management of fishery resources based on the division in the form of quotas allocated to the Member States of the catch volume available to the Community.

A Member State may not escape the obligation imposed on it by Article 10(2) of Regulation No 2057/82 provisionally to prohibit fishing by vessels flying its flag or registered in its territory as from the date on which the catches subject to quota are deemed to have exhausted the national quota by invoking practical difficulties which prevented it from foreseeing the imminent exhaustion of the quotas. The control measures laid down in Regulation No 2057/82, particular Articles 6 and 9, which provide for the verification and recording of landings, if properly observed and enforced, should provide the national authorities with enough information to enable them to anticipate the exhaustion of the quotas and act accordingly. Moreover, if in its view those measures are inadequate, it is open to a Member State, under Article 14 of Regulation No 2057/82, to adopt additional measures going beyond the minimum requirements laid down in that regulation.

2. A general provision can be applied independently only in situations for which no more specific rules are laid down by Community law. It follows that, where a provision of a general nature has been implemented by a specific rule and the Court has found that a Member State has failed to fulfil that specific obligation, it is no longer necessary to consider whether that State has also infringed the general provision on which that obligation is based.

REPORT FOR THE HEARING
in Case C-244/89 *

I — Legislative background and pre-litigation procedure

1. Articles 2, 3, 4 and 11 of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal 1983 L 24, p. 1) permit the Council to limit fishing for each species or group of species of fish, in particular by limiting catches. The volume of catches available to the Community is divided annually among the Member States in the form of quotas.

* Language of the case: French.

2. In implementation of the Agreement on reciprocal fishing rights concluded in 1986 between the Community and Norway, Council Regulation (EEC) No 3730/85 of 20 December 1985 allocating certain catch quotas between Member States for vessels fishing in the Norwegian economic zone and the fishery zone around Jan Mayen (Official Journal L 361, p. 66), whose period of validity was extended to 31 December 1986 by Council Regulation (EEC) No 114/86 of 20 January 1986 (Official Journal L 17, p. 4), provided that, for 1986, catches by vessels flying the flag of a Member State in waters falling within the Norwegian economic zone north of 62°00 N and within the fishery zone around Jan Mayen were to be limited to the quota set out in Annex I. The Annex fixed the quota for France at 65 tonnes for 'other species (as by-catches)'.

3. In implementation of the arrangement on reciprocal fishing rights for 1986 between the Community and the Faeroe Islands, concluded pursuant to the procedure laid down by the Fisheries Agreement between the EEC and the Government of Denmark and the Home Government of the Faroe Islands, contained in the Annex to Council Regulation (EEC) No 2211/80 of 27 June 1980 (Official Journal L 226, p. 11), Council Regulation (EEC) No 3732/85 of 20 December 1985 allocating catches between the Member States for vessels fishing in Faeroese waters (Official Journal L 361, p. 76), provided that, for 1986, catches by vessels flying the flag of a Member State in the waters falling within the fisheries jurisdiction of the Faeroe Islands were to be limited to the quotas set out in the Annex. The Annex fixed France's quota for redfish at 440 tonnes.

4. Pursuant to Article 5(2) of Regulation No 170/83,

'Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them'.

5. Those detailed rules were laid down in particular by Council Regulation No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States (Official Journal 1982 L 220, p. 1), as amended by Council Regulation No 1729/83 of 20 June 1983 (Official Journal 1983 L 169, p. 14). Article 10(1) of Regulation No 2057/82 provides that:

'All catches of a stock or group of stocks subject to quota made by fishing vessels flying the flag of a Member State shall be charged against the quota applicable to that Member State for the stock or group of stocks in question, irrespective of the place of landing'.

Pursuant to Article 10(2) of that regulation,

'Each Member State shall determine the date from which the catches of a stock or group of stocks subject to quotas made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that stock or group of stocks. As from that date, it shall provisionally prohibit fishing for that stock or group of stocks by such vessels as well as

the retention on board, the transshipment and the landing of fish taken after that date and shall decide on a date up to which transshipment and landings or final notifications of catches are permitted. The Commission shall forthwith be notified of this measure and shall then inform the other Member States'.

In order to fulfil those obligations, the Member States have at their disposal *inter alia* the monitoring and recording procedures for catches provided for in Articles 3 to 9 of Regulation No 2057/82, reference being made thereto in Article 2 of Regulations Nos 3730/85 and 3732/85.

6. It is apparent from the annual table of French landings, which the French Republic communicated to the Commission on 29 January 1987 and is appended to the reply, that the catch quotas allocated to France for 1986 were exhausted in September 1986 in the case of other species in Norwegian waters and in May 1986 in the case of redfish in the waters of the Faroe Islands.

By telex message of 12 May 1986, which is appended to the application, the French authorities informed the Commission that the French quotas for redfish in Faeroese waters had been exhausted and requested that it proceed to prohibit fishing for that species in that sector as from midnight on 12 May.

Following an exchange of quotas between the French authorities and the United Kingdom under Article 5(1) of Regulation No 170/83, which was notified to the Commission by telex message of 2 June 1986, annexed to the reply, France's quota for redfish in Faeroese waters was raised to 510 tonnes.

That increased quota was practically exhausted at the end of September 1986 (506 tonnes) and was exceeded in November 1986; no catches were made in October.

For 1986, the total catches of redfish in the waters of the Faeroe Islands declared by France were 617 tonnes, which was 107 tonnes over the limit. France's total catches of other species in Norwegian waters amounted to 105 tonnes in 1986, which was 40 tonnes over the limit.

7. By Regulation (EEC) No 1601/86 (Official Journal L 140, p. 22), which entered into force on 27 May 1986, the Commission, acting on information transmitted to it by the French authorities by telex message of 12 May 1986 and relying on Article 10(3) of Regulation No 2057/82, prohibited any further fishing for redfish by vessels flying the French flag in the waters of the Faroe Islands.

By Regulation No 3465/86 (Official Journal L 319, p. 29), which entered into force on 14 November 1986, the Commission, acting on the basis of information transmitted to it by the French authorities and relying on Article 10(3) of Regulation No 2057/82, prohibited further fishing for other species by vessels flying the French flag in Norwegian waters north of 62° N.

8. The Commission inferred from the breaches of quota that the French Republic had not complied with the relevant provisions of Regulations Nos 2057/82, 170/83, 3730/85 and 3732/85.

Consequently, by letter of 28 September 1987, the Commission formally requested the Government of the French Republic, pursuant to Article 169 of the EEC Treaty, to submit its observations on the alleged infringement and asked to be informed of the criminal or administrative proceedings taken against the masters of the vessels concerned.

9. In its reply of 14 December 1987, the Government of the French Republic stated that the overfishing of redfish in Faeroese waters and of other species in Norwegian waters, although considerable in percentage terms, was not great in terms of tonnage and that the infringements were essentially attributable to difficulties in obtaining information rapidly as to the progress of catches by fishermen operating in those waters.

10. On 26 October 1988, the Commission issued, under the first paragraph of Article 169 of the EEC Treaty, a reasoned opinion to the effect that, as regards the quotas allocated to France for 1986 for redfish in the waters of the Faeroe Islands and for other species in Norwegian waters, the French Republic had failed to fulfil its obligations under the relevant provisions of Regulation No 170/83 (Article 5(2)) and of Regulation No 2057 (Articles 1, 6 to 9 and 10(1) and (2)), in conjunction with Article 1 of Regulations Nos 3730/85 and 3732/85. Pursuant to the second paragraph of Article 169, the Commission called on the French Republic to take the measures necessary to comply with the opinion within a period of two months.

In its reasoned opinion, the Commission found, as regards the overfishing of redfish in Faeroese waters, that the French quota, although increased by an exchange of quotas that took place after the cessation of fishing decided on by the Commission on 27 May 1986, had been exceeded in November 1986 and, as regards the overfishing of other species in Norwegian waters, that fishing had also been prohibited by the Commission as from 14 November 1986 on the basis of the catch figures notified by the French authorities, which indicated that the quotas had already been exceeded by 14 tonnes in September 1986, and that in neither case had the French Republic ordered provisional suspension of fishing.

The Commission added that the French Government had not given it any details of the criminal or administrative proceedings brought against the masters of the vessels concerned and observed that the reason for that failure was doubtless that, for both the quotas concerned, the French authorities had not taken in due time the measures necessary to enforce the prohibition of fishing.

11. In its answer of 2 February 1989, the French Government stated that information about catches took a long time to obtain because of the remote location of the fishing grounds concerned. However, its authorities attempted to overcome the management difficulties arising from the delays by making transfers of quotas and also by constantly endeavouring to improve the way

in which the progressive exhaustion of the quotas was monitored. Finally, as far as criminal or administrative proceedings were concerned, in addition to the difficulties resulting from the redrafting of the rules on fisheries undertaken by the French authorities, the long delays in gathering all the facts raised problems of evidence which made such proceedings difficult.

II — Written procedure and forms of order sought by the parties

1. The Commission's application was received at the Court Registry on 2 August 1989.

2. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The Commission was called on to give a written answer a question and did so within the period appointed.

3. The *Commission*, the applicant, claims that the Court should:

(i) declare, in accordance with the second paragraph of Article 169 of the EEC Treaty, that by failing to ensure observance of the quotas allocated to it for the year 1986 for catches of other species in Norwegian waters and redfish in Faeroese waters, the French Republic has failed to fulfil its obligations under Article 5(2) of Regulation No 170/83 and Article 10(2) of Regulation No 2057/82, read in conjunction with Article 1 of Regulations Nos 3730/85 and 3732/85;

(ii) order the French Republic to pay the costs.

4. The *French Republic*, the defendant, contends that the Court should:

dismiss the Commission's action and order the Commission to pay the costs.

III — Pleas in law and arguments of the parties

1. (a) The *Commission* states that, despite the fact that the catch quotas allocated to France for 1986 were exhausted in respect of other species in Norwegian waters in September 1986 and in respect of redfish in Faeroese waters in May 1986 on the first occasion and, following an exchange of quotas in June, in November 1986 on a second occasion, the French authorities failed to take the measures necessary to impose a provisional prohibition on fishing by their fishermen in the zones concerned.

With respect to redfish, the Commission also states that the French authorities, which had informed the Community officials of the exhaustion of the initial quota in May 1986, without however suspending fishing of that species themselves, failed to take, in October, any measure to prevent further infringement of the quota, which had been increased following an exchange of quotas notified to the Commission in June 1986.

Article 10(2) of Regulation No 2057/82 requires each Member State to prevent any

quota from being exceeded by determining in advance the foreseeable date on which it will be exhausted, at which time its vessels should be provisionally prohibited from fishing.

The Commission infers from the fact that quotas were exceeded that the French Republic's failure to fulfil the obligation laid down in that article is self-evident. Moreover, the French Government does not deny the infringement but seeks to justify it by mentioning difficulties encountered in obtaining information on catches promptly because of the remoteness of the fishing grounds in question and its attempt to overcome those difficulties by exchanging quotas.

In the Commission's view, that argument is unacceptable.

Exchanges of quotas cannot compensate for the inadequacy of the national authorities' system for the compilation of information on catches.

Moreover, the Member States have means at their disposal to take action in due time in order to prevent quotas from being exceeded.

For example, Article 8 of Regulation No 2057/82 provides that information on catches is to be submitted to the State whose flag the vessel is flying not later than 15 days after the catch where the transshipment or landing takes place more than 15 days after the catch, and in practice such information would be transmitted by radio.

Moreover, pursuant to Annex IV, points 4.2.1 to 4.2.3, of Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish (Official Journal L 276, p. 1), the masters of fishing vessels must, when landing catches in the State whose flag they are flying, forward to the authorities of that State the original logbook and a landing declaration no later than 48 hours after landing is completed, and the same time-limit applies in the case of landing in a different Member State or in a non-member country. In order to ensure compliance with that obligation, Article 1(2) of Regulation No 2057/82 requires every Member State to take penal or administrative action against the skippers of fishing vessels where inspections by the national authorities show that they have not complied with the relevant regulations, which relate, *inter alia*, to the minimum frequency with which information on catches is to be submitted.

The Commission adds that, pursuant to Article 14 of Regulation No 2057/82, the Member States are always at liberty to adopt national inspection measures going beyond the minimum requirements laid down by that regulation, provided that they conform with the Community legislation and fishing policy.

Finally, the Commission observes that the Court has consistently held that a Member State may not plead difficulties encountered in implementing Community rules to justify a failure to observe them. Thus, the Court recently held that it is the responsibility of the Member States, which are entrusted with the implementation of Community regulations for the purposes of the common

organization of the markets in fishery products, to overcome any difficulties involved in carrying out inspections by taking the appropriate measures (judgment in Case 262/87 *Netherlands* v *Commission* [1989] ECR 225, paragraph 15) and that the responsibility to suspend fishing in due time, in order to ensure that quotas are not exceeded, attaches primarily to each Member State (ibid., paragraph 17).

(b) In its reply, the Commission refutes the arguments put forward by the French Republic in its defence.

As regards the argument concerning the remoteness of the fishing grounds to which the present proceedings relate, the Commission points out that Regulation No 2057/82 provides for the Community information facilities available to the Member States to ensure compliance with quotas and enables the reliability of the information entered in the logbook of vessels and forwarded to the national authorities to be ensured by means of various control measures, and where appropriate legal proceedings and suitable penalties.

More generally, the Member States' obligation — described in Article 5(2) of Regulation No 170/83 — to determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them requires them to take all necessary measures to ensure compliance with the quota fixed, if necessary adjusting such measures to the type of fishing concerned and, in order to take account of the remoteness of the fishing grounds, by requiring sufficiently frequent forwarding of information to ensure that the quota is not exhausted.

In reply to the French Government's arguments according to which account must be taken of the uncertainties associated with delimitation of the Faeroese waters and the absence of Community harmonization of the conversion factor for catches in terms of live weight, the Commission draws attention to the fact that the French Government did not raise those arguments in the pre-litigation phase.

As regards the alleged lack of a clear delimitation between Faeroese and United Kingdom waters, the Commission finds it difficult to see how that factor can have any impact on determination of the final level of catches or on the speed at which quotas are used up at any given time, particularly since the French authorities were in a position to establish in due time the exhaustion of the quota for redfish in Faroese waters, which was notified to the Commission by telex message of 12 May 1986, and then to exchange quotas for that species with the United Kingdom authorities.

As regards the conversion factor to be applied to the cleaned fish which is landed in order to calculate tonnages in terms of live weight for the purpose of comparison with the quotas allocated, the Commission contends that it is incumbent on each Member State, pursuant to Article 5(2) of Regulation No 170/83, to take all necessary measures to make up for the lack of Community harmonization of that factor, and that no differences existing as between the Member States can justify failure to observe the quotas allocated to them. In any

event, no problems in that regard can account for the breaches of quota at issue in the present case, which exceed 60% in the case of the quota laid down for other species in Norwegian waters and 20% of the aggregate quota, following the exchange of quotas, for redfish in Faeroese waters.

The Commission also refutes the French Government's argument that, for the two stocks in question, the Community quotas were never fully used between 1986 and 1988. That argument, which is based on an interpretation *ex post facto* of the events at issue, would render meaningless the obligation to impose a provisional prohibition of fishing which is incumbent on the Member States by virtue of Article 10(2) of Regulation No 2057/82. Since a Member State cannot foresee the extent to which the other Member States will exploit stocks of the same species, the conservation of fishery resources requires the provisional prohibition of fishing to be decided upon by the Member State exclusively on the basis of a comparison of the quota attributed to it and the objective data for catches of which its authorities are kept regularly informed. Moreover, as France did in the case of redfish fishing in Faeroese waters, the Member States can increase their own quotas by quota exchanges with other Member States subject to the same Community quota, thus benefiting from the latter's lower level of use.

Nor is the Commission persuaded by the French Republic's argument to the effect that the introduction of a statistical system for the compilation and processing of data contained in logbooks, which became obligatory, according to the French Government, as from 1 April 1986, called for an adjustment period by reason of its complexity. In that regard, the Commission points out, on the one hand, that Regulation No 2807/83 made the Community form of logbook compulsory as from 1 April 1985 (and not 1986 as wrongly contended by the defendant) and, on the other, that the Member States' obligation to forward to the national authorities promptly the information entered in the logbooks and the other control measures, in particular the recording of catches declared, transshipped and landed, laid down by Regulation No 2057/82, had been in force since 1 January 1983. Accordingly, the Commission states that France was deemed, as of that date, to have at its disposal the means to ensure that its fishermen complied with the quotas allocated to it.

The Commission adds that the French authorities' failure to act is particularly clear in the present case since, by informing the Commission on 12 May 1986 of the exhaustion of the initial quota for redfish in Faeroese waters — without, moreover, provisionally halting fishing, as they were required to do by Article 10(2) of Regulation No 2057/82 — they showed that they were in a position to avoid such breaches of quota, regardless of the very limited volume of the quotas and the seasonal character of the fishing concerned, factors which the French Government thus wrongly relied on in its defence.

In response to the defendant government's argument that it is not appropriate to rely — as the Commission did in 1986 for certain stocks (cod, saithe, mackerel and hake) in the ICES zones — on the extent of over-fishing, expressed as a percentage of

the total quota, in order to decide, by reference to that percentage, whether or not it is appropriate to commence proceedings for infringement of the Treaty, but that an assessment should be made in terms of absolute value, by comparing the contested quota infringements with, on the one hand, the levels of infringements which are regarded as insignificant and are therefore ignored by the Commission and, on the other, with the catch capacities of the fishing vessels in Faeroese and Norwegian waters, the Commission maintains that a comparison of the infringements in absolute terms, namely in terms of tonnage, is meaningless: the quotas attributed to France vary considerably in quantity, depending on the stocks and the fishing zones concerned. On the other hand, a percentage comparison discloses, in the case of the stocks for which the Commission considered that the infringement was not necessarily indicative of mismanagement of the quota and did not therefore justify proceedings, over-fishing of less than 1% of each of the quotas allocated to France. On the other hand, the breaches of quota on which the Commission decided to act in the present case — 21% for redfish and 60% for other species — reflect, by virtue of their size, the failure of the French authorities to take in due time the measures necessary to stop fishing for those two stocks. Moreover, in its replies to the letter calling for observations and to the reasoned opinion, the French Government clearly admitted the infringement of obligations of which the Commission accused it, without questioning the extent thereof by comparison with the other infringements to which the Commission referred in its letter calling for observations, but in respect of which it decided not to take proceedings.

As regards the catch capacity in excess of 10 tonnes per day of the fishing vessels operating in Norwegian and Faeroese waters, the Commission considers that, far from rendering the two alleged quota infringements less significant, it constituted a reason for the French authorities to be correspondingly more vigilant. In view of the limited volume of the two quotas in question, they should have made certain, by all appropriate means, that they knew at what speed the quotas were being used up, having regard in particular to the catch capacities of the French vessels operating in those waters.

Finally, the Commission rejects the French Government's argument that it is necessary, in assessing the contested quota infringements and the delay between the date of such infringements and the date on which fishing was closed, to take account not only of the time needed for the transmission of catch data by the skippers of fishing vessels to the national authorities but also the time taken by those authorities to forward the monthly catch declarations to the Commission.

The effect of such an argument would be that a Member State could escape the responsibilities imposed on it by the Community rules concerning fishing quota management. In the first place, the French Government is not entitled, in order to justify the breaches of quota at issue, to invoke delays in the forwarding by the skippers of fishing vessels of data concerning catches made, since the Member States may, if necessary, go further than the minimum monitoring requirements laid down by Regulation No 2057/82 and require more frequent forwarding of information, by radio for example. Similarly, the defendant government may not rely in its defence on the period of 15 days envisaged in Article 9(2) of Regulation No 2057/82, since that period in no way discharges Member States from the obligation to stop fishing well before that formality is

completed. If that were not the case, the result would be that it would be possible, on the basis of the time-limit for forwarding catch data to the Commission, to close fishing at the earliest in the middle of the month following that in which the catches made might have already exceeded the quota allocated, a situation which might have come about in the first days of the month. Such an interpretation conflicts directly with Article 10(2) of the same regulation, which requires each Member State provisionally to prohibit fishing as from the date on which catches are deemed to have exhausted the quota, which means that such a decision is to be made in due time, in other words as soon as exhaustion of the quota is foreseeable and therefore, if appropriate, even before the quota is wholly exhausted.

In the case of catches of redfish in Faroese waters, the breach of the quota, as shown by the monthly statistics notified by the French authorities, was foreseeable from the catch figures for September 1986, since the cumulative total catch for the first nine months of that year had already reached 506 tonnes as against a quota which amounted, after the exchange in June, to 510 tonnes, that figure remaining unchanged in October in the absence of catches. In view of the large fishing capacity of the vessels operating in those waters, the breach could therefore have been brought about by the first catches in October or, in any event, those at the beginning of November, and certainly not, as wrongly contended by the French Government, at the end of that month, when the quota had already been far exceeded. The French Government has no grounds for contending that, having regard to those data, it was not in a position to decide to close fishing until January 1987. That statement is all the more surprising in view of the fact that the French authorities were able, as early as 12 May 1986, to determine that the initial quota of 440 tonnes had been exhausted, even though, at the end of April, the cumulative total catch was only 373 tonnes. That clearly shows that the French authorities were able very rapidly to obtain information as to the rate at which quotas were being used and confirms that the suspension of fishing of that stock should have been decided on by France in October or, at the latest, the beginning of November 1986.

As regards the breach of the quota for the other species in Norwegian waters, the Commission states that it occurred in September 1986. In this case too, there is no justification for the French authorities' failure to take any decision during October. As regards definitive suspension of fishing, the Commission took a decision in that regard on 14 November and, contrary to the defendant government's contention, did so exclusively on the basis of the data notified by the French authorities. The decision was thus taken when the quota had already been exceeded by far, a fact which indicates the initial responsibility incumbent on the national authorities to prohibit fishing provisionally.

2 (a) (i) The *Government of the French Republic* reiterates, in the first place, that the waters to which the present proceedings relate are remote and that the information on catches made there takes a long time to obtain. This gives rise not only to difficulties in managing the quota system but also to uncertainty regarding the validity of the catch declarations, since the time taken to obtain information detracts from its reliability.

(ii) In addition to those geographical considerations, account must also be taken of two factors already referred to in Case C-62/89, in which judgment was given on 20 March 1990 ([1990] ECR I-925), namely uncertainties concerning delimitation of the Faeroese waters and the lack of a harmonized Community conversion factor for calculating the tonnage of catches in terms of live weight of landed cleaned fish.

(iii) The defendant government states that, in any event, French over-fishing in Faeroese and Norwegian waters has not undermined the protection of fishery resources or observance of the agreements concluded by the Community and the Faeroese and Norwegian authorities or, lastly, the catch possibilities of other Member States since, both in the case of redfish in Faeroese waters and by-catches in Norwegian waters, the Community's overall quota for those zones was not exhausted for 1986, or 1987 or 1988.

(iv) In reply to the Commission's claim that the French authorities took no measure to stop fishing for the species concerned, the French Government states that the introduction of a statistical system for the particulars entered in the logbooks made compulsory as from 1 April 1986 involves the processing of data from 5 000 vessels, representing more than 200 000 records to be dealt with each year in order to monitor 98 different fish stocks. That process requires the mobilization of a considerable amount of equipment and staff resources and, as in the case of any complex system, requires an adjustment period. Moreover, the Commission itself implicitly acknowledged that the French system displayed a degree of efficiency since only two out of the 98 stocks are the subject of proceedings. Moreover, it should not be forgotten that the seasonal nature of fishing sometimes does not allow conservation measures to be taken in due time, and that applies particularly where the quotas allocated are as low as those for the stocks at issue in the present case.

(v) The French Government adds that the Commission, which decided not to bring infringement proceedings against it owing to the limited nature of the infringements of the quotas allocated to it for 1986 for cod, saithe, mackerel and hake in the ICES zones, took as its criterion for assessing quota management the extent of overfishing expressed as a percentage of the total quota. However, the quota system should be assessed in absolute terms. Accordingly, the figures for overfishing put forward by the Commission for redfish and other species should be compared both with the level of the other infringements alleged but not acted upon by the Commission and with the catch capacities, exceeding 10 tonnes per day, of the fishing vessels operating in Faeroese and Norwegian waters.

(vi) Moreover, for the two quotas at issue, the period between the date of the alleged infringement and that of the closing of fishing should be seen in relation to the obligations deriving from the Community regulations which require the skippers of vessels to forward particulars from the logbook to the national authorities at least

fortnightly and, in all cases, within 48 hours after landing.

The French Government also states that, if it is considered that the vessels caught the quantities in excess of quota at the end of November in the case of redfish and at the end of September in the case of other species, those quantities should have appeared on the monthly declarations of December for redfish and October for other species. In fact, pursuant to Article 9(2) of Regulation No 2057/82, the national authorities have a period of 15 days to provide the Commission with the monthly declaration of catches. However, in view of the number of operations involved, that time-limit is, in practice, very short. It is therefore entirely reasonable to consider that the French authorities were unable, on the one hand, to notice the breach until the end of that 15-day period and, on the other, to take any regulatory measure, which would itself give rise to fresh time-limits. Moreover, after being informed by the French authorities on 12 May 1986 that the quota for redfish had been exhausted in Faeroese waters, the Commission itself had taken until 27 May to decide to prohibit fishing. Accordingly, the fact that the Commission halted fishing of additional species in Norwegian waters on 14 November supports the view that it had statistical information at its disposal other than that which was furnished by the French authorities and which it did not make available to the latter. As regards the definitive prohibition of fishing for redfish in Faeroese water, for which the quota was reached at the end of November 1986, the French authorities' decision to stop fishing could not therefore be adopted, under the scheme described above, before January 1987, at which time it would have become devoid of purpose.

(b) As regards, more particularly, the alleged breach of the quota for redfish in Faeroese waters, the French Government states in the first place that, on 12 May 1986, its authorities alerted the Commission to the trend in the catch declarations for that stock.

Furthermore, the defendant government contends that the breach of the quota in question has not been reliably established owing to objections concerning the borderline between the waters under United Kingdom jurisdiction and those under that of the Faeroe Islands. According to the French Government, that argument is particularly relevant in view of the limited extent of the alleged breach of quota.

(c) As regards the breach of quota for by-catches in Norwegian waters, the French Government, whilst stressing that it has no intention of challenging the case-law according to which Member States are not entitled to plead difficulties encountered in applying Community rules to justify a failure to comply with them, reiterates the view that Member States may, in certain circumstances, be unable to foresee certain developments and as a result be prevented from taking action in due time.

Besides the fact that the zone in question is particularly remote from the vessels' home ports and that it takes about 15 days to obtain information, a period which cannot be shortened, the quota of 65 tonnes allocated to France for 1986 was very low, whereas the catch capacities of the fishing vessels operating in Norwegian waters were in excess of 10 tonnes per day.

As a result, such a quota is likely to be exhausted even before the Member State receives the first information concerning catches.

Without denying that it is responsible for taking the necessary measures to avoid breaches of quotas, the Government of the French Republic states that, in those circumstances, on the one hand, to close fishing even before it has started is not a solution, unless all rights to use the quota are waived, and, on the other, that any other measure would make compliance with the quota uncertain, particularly since catches of other stocks are inherently difficult to predict.

IV — Reply by the Commission to a question put by the Court

The Court called on the Commission to reply in writing to the following question:

'In addition to the complaint concerning belated prohibition of fishing, the Commission charges the French Republic with failing to fulfil its obligations concerning the use of quotas under Article 5(2) of Regulation No 170/83. The Commission is requested to indicate the specific factors which show that the French Republic did not comply with the obligations imposed on it by that provision.'

The Commission replied that the obligation imposed on the Member States by Article 5(2) of Regulation No 170/83 to determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them was of general scope in so far as it covered all arrangements necessary to ensure that quotas are used in accordance with the relevant Community rules.

Thus, the Member States must, in the first place, share rights of access to their quotas fairly and without discrimination among the vessels flying their flag, so as to ensure optimum exploitation of the fishery resources allocated. It is then incumbent on them to lay down detailed management rules so that it is possible to ensure and verify that the vessels authorized to fish against the various quotas actually comply with the quantitative limits imposed, and with such specific conditions as the Council may have laid down for the use of such quotas. Finally, Article 5(2) of Regulation No 170/83 imposes an obligation on the Member States to verify compliance with quota management measures and to enforce such compliance by appropriate penalties.

That general obligation to verify compliance with quotas was clarified in several respects by Regulation No 2057/82; however, it does not affect the right and, where appropriate, the duty of each Member State to adopt on its own initiative such stricter control measures as might be necessary to take account of particular aspects of the activities of vessels flying their flag, as explicitly indicated in Article 14 of that regulation.

Among the minimum requirements to be met by the Member States' control measures

concerning vessels flying their flag is the keeping of a logbook (Article 3 of Regulation No 2057/82), the charging of all catches against the quotas of the Member State of the flag flown by the vessel in question (Article 10(1) of that regulation) and the provisional prohibition of fishing when catches are deemed to have exhausted the applicable quota (Article 10(2)). Moreover, Regulation No 2807/83 lays down certain rules concerning, in particular, notification by skippers to the authorities of the Member State whose flag is flown by their vessels of the catches landed. However, it is clear that the minimum requirements laid down by the Community legislature are not always sufficient to enable the Member State concerned to ensure compliance with its quotas. Thus, in the case of fishing in distant waters, the Member State concerned might be required to compel its skippers to notify their catches each day by radio, and the same measure might prove necessary concerning catches landed by such vessels directly in Member States other than those whose flag they fly.

The Commission infers that every case of non-compliance with a given quota, for which responsibility attaches to the Member State concerned, constitutes in the first place an infringement of Article 5(2) of Regulation No 170/83, in conjunction with the provision which attributed that quota to the Member State concerned. Where the infringement derives from the fact that the Member State concerned did not prohibit fishing in due time, there is also an infringement of Article 10(2) of Regulation No 2057/82. On the other hand, where it appears that the belated prohibition of fishing was attributable to the failure of the Member State concerned to take the necessary measures additional to those provided for by Regulation No 2057/82 in order to obtain in due time the necessary information concerning catches by its vessels, only Article 5(2) of Regulation No 170/83 is infringed.

Thus, the general obligation to manage quotas, imposed on the Member States by Article 5(2) of Regulation No 170/83, is given effect by a management obligation at Community level, imposed by Article 10(2) of Regulation No 2057/82, namely precautionary suspension of fishing of a stock which is being exhausted. Accordingly, an infringement of that specific management obligation must be regarded as also constituting, *ipso facto*, a breach of the general obligation imposed on the Member States by Article 5(2) of Regulation No 170/83.

In the present case, the French Republic, by not suspending fishing for the stocks in question in due time, failed to give effect to the specific rule for the management of quotas laid down by Article 10(2) of Regulation No 2057/82, in order to monitor compliance therewith, and accordingly also infringed the general management obligation imposed on it by Article 5(2) of Regulation No 170/83. In those circumstances, although the present infringement proceedings are based mainly on an infringement of Article 10(2) of Regulation No 2057/82, the Commission felt it necessary to maintain the reference to the wider obligation laid down by Article 5(2) of Regulation No 170/83, of which the obligation to suspend fishing forms an integral part, being a specific management rule imposed by a Community provision.

Finally, the Commission also felt it necessary to maintain the reference to Article 5(2) of Regulation No 170/83 because of the reply given by the French Republic to the reasoned opinion. The French authorities sought to justify the two cases of overfishing acted upon by the Commission by reference to management difficulties which they claim to have encountered.

However, the infringement of Article 5(2) of Regulation No 170/83 derived not only from the close correlation between that provision and the similar but more specific obligation imposed by Article 10(2) of Regulation No 2057/82 but also from specific inadequacies in quota management. The latter, expressly admitted by the Member State concerned, probably account for the absence of any French decision to suspend fishing against the two quotas in question.

The Commission concluded therefrom that the infringement of Article 5(2) of Regulation No 170/83 was not brought to an end by the finding that Article 10(2) of Regulation No 2057/82 had been infringed. It may in fact constitute a separate ground for complaint where, because of inadequacies in the management of quotas which manifested themselves before the obligation to suspend fishing arose, it appears that the Member State in question did not adopt appropriate detailed rules for the utilization of its own quotas in order to enable it to prevent them from being exceeded.

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