JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
22 February 2000 *

In Case T-138/98,

Armement Coopératif Artisanal Vendéen (ACAV), established at Sables-d'Olonne, France,

and

Armement Alain André and ACAV, Armement Thierry Arnaud and ACAV, Armement Alain Augereau, Armement Jean-Luc Bernard and Angélique Bernard, Armement Pascal Burgaud, Armement José Burgaud and ACAV, Armement Bruno Chiron and Jean Noury, Fabien Gaillard, Armement Bruno Girard, Armement Bruno Girard and ACAV, Armement Denis Groisard, Fabrice Groisard, Armement Islais SARL, Armement Marc Jolivet, Armement Yannick Orsonneau and ACAV, Armement Christian Rafin and ACAV, Armement Éric Rivalin and ACAV, Armement Éric Taraud and ACAV, Armement Fernand Voisin and Alain Voisin, Patrick Voisin, Yeu Pêcheries SA, Armement Bernard Zereg, established on Ile-d'Yeu, France,

represented by L. Funck-Brentano and S.Ponsot, of the Paris Bar, with an address for service in Luxembourg at the Chambers of J. Neuen, 1 Place du Théâtre,

applicants,

* Language of the case: French.

supported by

French Republic, represented by J.-F. Dobelle, Deputy Director of Legal Affairs in the Ministry of Foreign Affairs, C. Vasak, Undersecretary for Foreign Affairs in the Legal Affairs Directorate, K. Rispal-Bellanger, Head of the Subdirectorate for International Economic Law and Community Law in the same directorate, and C. Chavance, Secretary for Foreign Affairs in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

by

Municipality of Ile-d'Yeu, represented by R. Houssin, of the Nantes Bar, with an address for service in Luxembourg at the Chambers of J. Neuen, 1 Place du Théâtre,

by

Ireland, represented by M.A. Buckley, Chief State Solicitor, and A. Collins, Barrister, acting as Agents, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

and by

Thomas Kennedy, John Graham, John Flannery, Michael Hennessy and Padraig Ó Mathuna, residing in Dingle, Ireland,

Vincent Browne, Michael Murphy, John O'Donnel, residing in Tralee, Ireland,

Donal O'Neill, John D. Sullivan, Neil Minihane, Kieran O'Driscoll, Peter Carleton, Donal Healy, residing in Castletownbere, Ireland,

Gerard Minihane, residing in Skibbereen, Ireland,

represented by D. O'Donnell SC, J. Devlin, Barrister, G. Casey, Solicitor, and P. McDermott, Barrister, North Main Street, Bandon, County Cork, Ireland,

interveners,

v

Council of the European Union, represented by J. Carbery and L. Railas, of its Legal Service, acting at Agents, with an address for service in Luxembourg at the office of A. Morbilli, Director-General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Kingdom of Spain, represented by R. Silva de Lapuerta, Abogado del Estado, of the Community Legal Affairs Department, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

and by

Commission of the European Communities, represented by G. Berscheid, of its Legal Service, and T. van Rijn, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for annulment of Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources (OJ 1998 L 171, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(First Chamber, Extended Composition),

composed of: B. Vesterdorf, President, K. Lenaerts, A. Potocki, A.W.H. Meij and M. Vilaras, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 23 November 1999,

gives the following

Judgment

Legislative background

1 In order to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions, the Council adopted Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1), which was repealed and replaced by Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1).

2 Under Regulation No 170/83 the Council adopted Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources (OJ 1986 L 288, p. 1). Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation No 3094/86 (OJ 1992 L 42, p. 15) inserted into the latter regulation a new provision, Article 9a, imposing a ban in principle, subject to a temporary derogation, on drift-nets whose individual or total length is more than 2.5 kilometres.

3 Following a succession of amendments, Regulation No 3094/86 was codified in Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources (OJ 1997 L 132, p. 1).

4 Council Regulation (EC) No 1239/98 of 8 June 1998 (hereinafter 'Regulation No 1239/98' or 'the contested regulation' — OJ 1998 L 171, p. 1) amended Regulation No 894/97, first of all, by inserting a new Article 11 and Article 11a worded as follows:

'Article 11

No vessel may keep on board, or use for fishing, one or more drift-nets whose individual or total length is more than 2.5 kilometres.

Article 11a

1. From 1 January 2002, no vessel may keep on board, or use for fishing, one or more drift-nets intended for the capture of species listed in Annex VIII.

2. From 1 January 2002, it is prohibited to land species listed in Annex VIII which have been caught in drift-nets.

3. Until 31 December 2001, a vessel may keep on board, or use for fishing, one or more drift-nets referred to in paragraph 1 after receiving authorisation from the competent authorities of the flag Member State. In 1998, the maximum number of vessels which may be authorised by a Member State to keep on board, or use

for fishing, one or more drift-nets shall not exceed 60% of the fishing vessels which used one or more drift-nets during the period 1995 to 1997.

4. Member States shall communicate to the Commission for each target species by 30 April of each year, the list of vessels authorised to carry out fishing activities using the drift-nets referred to in paragraph 3; for 1998, the information shall be sent not later than 31 July 1998.'

5 One of the 18 species listed in Annex VIII referred to in Article 11a of Regulation No 894/97, as amended, is albacore tuna.

6 The contested regulation also inserted into Regulation No 894/97 a new Article 11b, paragraph 6 of which provides:

'In the case of failure to comply with the obligations laid down in Articles 11 and 11a and this article, the competent authorities shall take appropriate measures in respect of the vessels concerned, in accordance with Article 31 of Regulation (EEC) No 2847/93 [OJ 1993 L 261, p. 1].'

7 Finally, Article 11c, inserted by the contested regulation, indicated the geographical scope of the new provisions of Regulation No 894/97 in the following terms:

'With the exception of waters covered by Council Regulation (EC) No 88/98 of 18 December 1997 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound [OJ 1998 L 9, p. 1] and notwithstanding Article 1(1), Articles 11, 11a and 11b

shall apply in all waters falling within the sovereignty of jurisdiction of the Member States and outside those waters shall apply to all Community fishing vessels.'

Procedure

8 It was against that background that, by an application lodged at the Registry of the Court of First Instance on 31 August 1998, the Armement Coopératif Artisanal Vendéen and 22 French owners of tuna-fishing vessels (hereinafter 'the applicants') brought an action for the annulment of Regulation No 1239/98 on the ground that, as from 1 January 2002, it bans the use by vessels flying the flag of a Member State of drift-nets for catching certain species, including albacore.

9 By a separate document, which was lodged at the Registry of the Court of First Instance on 29 October 1998, the Council raised an objection of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance. On 11 January 1999 the applicants submitted their observations on the objection.

10 By order of the President of the First Chamber dated 30 November 1998 the French Republic was granted leave to intervene in support of the form of order sought by the applicants.

11 By order of the President of the First Chamber dated 3 June 1999 the Kingdom of Spain and the Commission were given leave to intervene in support of the form of order sought by the Council, whilst Ireland and the municipality of Ile-d'Yeu, together with Thomas Kennedy and 13 other applicants, who are members of the Irish Tuna Association ('the ITA'), were given leave to intervene in support of the form of order sought by the applicants. Those interveners were requested as a

first step to submit their submissions, pleas and arguments on the admissibility of the action.

12 The ITA members did not lodge a statement in intervention in due time.

13 Ireland submitted a statement in intervention containing no arguments on the admissibility of the present action.

14 On hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure in order to rule on the objection of inadmissibility raised by the defendant.

15 By a decision of the Court dated 15 November 1999 the case was referred to the First Chamber, Extended Composition.

16 At the hearing on 23 November 1999 the Court heard argument from the parties, together with their replies to questions put to them orally by the Court at the hearing.

Forms of order sought by the parties

17 In their application the applicants claim that the Court should:

— declare the action admissible;

— annul Regulation No 1239/98;

— order the Council to pay the entirety of the costs.

18 In their observations on the objection of inadmissibility the applicants claim that the Court should:

— dismiss the objection of inadmissibility raised by the Council;

— order the Council to pay the entirety of the costs.

19 In support of the form of order sought by the applicants, the French Republic and the municipality of Ile-d'Yeu contend that the Court should:

— dismiss the objection of inadmissibility raised by the Council;

— order that the action be examined on its merits;

— study the possibility of a mission to Ile-d'Yeu in order to make an on-the-spot assessment of the special features of the present case;

— order the Council to pay the costs.

20 At the hearing Ireland and the members of the ITA claimed that the Court should dismiss the objection of inadmissibility. In the alternative, Ireland requested that a decision on the objection be deferred until examination of the substantive issues.

21 In its objection of inadmissibility the Council contends that the Court should:

— dismiss the action as manifestly inadmissible;

— order the applicants to pay the costs.

22 In support of the form of order sought by the Council the Commission contends that the Court should:

— dismiss the action as manifestly inadmissible;

— order the applicants to pay the costs.

23 In support of the form of order sought by the Council the Kingdom of Spain contends that the Court should:

— declare the action inadmissible;

— order the applicants to pay the costs.

Admissibility of the action

Parties' arguments

24 The Council maintains that the action is inadmissible on the ground that the conditions laid down in the fourth paragraph of Article 173 of the EC Treaty (now the fourth paragraph of Article 230 EC) are not satisfied.

25 First, the contested regulation is, like Regulation No 894/97 which it amends, a legislative act which applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract. Inasmuch as the action challenges a regulation having general application as provided for in the second paragraph of Article 189 of the EC Treaty (now the second paragraph of Article 249 EC), it is inadmissible on that ground alone, in accordance with settled case-law (Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463 and Case 26/86 *Deutz and Geldermann* v *Council* [1987] ECR 941).

26 Secondly, the applicants are not individually concerned by the contested regulation and are affected by it on the same basis and in the same way as the other traders operating in that sector. In fact, there is nothing to distinguish their situation from that of all the other fishermen who, both in France and in the other countries of the Community, carry on the same fishing activity using drift-nets as they do.

27 Finally, the applicants are not directly concerned by Regulation No 1239/98 for the transitional period ending on 31 December 2001 since during that period it is

still the competent national authorities who select the fishing vessels eligible for authorisation to use drift-nets.

28 The Commission submits that the applicants cannot be deemed to be individually concerned by the contested regulation.

29 First of all, it refutes the applicants' argument that they belong to a restricted group of traders comprising all the albacore fishermen established on Ile-d'Yeu who use drift-nets. First, the judgments in Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207 and Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847, relied on by the applicants and the French Republic respectively, refer to different situations and are not relevant to this case.

30 Secondly, the Commission considers that the fact that since 1995 the applicants have all held special fishing permits allowing them to use drift-nets in no way means that they belong to a closed class of traders (order in Case T-12/96 *Area Cova and Others* v *Council and Commission* [1999] ECR II-2301). The deliberations of the competent French authority indicate expressly that special fishing permits are not reserved in France for persons previously permitted to fish for albacore using drift-nets. Moreover, the lists of vessels authorised to fish with drift-nets to be communicated to the Commission by the Member States each year by 31 December 2001 under Article 11a(4) of Regulation No 894/97, as amended by the contested regulation, may vary from one year to the next.

31 In any event, it is clear from the case-law that for a trader to be deemed to be individually concerned by a regulation it is not sufficient that he belongs to a

closed class of traders (Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 64).

32 The Council cannot be said to have adopted Regulation No 1239/98 knowing that that act would have specific effects on the applicants. Drift-nets are used not only by French fishermen established outside Ile-d'Yeu but also by fishermen established in other Member States, in particular in Italy where the largest number of users are established. Moreover, the fact that the Commission and the Council were informed of the possible consequences that adoption of the contested regulation might have on the economy of Ile-d'Yeu cannot suffice to identify the applicants individually where there is no obligation to have regard to their specific situation (order in *Area Cova*, cited above, paragraph 54), and where, moreover, comparable economic consequences could arise in other regions of the Community.

33 In those circumstances the Commission considers that the applicants' only distinguishing feature in relation to other fishermen of the Community who are also concerned by the contested regulation is the fact that they are established on Ile-d'Yeu. A criterion based on the geographical situation of each of the operators concerned by a regulation, however, cannot suffice without improperly extending the situations in which an action may be brought against a legislative act.

34 As to the alleged lack of other legal remedies by means of which the validity of the contested regulation might be challenged, the Commission points out that, according to the French Republic itself, the possibilities for making a reference for a preliminary ruling are not non-existent but reduced. None the less, even if the prohibition of drift-nets did not involve an implementing measure, there was nothing to prevent the applicants from seeking authorisation to use nets of that kind and challenging any refusal by the competent authorities to issue it to them.

35 The Kingdom of Spain contends that the applicants are in the same situation as any other owner of a vessel fishing with drift-nets for the species listed in Annex VIII to Regulation No 894/97, inserted by the contested regulation. The latter instrument thus concerns them not individually but in the same way as any other operator in or likely to be in the same situation. Moreover, during the transitional period ending on 31 December 2001 the regulation is not directly applicable to the applicants inasmuch as until that time the competent national authorities may still issue to a limited number of vessels authorisations allowing the use of drift-nets.

36 The applicants maintain that, in spite of its legislative nature, Regulation No 1239/98 is of individual concern to them, with the result that, in accordance with the case-law (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501 and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853), their action must be held to be admissible.

37 They maintain, first, that in accordance with the case-law *(Piraiki-Patraiki*, cited above, and Case 207/86 *Apesco* v *Commission* [1988] ECR 2151, paragraph 12) they are individually concerned as members of a closed class of traders, who are identified and identifiable and specifically affected by the contested regulation. That closed class of traders is, they say, made up of fishermen on Ile-d'Yeu who, each year since 1995, have received authorisation to use drift-nets to fish for albacore in the North Atlantic. Among the fishing vessels flying the French flag which each year are authorised to fish for albacore in the North Atlantic area using drift-nets, that is to say 69 vessels in 1995 and 43 in 1998, the applicants taken as a whole constitute the biggest fleet of vessels authorised to engage in that kind of fishing. Moreover, the contested regulation affects them specifically since, each year since 1995, they have all received authorisation from the competent French authority to carry on that form of fishing.

38 Secondly, the Council was aware of the applicants' particular situation when it adopted the contested regulation. First of all, the list of vessels authorised in France to use drift-nets to fish for albacore is communicated each year by the French authorities to the Commission. Moreover, several approaches were made by them to both the French political authorities and the Commissioner in charge of fisheries at the time. In its communication of 8 April 1994 on the use of large drift-nets (COM (94) 50 fin.) the Commission stated as follows: 'The island of d'Yeu poses a particular problem: 21 vessels used drift-nets to fish for albacore in 1993, of which 15 benefited from the derogation. This gear accounts for a significant proportion of fishing activity, itself the linchpin of the island's economy. If drift-netting for albacore were to cease, apart from temporary measures to help avert an immediate crisis, a comprehensive plan would have to be worked out for exploring all the alternative forms of employment and, once the solutions had been selected, for providing the requisite funding.' In its Proposal for a Council Decision on a specific measure to encourage diversification out of certain fishing activities and amending Council Decision 97/292/EC of 28 April 1997 (OJ 1998 C 314, p. 18) the Commission also emphasised that 'a specific number of fishing vessels flying the Spanish, French, Irish, Italian and United Kingdom flags are affected by the ban on fishing with drift-nets.'

39 Consequently, the applicants consider that their situation is characterised by a series of specific features as required by the case-law (*Extramet* and *Codorniu*, cited above, and Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615) since they represent all the tuna fishing-vessel owners on Ile-d'Yeu authorised to use drift-nets for catching albacore and a substantial part of their income (between 30% and 50% of their turnover) is derived from that activity.

40 As to the argument that they are not directly affected by the contested regulation during the transitional period, the applicants reply that the ban on using drift-nets to fish for certain species in the North Atlantic will be directly applicable as from 1 January 2002 without any implementing measure on the part of the Member

States being needed. Besides, a regulation may be challenged as from its entry into force even if the prohibition which it imposes is to apply as from a future date.

41 Finally, the applicants submit that in assessing the admissibility of their action regard must be had to the absence of any possibility of challenging the validity of the contested regulation by way of a reference to the Court for a preliminary ruling. First, the ban on drift-nets will be directly applicable as from the year 2002 with the result that no implementing measure on the part of the Member States will be needed. Secondly, the fact that a scheme of temporary authorisations is put in place by the contested regulation during the transitional period is of no effect in their case since such a system already existed in France prior to adoption of the regulation and they were all in possession of such an authorisation.

42 The French Republic supports the applicants' arguments. It adds that the present case may be compared with the judgment in *Weddel*, cited above, in which the Court held that the regulation at issue was to be regarded as a bundle of individual decisions. The annual renewal by the competent French authorities of special fishing permits issued to vessels fishing for albacore in the North Atlantic can benefit only a closed class of operators clearly identifiable by the Commission. Moreover, in issuing those permits the French authorities are merely implementing Community rules under the aegis of the Commission.

43 The applicants' situation is also analogous to that of the applicants in *Apesco*, cited above, even if, unlike in that case, the list of vessels authorised to carry on a given fishing activity is in the present case communicated to, and not drawn up by, the Commission. None the less, the national authorities have only limited room for manœuvre in drawing up the annual list in view of the quotas introduced under the Community fisheries policy.

44 The lists are forwarded each year to the Commission so as to implement inspection procedures for fishing vessels and to enable the Commission to identify the fishing units concerned by the ban on drift-nets. The vessels registered on Ile-d'Yeu have been inspected at least once a year since 1995, either by national inspectors or by Community inspectors. Since the special situation of Ile-d'Yeu was known to the Commission and mentioned in its communication of 8 April 1994, the Council knowingly altered the legal situation of that closed class of clearly identifiable operators.

45 Moreover, the applicants are individually concerned, inasmuch as the regulation affects them more seriously than any other operator in the sector in question, owing to the preponderance of albacore fishing within their overall fishing activities. In that regard the French Republic requests the Court to make an on-the-spot inspection, in accordance with Article 65 of its Rules of Procedure.

46 Finally, the French Republic maintains that to hold the present action to be inadmissible would be to deprive the applicants of their right of access to the courts under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, regard being had to the lack of effective legal remedies to challenge the contested regulation. In fact, since it produces its effects only after a certain period and requires no implementing measure by the national authorities, there is scarcely any possibility of a court referring a question to the Court for a preliminary ruling on validity.

47 The municipality of Ile-d'Yeu supports the arguments of the applicants and of the French Republic, stressing that to declare the present action inadmissible could be construed as a denial of justice.

48 At the hearing it also stated that the abandonment after a certain period of drift-nets for catching albacore will compel the applicants to use other clearly less

profitable equipment such as rods, which will be all the more damaging to them since the other species which they fish for, namely sole and hake, are subject to quotas. As regards the effect of the regulation on their activity the ITA members also consider themselves to be particularly affected, inasmuch as more than 70% of their turnover comes from the drift-netting of tuna. Ireland maintains that the serious economic impact of the regulation on the activities of individuals leading, as in the present case, to a reduction of more than one third in their turnover is such as to differentiate them sufficiently for their action challenging the regulation to be admissible. In reply to those arguments, the Kingdom of Spain submitted that, like the thousand or so Spanish operators fishing for albacore by rod, the applicants will be able to pursue their activity just as profitably, all the more so since they will benefit from the reconversion aid decided on by the Council.

Findings of the Court

49 Under the fourth paragraph of Article 173 of the Treaty the admissibility of an action for the annulment of a regulation brought by a natural or legal person is subject to the requirement that the contested regulation is in fact a decision of direct and individual concern to that person. According to settled case-law the test for distinguishing between a regulation and a decision is whether the measure is of general application or not. A measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in the abstract (order in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 33; *Weber*, cited above, paragraph 55, and order in Case T-114/96 *Biscuiterie-Confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraph 26).

50 The Court notes in the present case that the prohibition laid down in the contested regulation on the keeping on board or use of drift-nets for the capture of the species set out therein after 1 January 2002 applies without distinction to

any vessel which is flying the flag of a Member State and is currently using drift-nets in the fishing areas specified, or is likely to do so.

51 Contrary to the French Republic's submissions, the contested regulation cannot be regarded as a bundle of individual decisions of which each operator of a fishing vessel established on Ile-d'Yeu is an addressee by virtue of being a member of a closed class of traders.

52 In that connection it should be noted that, under Article 11a(3) of Regulation No 894/97, inserted by the contested regulation, any fishing vessel may, until 31 December 2001, still keep on board or use drift-nets intended for the capture of one of the species mentioned in the contested regulation, provided that it has been authorised to do so by the competent authority of the Member State of the flag which it flies. Although in each Member State the maximum number of vessels which may obtain such authorisation may not exceed 60% of vessels having used drift-nets between 1995 and 1997, the issue of an authorisation is not subject to the condition of having carried on that activity since 1995 and, *a fortiori*, is not necessarily reserved to those vessels alone. Moreover, it follows from Article 11a(4) of Regulation No 894/97, inserted by the contested regulation, that authorisations issued by the Member States to fishing vessels using drift-nets are only for one year and for one or several specified species.

53 Under those circumstances it is possible that owners of vessels other than the applicants, who are established in France or in other Member States and who, on entry into force of the contested regulation, had not engaged in fishing for albacore with drift-nets in the fishery sectors referred to, may not only contemplate doing so during one of the fishing seasons prior to the year 2002, and thus be affected by the contested regulation (order in *Area Cova*, cited above, paragraph 29), but may also in fact be authorised to do so by their competent national authority. Inasmuch as the lists of vessels authorised in each Member State to use drift-nets for the capture of albacore may therefore change each year

until that fishing method is banned on 1 January 2002, the contested regulation cannot be regarded as applying definitively and absolutely only to those owners who were already carrying on that form of fishing in the sectors concerned prior to its entry into force or, therefore, as being addressed to a closed class of traders to which the applicants might belong.

54 That conclusion is not altered by the fact that since 1995 the applicants have each year obtained from the competent French authority a special fishing permit under Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits (OJ 1994 L 171, p. 7) authorising them to fish for albacore using drift-nets in the maritime waters of the North-East Atlantic. In fact, as is apparent from the file, the deliberations of that authority expressly indicate that those special fishing permits are issued in France each year not only to operators so requesting who obtained a permit the previous year, provided always that their vessel caught a minimum quantity of tunny, but also to applicants for a permit remaining on a waiting list the previous year, as well as to new applicants. It is also clear from the file that the number and identity of the vessels authorised in France to fish for albacore with drift-nets has varied each year since 1995. Accordingly, even if regard is had only to the situation of tuna-fishing vessel owners of the French fleet, the applicants could not be deemed to belong to a closed class of traders.

55 The case-law relied on by the French Republic in support of the argument that the contested regulation should be regarded as a bundle of individual decisions addressed to the applicants is not in point either. In fact the judgment in *Weddel* to which it refers concerned a situation in which the contested Commission regulation determined the percentage within the limits of which the competent bodies of the Member States would satisfy requests for importation lodged by traders during a given period, with the result that it affected only the specific number of traders making such requests during that period. Conversely, in the present case it follows from the foregoing considerations that the contested regulation applies in the same way to all vessels which are currently or are likely

to be engaged in the fishing activities defined by it and not only to operators who, prior to adoption of the contested regulation, may have obtained authorisations to engage in those activities.

56 It follows that the contested act is of general scope and constitutes a regulation within the meaning of Article 189 of the EC Treaty.

57 None the less, the Court has stated that in certain circumstances a provision in a measure of general scope may be of individual concern to certain traders (*Extramet*, cited above, paragraph 13, and *Codorniu*, cited above, paragraph 19). That will be the case if the provision at issue affects natural or legal persons by reason of certain attributes which are peculiar to them or by reason of a circumstance which differentiates them from all other persons so that they are singled out in the same way as an addressee of a decision (*Codorniu*, paragraph 20).

58 It should be noted that the ban imposed by the contested regulation as from 1 January 2002 on the keeping on board or use on a vessel of drift-nets intended for the capture of species listed in the regulation applies to any vessel flying the flag of a Member State which is currently, or is likely to be, engaged in that activity in the fishing zones defined by it.

59 It follows that the contested regulation is of concern to the applicants only in their objective capacity as operators of vessels flying the flag of a Member State who are likely to engage in fishing for albacore in the zones set out therein in the same way as any other operator active in that sphere.

60 That finding is not invalidated by the fact that the applicants are all established on Ile-d'Yeu and, if they may be regarded as a unit, constitute the largest fleet of vessels flying the French flag authorised each year since 1995 to fish for albacore in the North-East Atlantic area. A circumstance of that kind is not sufficient to differentiate the applicants from any other operator in the light of the contested regulation, which deals generally with all fishing vessels established in France, and also in the other Member States, likely to engage, within certain Community waters or beyond them, in the fishing of albacore or of any other species listed in Annex VIII to Regulation No 894/97, as inserted by the contested regulation (see to that effect *Buralux*, cited above, paragraph 29).

61 The case-law relied on in this connection by the applicants is not relevant. First of all, it refers (*Piraiki-Patraiki*, cited above) to the situation in which an existing provision requires the author of the contested regulation to take account of the special situation of certain operators; but there are no such circumstances in the present case. In particular, neither the applicants nor the interveners have claimed that the contested regulation is of individual concern to operators of fishing vessels established in Ile-d'Yeu on the ground that the Council is under an obligation to have regard to their specific situation as opposed to that of any other person concerned by the measure.

62 As regards the judgment in *Apesco*, moreover, it should be noted that the facts to which that judgment relate are clearly distinguishable from the facts in this case. Unlike here, that judgment concerned a measure whereby the Commission approved, in the context of the transitional provisions in respect of fisheries contained in the Act of Accession of Spain and Portugal to the European Economic Community of 12 June 1985 (OJ 1985 L 302, p. 9), a list of 150 Spanish vessels chosen from a specified number of vessels listed in an annex to the Act of Accession, authorised to carry on fishing activities in the waters of the former Community of Ten during a given period. However, again no such circumstances apply in this case. Apart from the fact that the contested regulation adopted by the Council does not concern traders in only one Member State, it

should be noted that it applies in the same way to all vessels which are currently, or are likely to be, engaged in the drift-net fishing activities defined therein and not solely to traders in a position to have their names entered, prior to adoption of the contested regulation, on a list of vessels authorised in that respect by the Member State of the flag which they fly (see, to that effect, Case C-213/91 *Abertal and Others* v *Commission* [1993] ECR I-3177, paragraph 22).

63 As to the argument that the Council was aware of the special situation of the applicants when it adopted the contested regulation, it is important to emphasise that, although the Member States forward to the Commission each year a list of the fishing vessels authorised to use drift-nets intended for the capture of species such as albacore, the Council did not have when it adopted the contested regulation specific information on the vessels covered in each Member State by such an authorisation for the 1998 fishing season (see, to that effect, Case T-168/95 *Eridania and Others* v *Council* [1999] ECR II-2245, paragraph 48) or, *a fortiori*, information as to the vessels capable of being so authorised for one of the fishing seasons prior to 1 January 2002. That finding is not affected by the fact that, in its communication of 8 April 1994, the Commission mentioned the number of vessels established on Ile-d'Yeu which in 1993 fished for albacore with drift-nets, not least since that number has changed over the ensuing years.

64 Moreover, as the Court has held in connection with an action for the annulment of Regulation No 345/92 banning drift-nets exceeding 2.5 kilometres in length, the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (order in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573, paragraph 13; see also *Abertal*, paragraph 23, and the order in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37).

65 As has already been emphasised, the contested regulation is of concern to the applicants only in their objective capacity as albacore fishermen using a certain fishing technique in a specific area in the same way as any other operator in the same situation. Furthermore, there is no concrete indication in the contested regulation that the measures in question were adopted specifically taking account of the applicants' situation (*Abertal*, paragraph 23). Similarly, it cannot be concluded that the contested regulation is of individual concern to the applicants by virtue of the fact that in a proposal for a Council decision adopted in a legal framework differing from that governing the adoption of the contested regulation, the Commission referred to the existence of a specific number of fishing vessels flying the Spanish, Irish, French or British flag affected by the ban on fishing with drift-nets.

66 As to the arguments going to the serious economic impact which the contested regulation has on the applicants' business, the fact that a legislative measure may have specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all the other operators concerned where that measure is applied on the basis of an objectively determined situation (orders in *Sveriges Betodlares and Henrikson*, paragraph 37, and Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207, paragraph 22).

67 It follows from all those considerations that Regulation No 1239/98 cannot be deemed to be of individual concern to the applicants. Since they do not satisfy one of the conditions of admissibility laid down in the fourth paragraph of Article 173 of the Treaty, there is no need to examine the Council's argument that the contested regulation is not of direct concern to them during the transitional period expiring on 31 December 2001.

68 Finally, as to the argument concerning the lack of a legal remedy at national level and the argument that such remedies are in any event ineffective, such circumstances, even if they are established, cannot warrant modifying by way of judicial interpretation the system of legal remedies and procedures laid down

in the Treaty. In no event do they enable an action for annulment brought by a natural or legal person to be declared admissible where it does not satisfy the conditions laid down in the fourth paragraph of Article 173 of the Treaty (orders in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 26, and *CNPAAP*, paragraph 38).

69 In those circumstances, neither the applicants nor the French Republic, which incidentally has not brought an action for the annulment of Regulation No 1239/98 under the second paragraph of Article 173 of the Treaty, may legitimately plead the lack of other remedies for the purpose of assessing the validity of the contested regulation.

70 It follows that the action must be dismissed as inadmissible.

The requests for measures of inquiry

71 In their pleadings the French Republic and the municipality of Ile-d'Yeu (interveners) request the Court to consider making an on-the-spot inspection.

72 Even if those requests, which were not submitted by the applicants, are admissible, they must in any event be rejected. Inasmuch as they are measures of inquiry within the meaning of Article 65 et seq. of the Rules of Procedure of the

Court of First Instance, it is for the Court of First Instance to appraise the usefulness of such measures for the purpose of resolving the dispute (see, most recently, Case T-140/97 *Hautem* v *BEI* [1999] ECR-SC I-A-167 and II-897, paragraph 92). However, in the present case they are neither relevant nor necessary for the purpose of ruling on the admissibility of the present case. It is therefore not appropriate for recourse to be had to them.

73 Accordingly, the requests by the French Republic and by the municipality of Ile-d'Yeu for measures of inquiry must be rejected.

Costs

74 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the applicants have been unsuccessful and the Council sought an order for costs against the applicants, they must be ordered to pay their own costs as well as those incurred by the Council.

75 Under Article 87(4) of the Rules of Procedure, the French Republic, the Kingdom of Spain, Ireland, the Commission, the municipality of Ile-d'Yeu and the members of the ITA, which all intervened in the proceedings, are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

hereby:

1. Dismisses the action as inadmissible;

2. Orders the applicants to pay their own costs as well as those incurred by the Council;

3. Orders the interveners to bear their own costs.

Vesterdorf Lenaerts Potocki

Meij Vilaras

Delivered in open court in Luxembourg on 22 February 2000.

H. Jung
Registrar

B. Vesterdorf
President