no due consideration of its broader context.

50. The Council, supported by the intervening governments, continues for its part to argue that the use of the phrase 'shall adopt measures on' in Article 43(3) TFEU suggests that that provision can also be used as the legal basis for measures other than those fixing and allocating fishing opportunities. Accordingly, Article 43(3) TFEU covers not only a quantified right to fish that can be

expressed in different ways, such as a TAC, but also functionally connected measures. In the view of the Council, Article 43(3) TFEU is a separate, autonomous legal basis and not an exception to Article 43(2) TFEU. It constitutes a *lex specialis* in relation to the *lex generalis* laid down in Article 43(2) TFEU and, accordingly, should not be interpreted restrictively.

51. The Council therefore opposes the interpretation, proposed by the applicants, to the effect that the ordinary legislative procedure enjoys primacy over acts adopted under Article 43(3) TFEU. On the contrary, the Council argues, Article 43(2) and Article 43(3) TFEU constitute autonomous legal bases and there is no hierarchical relationship between them. In that context, the Council also disputes the argument that, to the extent that a measure is connected to CFP objectives, it must be based on Article 43(2) TFEU, and that no measure can be adopted on the basis of Article 43(3) TFEU without a prior decision under Article 43(2) TFEU on political choices in relation to the CFP. [8]

b) Article 43(3) TFEU as a *sui generis* legal basis for implementing measures

52. The first point I would make is that, in order to substantiate their claims, both the applicants and the Council rely on the wording and historical context of Article 43(2) TFEU and Article 43(3) TFEU, as well as on a systemic and teleological reading of those provisions. To my mind, those arguments can be used to defend both viewpoints.

53. Even if, on balance, I have more sympathy for the arguments of the Council as regards the scope of Article 43(2) TFEU and Article 43(3) TFEU, that is not, to my way of thinking, sufficient reason to propose a departure from the line of demarcation between those provisions laid down by the Court in the *Venezuela* judgment.

54. Indeed, the statements made by the Court in that judgment can hardly be described as mere *obiter dicta*. On the contrary, the Court held — after a detailed analysis both of the relevant provisions of the Treaty and of the aim and context of the declaration under consideration in that case [9] — that an autonomous decision made on the basis of EU policy interests belongs within the sphere of competence of the EU legislature and that Article 43(3) TFEU falls to be applied in relation to primarily technical measures that implement those choices. [10]

55. Nevertheless, before analysing the contested regulation by reference to that statement, I wish to make a number of observations in the light of the literal, contextual and teleological arguments put forward by the parties.

i) The context

56. On the face of it, I see no compelling reason why Article 43(3) TFEU could not be interpreted as also covering a relatively broad variety of measures which somehow 'relate to' the fixing and allocation of fishing opportunities. [11] These could include measures that are also necessary in some way for actually fixing and allocating fishing opportunities (such as the method for fixing catch limits or limiting fishing effort, of relevance here). Those measures might even be said to be among the means

8 — It should be specified that the Commission in fact adopts a more nuanced position in this regard. It argues that, where no legislative measure under Article 43(2) TFEU exists, Article 43(3) TFEU may be employed by the Council for non-legislative measures designed to attain the objectives of the CFP. By contrast, where an act has been adopted under paragraph 2 of Article 43 TFEU, the Council is bound by that framework when adopting measures under paragraph 3.

9 — Paragraphs 47 to 79 of the *Venezuela* judgment.

10 — In particular paragraphs 79 to 81 of the judgment.

11 — See, as regards the wording and how that wording could be interpreted, the Opinion of Advocate General Sharpston in Joined Cases *Parliament and Commission* v *Council*, C-103/12 and C-165/12, EU:C:2014:334 ('Opinion of Advocate General Sharpston in the *Venezuela* case') and, in particular, point 160.

necessary to attain CFP objectives to the extent that they relate to the fixing and allocation of fishing opportunities. No contextual reading, whether of Article 43(3) TFEU as part of Article 43 TFEU or in relation to the historical context of that provision, appears to give a clear indication of the interpretation to be followed.

57. More specifically, it seems to me that consideration of the historical context is inconclusive. Prior to the entry into force of the Lisbon Treaty, no Treaty provision specifically addressed the procedures for fixing and allocating fishing opportunities. Instead, Article 20(1) of the basic regulation set out the procedure for deciding 'on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits'. Those measures – that is to say, the fixing of fishing opportunities and certain ancillary measures – were to be adopted by the Council acting by qualified majority on a proposal from the Commission. The Parliament was not involved.

58. At this point, I would observe that it is not entirely clear to me why a parallel should automatically be drawn between Article 20 of the basic regulation and Article 43(3) TFEU. Or indeed, between Article 37 EC and Article 43(2) TFEU, for that matter.

59. As the Council observes, Articles 43(2) and 43(3) TFEU were introduced by the Treaty of Lisbon to replace one single provision, Article 37 EC, which had been the legal basis for the adoption of a whole range of legal acts, relating to both agriculture and fisheries, prior to the entry into force of the Treaty of Lisbon. Those facts alone do not seem to support the inference that the drafters of the FEU Treaty wished to ensure that, in circumstances where Article 37 EC would have been used prior to the entry into force of the Treaty of Lisbon, Article 43(2) TFEU must now be used.

60. Admittedly, however, the similarity between Article 20 of the basic regulation and Article 43(3) TFEU is difficult to ignore. If anything, Article 43(3) TFEU would seem to be narrower in scope than Article 20 of the basic regulation as, by contrast with the latter provision, it makes no mention of 'conditions associated with'.[12] Given the substantial changes that have now been made to the architecture of the Treaty in general and to the field of agriculture and fisheries in particular, it seems just as likely that, as the Council contends, the changes in the Treaty in fact reflect the desire of the drafters to reserve to the Council — notwithstanding the extension of the ordinary legislative procedure to this field — certain specific (autonomous) powers, rather than limited implementing powers.

61. That leads me to the next point. None of the parties deny that the drafters of the Treaty prescribed the ordinary legislative procedure under Article 43(2) TFEU for the more general category of measures, namely those necessary for the pursuit of the objectives of the CFP, whereas they reserved a non-legislative procedure under Article 43(3) TFEU for a certain type of regulatory measure (which, however, like the regular setting of TACs, may at the same time be necessary for the pursuit of the objectives of the CFP). There is considerable disagreement, however, as to the relationship between those procedures and the corresponding measures.

12 — Another interesting point to note here is that the wording used in Article 43(3) TFEU is also very similar to that of Article III-231(3) of the Treaty Establishing a Constitution for Europe: 'The Council, on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.' Unlike Article 20 of the basic regulation, the text of that provision is silent as to 'the conditions associated with those [catch and fishing] limits'. Indeed, that provision clearly refers to lower-level provisions (as opposed to European laws) that would seem to indicate a hierarchy between legislative instruments and instruments that are situated, in terms of order of precedence, at a lower level than legislative instruments. See also Opinion of Advocate General Sharpston in the *Venezuela* case, point 168. However, that does not automatically mean that those instruments are interdependent or that one is necessarily subordinate to the other.

ii) Hierarchy or no hierarchy?

62. As I have already mentioned, the Council and the intervening governments support the view that Article 43(3) TFEU constitutes a separate legal basis and should not be used solely for mere technical measures such as the setting of TACs. In my view, the fact that Article 43(3) TFEU is formulated in such a way as to cover 'measures on the fixing and allocation of fishing opportunities', rather than being limited, for example, to simply empowering the Council to 'fix and allocate fishing opportunities', is neither here nor there. On the basis of the wording of that provision, it is possible to defend – equally (un)convincingly – both the interpretation argued for by the applicants and the Council's interpretation.

63. On the other hand, nothing would seem, on the basis of the wording, to exclude from the outset the possibility that Article 43(2) and Article 43(3) TFEU establish two separate competences for the EU institutions. According to that reading, those two provisions could be mutually exclusive and complementary. Indeed, I am not convinced that simply because the drafters of the Treaty decided to extend the ambit of the ordinary legislative procedure to cover agriculture and fisheries, all other competences provided for by the Treaties in that field are necessarily to be construed narrowly or subordinated to legislative competence.

64. Nevertheless, the Court has now established a clear hierarchy between those provisions. In the *Venezuela* judgment, the Court held that measures taken on the basis of Article 43(3) TFEU are of a primarily technical nature and are intended to *implement* provisions adopted on the basis of Article 43(2) TFEU.[13] Furthermore, following a detailed examination of the declaration at issue in that case, the Court observed that, precisely because that declaration constituted a measure which entails the adoption of an autonomous decision which must be made by reference to the policy interests of the European Union pursued through its common policies, in particular its common fisheries policy, that declaration fell within an area of competence in which the decision-making power lies with the EU legislature under Article 43(2) TFEU.[14]

65. The Court seems therefore to have accepted that Article 43(3) TFEU primarily concerns measures, akin to those previously taken under Article 20 of the basic regulation, that need to be taken at regular intervals (the setting of TACs, for example).[15] Moreover, I read that judgment — and, in particular, the statement regarding the need to reserve to the EU legislature competence to take autonomous decisions in accordance with EU policy interests — as indicating that recourse to Article 43(3) TFEU is in fact subject to a prior condition, namely the existence of a related measure under Article 43(2) TFEU.

66. In other words, any *autonomous* decision involving policy considerations now necessarily falls under Article 43(2) TFEU. In the light of the Court's findings in the *Venezuela* judgment, I believe that any measure which sets the framework for the fixing and allocation of fisheries opportunities will now fall within the scope of Article 43(2) TFEU. This is because such a framework cannot be construed as a measure simply designed to implement a provision adopted at a higher level with regard to the specific policy interests of the European Union. Measures under Article 43(3) TFEU must therefore be confined to those which closely relate to the definition of who can fish what, and where, and conditions functionally linked to those questions (provided that they constitute implementing measures), whereas measures relating to other aspects of fishing opportunities cannot be covered by Article 43(3) TFEU.[16]

13 — Paragraph 50 of the *Venezuela* judgment.

14 — Paragraphs 79 to 81 of the judgment.

15 — Opinion of Advocate General Sharpston in the *Venezuela* case, point 164.

16 — In a similar vein, see also Opinion of Advocate General Sharpston in the *Venezuela* case point 169.

67. Viewed in that light, I believe parallels drawn between Article 43(3) TFEU and implementing acts based on Article 291 TFEU to be perfectly apt. By their very nature, measures on the fixing and allocation of fishing opportunities, which must respect the legislative provisions of the CFP, can be assimilated to implementing measures. This is so even though they fall outside the scope of 'implementing acts' for the purposes of Article 291 TFEU. This approach and the line of demarcation between the types of measure that can be adopted under Article 43(2) and Article 43(3) TFEU, respectively, was confirmed by the Court in the *Venezuela* judgment.

68. Keeping in mind the above, it is now necessary to determine whether the provisions laid down in the contested regulation and which were hived off from the Commission's original proposal are technical measures — the adoption of which do not necessitate an assessment of necessity — designed to implement provisions adopted on the basis of Article 43(2) TFEU.

2. The contested regulation

69. As their principal submission, the Parliament and the Commission maintain that the Council used the wrong legal basis for the contested regulation. This is so, they argue, because the provisions laid down in that regulation were hived off from the Commission's original proposal for the amendment of Regulation No 1342/2008 and subsequently adopted on the basis of Article 43(3) TFEU rather than Article 43(2) TFEU, which was the legal basis for the Commission's original proposal. Before addressing that submission, I will briefly explain what it is that multiannual plans, such as the plan established by Regulation No 1342/2008 and amended by the contested regulation, are designed to do.

a) What are multiannual plans and what are they for?

70. To begin with, it must be remarked that the overarching aim of the CFP is, incontestably, the sustainable exploitation of living aquatic resources. In accordance with Article 2 of the basic regulation, that objective is to be achieved, in particular, by means of a multiannual approach to fisheries management as laid down in various multiannual plans. In that context of sustainability, multiannual plans establish the specific measures required for the recovery of stock levels or, if the stock is already at a sustainable level, for the maintenance of the stock at that level.

71. Those plans, including the plan established for cod under Regulation No 1342/2008, provide for a range of specific conservation measures to support sustainable management of the fishery in question. Those include closed areas, strict technical provisions on mesh sizes and gear, as well as various forms of monitoring, inspection and control. The plans are designed, in particular, to set out targets for sustainable exploitation of the stocks concerned. This is done, inter alia, through detailed rules for the annual fixing of TACs, on the one hand, and the maximum allowable fishing effort, on the other.

72. In accordance with Articles 5 and 6 of the basic regulation, both recovery plans and management plans are to include targets against which the state of the stock is to be assessed. While harvesting rules[17] — which, in accordance with Article 5(4) of the basic regulation, constitute a predetermined set of biological parameters to govern catch limits — are optional, limiting fishing effort is, as a matter of principle, compulsory for recovery plans.

17 — There seems to be some disagreement as to the meaning of the term 'harvesting rules'. This is undoubtedly because the definitions of that term in recital 7 to the basic regulation and Article 5(4) thereof differ. Given the more precise definition in Article 5(4) of the regulation, I will hereinafter refer to harvesting rules only in relation to TACs and not to fishing effort.

b) The method for setting TACs and allocating fishing effort in poor data conditions

73. As can be seen from the above, multiannual plans are tools for the conservation of fish stocks, which decisively contribute to the sustainable exploitation of those stocks. In that regard, multiannual plans are crucial to the attainment of the objectives of the CFP: they put into practice broad principles of conservation and sustainability and balance them against socio-economic objectives. All the parties seem to agree on this.

74. In addition to the crucial role of multiannual plans for the purposes of attaining the objectives of the CFP, all parties appear to agree that if Article 43(3) TFEU is not the appropriate legal basis for the contested regulation, then Article 43(2) is (and that, if that is so, no part of the Commission's original proposal should have been hived off). None of the parties claim that a dual legal basis ought to have been cited for the contested regulation.

75. In that regard, it is settled law that the choice of legal basis for an EU measure must be based on objective factors which are open to judicial review. These include not only the aim and content of the measure, but also the legislative context. [18]

76. Turning first to the context, the Cod Plan, as set out in Regulation No 1342/2008, was based in its entirety on Article 37 EC. However, given that the constitutional landscape in the field of fisheries has since undergone significant changes, [19] it would seemed rushed to conclude, on that sole basis, that subsequent amendments to that plan must necessarily be based on Article 43(2) TFEU.

77. Be that as it may, the problem here does not lie in identifying the predominant purpose or the content of the contested regulation. As can be seen from the preamble, the aim of that regulation is to adjust specific rules prescribing a detailed methodology for the annual fixing of TACs and fishing effort limitations in a way that reflects the need for flexibility in fixing and allocating fishing opportunities on the basis of scientific data. [20]

78. Articles 9 and 12 of the Cod Plan, as respectively replaced and amended by the contested regulation, establish detailed rules for fixing fishing opportunities, expressed in terms of TACs and fishing effort limitations, in certain specific sets of circumstances. In that sense, they adapt the exceptions to the otherwise applicable rules for the fixing of fishing opportunities. Admittedly, this is done without amending the overall objective of the Cod Plan expressed in terms of maximum sustainable yield and fishing mortality rate in Article 5 of Regulation No 1342/2008. [21] None the less, given the Court's findings in the *Venezuela* judgment — and, in particular, its strict construction of Article 43(3) TFEU — the question that now arises is whether the provisions laid down in the contested regulation constitute more than mere technical measures designed to implement the Cod Plan as a whole.

79. I believe that to be the case. Indeed, as already indicated (and, in essence, accepted by the Council), the contested regulation lays down (some of) the means of achieving the objectives of the Cod Plan concerning the fixing and allocation of fishing opportunities.

18 — See judgments in *Commission* v *Parliament and Council*, C-43/12, EU:C:2014:298, paragraph 29, and *Commission* v *Council*, C-137/12, EU:C:2013:675, paragraph 52 and case-law cited. For the legislative context, see in particular the judgment in *Commission* v *Parliament and Council*, C-411/06, EU:C:2009:518, paragraphs 64 and 65.

19 — See point 59 above.

20 — Recitals 3 to 5 of the contested regulation.

21 — Indeed, in accordance with Article 5(2) of the basic regulation, the objectives of the plan are indicated by reference to those specific 'conservation reference points'.

80. In that regard, first, the Cod Plan as laid down in Regulation No 1342/2008 (the regulation which the contested regulation amends) is designed to ensure, in accordance with Article 5 thereof, the sustainable exploitation of the relevant cod stocks on the basis of maximum sustainable yield. This objective is to be attained while maintaining a specific level of fishing mortality for cod in appropriate age groups. To attain this objective, Articles 7 to 10 of that regulation lay down harvesting rules concerning the way in which TACs and the fishing effort are to be calculated in various circumstances. In essence, those provisions articulate the means by which the objective of the plan defined in Article 5 is to be achieved.

81. More specifically, as regards the contested regulation, the material content of Article 9 (method for setting TACs in data poor conditions) and Article 12 (methodology for setting the fishing effort), as amended, seems to constitute a framework, or indeed – to adopt the expression employed by Advocate General Sharpston – a *prerequisite*[22] for fixing fishing opportunities over the years. As I see it, those provisions are not simply measures designed to implement the Cod Plan but rather essential building blocks integral to that plan. That is why they must be dealt with in the basic legislative act.

82. In that regard, the Council emphasises the optional character of those measures. In my view, however, the fact that those rules may or may not be optional is beside the point. In fact, an assessment of necessity in the light of the objective of the CFP is involved not only in relation to the choice to include those rules in a multiannual plan, but also to the determination of the content of those rules. According to the Court, that assessment falls to be made in a legislative procedure. Even more fundamentally perhaps, those provisions do not merely 'fix' or 'allocate' fishing opportunities. As can be seen from the contested regulation, the provisions in question set out a detailed method to be followed when fishing opportunities are fixed and allocated under Article 43(3) TFEU. In other words, they provide the framework within which fishing opportunities are fixed and allocated in certain specific circumstances.

83. More specifically, with regard to Article 9 of the Cod Plan, as replaced by the contested regulation, that provision lays down detailed rules for the fixing of the TACs in poor data conditions where the rules established in Articles 7 and 8 cannot be applied because of the lack of sufficiently accurate and representative information. That amendment introduced more flexible rules which allow an appropriate response to scientific advice, rather than imposing an automatic reduction of 25% as originally envisaged by Regulation No 1342/2008.

84. On the other hand, Article 12(4) of the Cod Plan has undergone a similar amendment relating to the setting of fishing effort in poor data conditions. A new paragraph 6 has also been added to Article 12, under which it is possible for the Council not to apply further fishing effort reductions, once the fishing effort ceiling has been reduced for four consecutive years.

85. That being so, if the approach advocated by the Council were followed, the Council would be empowered not only to fix and allocate fishing opportunities (on a yearly basis), but also – in the course of that same decision-making procedure – to determine the mechanism for doing so.

86. While it may certainly be true that, as the Commission observes, this could entail a risk that short-term (political or economic) considerations would trump long-term considerations pertaining to sustainability, neither of the applicants has shown that such a risk has come about in the present cases.[23] On the contrary, all the parties seem to be satisfied with the material content of the provisions laid down in the contested regulation. What is more, I must remark that, even under Article 43(3) TFEU, the Council does not act alone: the Commission has the right of initiative and is

22 — Opinion of Advocate General Sharpston in the *Venezuela* case, point 169.

23 — None the less, those short-term considerations appear to underlie the need to adopt urgently the provisions laid down in the contested regulation. As the Council explains in recital 5 to that regulation, for example, the continued application of the automatic annual effort reductions as laid down in Regulation No 1342/2008 would have a significant economic and social impact on certain fleet segments.

to present the proposal for measures adopted under that provision. In that sense, the assertions that the Council might well run wild and that, without the Parliament's involvement in the decision-making procedure, the objectives of the CFP would be disregarded, presuppose that, in such circumstances, the Commission would also run wild, alongside the Council.

87. More importantly, therefore, if Article 43(3) TFEU falls to be construed as covering measures defining the framework in which fishing opportunities are fixed and allocated, then it is wholly at odds with the idea that any decision involving political choices is to be made in the course of a legislative procedure. If the Council were to be allowed to adopt on the basis of Article 43(3) TFEU harvesting rules and fishing effort limits such as those at issue in the present proceedings, not only would it have the power to execute choices made by the legislature through the actual fixing and allocation of fishing opportunities, but it would also, in effect, be recognised as having the power to act as sole regulator in defining the framework in which the actual fishing opportunities are determined in certain specific conditions. The Court has made it clear that such a situation would be unlawful. [24]

88. Before concluding, it is necessary to address the concerns of the Council and the intervening governments. They are concerned that the interpretation proposed by the Parliament and the Commission, and in essence confirmed by the Court, will divest Article 43(3) TFEU of any meaning and considerably limit the discretion of the Council in taking measures under that provision.

89. While perhaps not divesting Article 43(3) TFEU of all meaning, the interpretation proposed by the Parliament and the Commission certainly entails a narrow construction of that provision and the competences conferred thereunder. But, in fact, that is the consequence of the Court's approach in the *Venezuela* judgment. As the law stands, the measure of discretion (whether more or less) that the Council enjoys in adopting measures under Article 43(3) TFEU depends on how much leeway the EU legislature has decided to leave it. [25]

90. To reiterate, Articles 9 and 12 of the Cod Plan as respectively replaced and amended by the contested regulation, do not simply implement choices made by the EU legislature, but rather define the framework for fixing and allocating fishing opportunities in certain specific circumstances. That is why it is my belief that the contested regulation was adopted on the wrong legal basis and that, in hiving those provisions off from the rest of the Commission's proposal, the Council acted unlawfully. Accordingly, the single plea raised by the Parliament and the first plea relied upon by the Commission ought to be upheld.

91. A conclusion to that effect is sufficient in itself for the actions brought by the Parliament and the Commission in the present cases to be upheld and the contested regulation annulled. For the sake of completeness, however, I will briefly deal with the two remaining pleas raised by the Commission and the request made by the Commission and the Council that the effects of the contested regulation be maintained.

24 — See, in particular, paragraph 50 of the *Venezuela* judgment.

25 — Had the contested regulation been adopted on the basis of Article 43(2) TFEU, Article 12(6), as amended, would provide a neat illustration of a legislative provision attributing such leeway to the Council.

D – *Outstanding issues: procedural error, the Commission's exclusive right of initiative, and the effects of the contested regulation*

92. The second plea raised by the Commission concerns an alleged procedural error: it is submitted that, as a result of erring in the choice of legal basis, the Council also contravened the institutional prerogative of the Parliament to participate in the ordinary legislative procedure and that of the EESC to be duly consulted. As the Commission itself observes, that plea stands or falls with the first. I have concluded above that the first plea, pertaining to the choice of legal basis, should be upheld. It follows that the second plea of the Commission should be upheld, too.

93. And so should the third.[26] This is not only because Articles 9 and 12 of the Cod Plan as respectively replaced and amended by the contested regulation have, illicitly, been metamorphosed from legislative into regulatory provisions: as a result of that change, the legal character of those provisions (even though their aim and content may have remained unchanged) would be altered fundamentally. What is more, the overall approach to managing cod stocks would be significantly altered.

94. However, in the event that the Court does not agree with me that Article 43(3) TFEU was the wrong legal basis for the contested regulation, I would propose that the third plea raised by the Commission be rejected. Indeed, both the Commission and the Council agree that a modification of the legal basis does not automatically imply a fundamental change in the subject-matter and the objectives of the proposal. Were the Court to consider that the Council was right to split the proposal and to adopt the contested regulation under Article 43(3) TFEU (on the view that the provisions at issue are technical implementing measures for the overall Cod Plan), it would then also be necessary to correct the legal basis accordingly.[27]

95. Finally, the Commission and the Council, relying on Article 264(2) TFEU, ask the Court to maintain the effects of the contested regulation in the event of annulment.[28] The Parliament has not objected to that request.

96. I have concluded above that the contested regulation ought to be annulled. As a result, the basis on which fishing opportunities have been fixed as of 2013 would partly disappear. In my view, that is a situation in which important grounds relating to legal certainty and the need to avoid serious negative consequences for the field can be identified, justifying a decision to maintain the effects of the annulled act.[29]

97. In the present circumstances, where fishing activities have actually been conditioned by the application of the rules laid down in the contested regulation as regards the setting of TACs and fishing effort limits, a disruption in the application of that regulation would not only be problematic in terms of legal certainty (as the specific regulations[30] fixing the actual fishing opportunities for a

26 — As a matter of principle, the Council can split the Commission's proposals where to do so is justified in the light of the proposal's content. This is because, although the Commission has the right of initiative, that right is not absolute. However, the Council may only take that step (unanimously, in accordance with Article 293(1) TFEU), to the extent that this is consistent with the object and aim of the original proposal, as required by the Court. See judgment in *Eurotunnel and Others*, C-408/95, EU:C:1997:532, paragraph 39.

27 — See, to that effect, Opinion of Advocate General Sharpston in the *Venezuela* case, points 196 and 197.

28 — The Commission considers that the effects of the contested regulation should be maintained for a maximum of one calendar year starting from 1 January following delivery of the judgment in the present cases.

29 — See, for example, judgments in *Parliament* v *Council*, C-166/07, EU:C:2009:499, paragraphs 74 and 75; *Parliament* v *Council*, C-355/10, EU:C:2012:516, paragraphs 89 and 90; *Commission* v *Parliament and Council*, C-43/12, EU:C:2014:298, paragraphs 54 to 56; and *Parliament* v *Council*, C-490/10, EU:C:2012:525, paragraphs 91 and 92.

30 — For the year in question, these are Council Regulation (EU) No 39/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements (OJ 2013 L 23, p. 1) and Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements (OJ 2013 L 23, p. 54.)

given year might be inconsistent with the original Cod Plan), but may also have broader negative consequences for the industry. Moreover, all the parties involved in the present proceedings seem to approve of the material content of the contested regulation, the only substantial disagreement concerning the choice of legal basis.

98. In those circumstances, I believe that the effects of the contested regulation should be maintained. There is certain appeal to the Commission's suggestion to maintain the effects of the contested regulation for a full calendar year following delivery of the judgment. This would ensure enhanced legal certainty from the viewpoint of fishermen in particular, given that fishing opportunities are generally set on a yearly basis for a specific calendar year. Nevertheless, and however practical that might be, it is of fundamental importance that the effects of unlawful acts are not maintained in force for longer than what is strictly necessary. To encourage the EU institutions to adopt a new regulation on the correct legal basis as soon as possible, it is my view that the effects of the contested regulation ought to be maintained for a period not exceeding six months as from the date of delivery of the judgment in the present cases.

IV – **Costs**

99. In accordance with Article 138(1) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for by the successful party. In the present cases, the Parliament and the Commission have both applied for costs and the Council has been unsuccessful.

100. Article 140(1) of the Rules of Procedure, on the other hand, provides that Member States which have intervened are to bear their own costs. The Kingdom of Spain, the French Republic and the Republic of Poland ought therefore to bear their own costs.

V – **Conclusion**

101. Having regard to all the above considerations, I propose that the Court:

— annul Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks;

— maintain, in accordance with Article 264(2) TFEU, the effects of the annulled regulation until the entry into force, within a period not exceeding six months as from the date of delivery of the judgment in the present cases, of a new regulation adopted on the correct legal basis;

— order the Council to pay the costs; and

— order the Kingdom of Spain, the French Republic and the Republic of Poland to bear their own costs.