JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

19 October 2011 *

In Case T-139/06,

**French Republic,** represented initially by E. Belliard, G. de Bergues and S. Gasri, and subsequently by E. Belliard, G. de Bergues and B. Cabouat, acting as Agents,

applicant,

v

**European Commission,** represented by T. van Rijn, K. Banks and F. Clotuche-Duvieusart, acting as Agents,

defendant,

* Language of the case: French.

supported by

**United Kingdom of Great Britain and Northern Ireland,** represented by S. Behzadi-Spencer, T. Harris and C. Murrell, acting as Agents,

intervener,

APPLICATION for annulment of Commission Decision C(2006) 659 final of 1 March 2006 seeking payment of penalty payments due in compliance with the judgment of the Court of Justice in Case C-304/02 *Commission* v *France* [2005] ECR I-6263,

THE GENERAL COURT (Sixth Chamber),

composed of E. Moavero Milanesi, President, N. Wahl and S. Soldevila Fragoso (Rapporteur), Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 12 May 2011,

gives the following

## Judgment

### The facts

1 By its judgment of 11 June 1991 in Case C-64/88 *Commission* v *France* [1991] ECR I-2727, 'the judgment of 11 June 1991'), the Court held as follows:

'[B]y failing to carry out between 1984 and 1987 controls ensuring compliance with technical Community measures for the conservation of fishery resources, laid down by Council Regulation (EEC) No 171/83 of 25 January 1983 and by Regulation (EEC) No 3094/86 of 7 October 1986, the French Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States and under Article 1 of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities.'

2 By application lodged at the Registry of the Court of Justice on 27 August 2002, the Commission of the European Communities brought an action under Article 228 EC for a declaration that the French Republic had not complied with the obligations imposed by the judgment of 11 June 1991 and for an order for payment of a penalty payment.

3 By judgment of 12 July 2005 (Case C-304/02 *Commission* v *France* [2005] ECR I-6263, 'the judgment of 12 July 2005'), the Court held as follows:

'1. By failing to carry out controls of fishing activities in accordance with the requirements laid down by the Community provisions, and by failing to ensure that action is taken in respect of infringements of the rules governing fishing activities in accordance with the requirements laid down by the Community provisions, the French Republic has not implemented all the necessary measures to comply with the judgment of 11 June 1991 … and has accordingly failed to fulfil its obligations under Article 228 EC.

2. [The Court o]rders the French Republic to pay to the Commission of the European Communities, into the account "European Community own resources", a penalty payment of EUR 57 761 250 for each period of six months from delivery of the present judgment at the end of which the judgment [of 11 June 1991] has not yet been fully complied with;

3. [The Court o]rders the French Republic to pay to the Commission of the European Communities, into the "European Community own resources" account, a lump sum of EUR 20 000 000.

4. [The Court o]rders the French Republic to pay the costs.'

4 By note JUR JM 1128/2005 of 29 July 2005, the French authorities informed the Commission of the measures which they had taken since 2003 on the reinforcement of controls concerning the common fisheries policy as regards, in particular, the statutory size of catches, by informing it of the plans for the control of fisheries for the years 2004 and 2005.

5 The Commission responded to the French authorities by note FISH/D/3/AC/mrh D(2005) 10572 of 28 September 2005, in which it indicated that the information provided did not allow it to establish full compliance with the judgment of 12 July 2005. In that same note, the Commission also asked the French authorities to send to it, as soon as possible, certain information which it considered necessary to assess the extent of compliance with that judgment.

6 The French authorities replied to that request by note JUR SJ 1808/05 of 15 December 2005.

7 The Commission was of the opinion that those replies were incomplete and therefore, by note FISH/D/3/AC/mhr D(2005) of 23 December 2005, specified to the French authorities the documents which they were required to send to it.

8 The French authorities replied to the Commission by note JUR SJ 42/06 of 16 January 2006.

9 Moreover, the Commission carried out five inspections from October to December 2005, three of which were unannounced. The reports of those inspections were forwarded to the French authorities on 21 and 23 December 2005.

10 The French authorities submitted their comments on those reports by note JUR SJ 43/06 of 16 January 2006.

11 By note JUR SJ 212/06 of 15 February 2006, the French authorities updated the data sent to the Commission by their earlier notes.

12 In addition, two meetings were held between the Commission's services and the French authorities, on 18 July and 12 October 2005.

13 Finally, the Commission undertook two new inspections between 7 and 9 February 2006.

14 The inspection reports were sent to the French authorities on 21 February 2006, which reacted to those reports by note AGRAP-RP/162/06, dated 7 March 2006, but sent to the Commission by email on 24 February 2006.

15 The Commission considered that the French Republic had not fully complied with the judgment of 12 July 2005, and, consequently, on 2 March 2006 notified it of Decision C(2006) 659 final, of 1 March 2006, seeking payment of the amount of EUR 57 761 250 in compliance with that judgment ('the contested decision').

**Procedure and forms of order sought**

16 By application lodged at the Registry of the General Court on 12 May 2006, the French Republic brought the present action.

17 By document lodged at the Court Registry on 5 September 2006, the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in the proceedings in support of the form of order sought by the Commission. By order of 12 October 2006, the President of the First Chamber of the General Court granted leave to

intervene. The United Kingdom lodged its statement in intervention and the other parties lodged their observations on the statement within the prescribed periods.

18 After a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present case was, consequently, assigned.

19 Upon hearing the report of the Judge-Rapporteur, the General Court decided to open the oral procedure and, by way of a measure of organisation of procedure as provided for in Article 64 of the Rules of Procedure, requested the parties to answer, in writing, before the hearing, a question concerning the effect of the judgment of the General Court in Case T-33/09 *Portugal* v *Commission* [2011] ECR II-1429 on the present dispute. With the exception of the United Kingdom which did not participate, the parties presented oral arguments and their answers to the oral questions put by the Court at the hearing of 12 May 2011.

20 The French Republic claims that the General Court should:

— principally, annul the contested decision;

— in the alternative, reduce the penalty payment;

— order the Commission to pay the costs or, if the amount of the penalty payment is reduced by the General Court, order each party to bear its own costs.

21 The Commission contends that the General Court should:

— dismiss the application of the French Republic;

— order the French Republic to pay the costs.

22 The United Kingdom, the intervener in support of the Commission, contends that the General Court should dismiss the application.

**Law**

23 The French Republic raises four pleas in law, alleging lack of competence of the Commission to recover the penalty payment, infringement of the rights of the defence, incorrect assessment of the measures which it took to comply with the judgments of the Court, and that the Commission should have declared a lower penalty payment amount.

*The first plea in law, alleging lack of competence of the Commission*

24 In essence, the French Republic considers that the treaties do not grant the Commission competence to require payment of a penalty payment under Article 228 EC and that the only way to proceed is for the Commission to bring a new action for failure to fulfil obligations on the basis of Article 226 EC.

25 It should be noted at the outset that the EC Treaty does not lay down the detailed rules for the enforcement of the judgment that the Court delivers at the conclusion of the procedure under Article 228 EC, in particular where a penalty payment is decided on (*Portugal* v *Commission*, paragraph 61).

26 Although the procedures provided for under Articles 226 EC and 228 EC have the same purpose, that is to say, to ensure the effective application of EU law, the fact remains that they constitute two distinct procedures, each with its own subject-matter.

27 The procedure established under Article 226 EC is designed to obtain a declaration that the conduct of a Member State is in breach of EU law and to terminate that conduct (see Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 27, and Case C-456/05 *Commission* v *Germany* [2007] ECR I-10517, paragraph 25), while the procedure provided for under Article 228 EC has a much narrower ambit, being designed only to induce a defaulting Member State to comply with a judgment establishing a breach of obligations (judgment of 12 July 2005, paragraph 80).

28 It follows that, once the Court of Justice has held, by a judgment delivered on the basis of Article 226 EC, that a Member State has failed to fulfil its obligations, the continuation of negotiations between that Member State and the Commission is no longer designed to establish the existence of the infringement — which is precisely what the Court of Justice has found — but to determine whether the necessary conditions for the bringing of an action under Article 228 EC are met (judgment of 21 September 2010 in Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden* v *API and Commission*, not published in the ECR, paragraphs 118 to 120).

29 In the present case, by the judgment of 12 July 2005, the Court found a breach of Article 228 EC by the French Republic and ordered it to pay to the Commission, into the 'European Community own resources' account, a penalty payment of

EUR 57 761 250 for each period of six months from delivery of that judgment at the end of which the judgment of 11 June 1991 had not been fully complied with.

30 It is apparent from the operative part of the judgment of 12 July 2005 that the Court of Justice, in the context of the special judicial procedure provided for the enforcement of judgments under Article 228(2) EC, in other words a method of enforcement (judgment of 12 July 2005, paragraph 92), precisely established both the amount of the penalty payment and the administrative authority responsible for its recovery.

31 In compliance with the procedure laid down in the Treaty, following an action by the Commission based on Article 226 EC, the Court of Justice, by the judgment of 11 June 1991, found the French Republic guilty of a failure to fulfil its obligations. Following an action by the Commission based on Article 228 EC, the Court of Justice found a failure to comply with that first judgment and ordered the French Republic to pay a penalty payment and a lump sum in order to induce it to comply with the judgment of 11 June 1991 as soon as possible.

32 According to Articles 226 EC to 228 EC, the rights and duties of Member States may be determined and their conduct appraised only by a judgment of the Court of Justice (Case C-191/95 *Commission* v *Germany* [1998] ECR I-5449, paragraph 45; see, by analogy, Joined Cases 142/80 and 143/80 *Essevi and Salengo* [1981] ECR 1413, paragraphs 15 and 16). Since the Court of Justice clearly determined the French Republic's obligations in the judgment of 12 July 2005, it would be contrary to the spirit of the Treaty and the purpose of the process provided for under Article 228 EC to oblige the Commission to bring a new action for failure to fulfil obligations on the basis of Article 226 EC.

33 By the judgment of 12 July 2005, first, the lump sum which the French Republic was ordered to pay had become immediately payable, as it was imposed to penalise the

delay by the French authorities in fully complying with the judgment of 11 June 1991, and, second, payment of any penalty payment was subject to the six-monthly finding by the Commission of the absence of full compliance with that judgment. The judgment of 12 July 2005, in the context of Article 228 EC, gives the Commission power to make that finding autonomously, the French Republic being able to dispute the finding of its failure to comply by bringing an action for annulment before the General Court, as it has in the present case. In the context of this action, it is open to the French Republic to show that the Commission exceeded the limits of the authority granted by the Court of Justice and that specific measures were adopted, following each six-monthly finding, in order to ensure full compliance with the judgment of 11 June 1991 that found that the French Republic had failed to fulfil its obligations.

34 Furthermore, the provisions of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as specified in Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Regulation No 1605/2002 (OJ 2002 L 357, p. 1) provide a legal basis for the contested decision, as regards methods for collection of a penalty payment and a lump sum. As specified in the judgment of 12 July 2005, the French Republic is ordered to pay a penalty payment and a lump sum to the Commission, into the account 'European Community own resources'.

35 Article 274 EC provides that '[t]he Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279 EC'. Moreover, Article 60 of Regulation No 1605/2002 provides that the authorising officer is to be responsible for implementing revenue and, in particular, establishing entitlements to be recovered and issuing recovery orders. Finally, Article 78(1) of Regulation No 2342/2002 specifies that the establishment by the responsible authorising officer of an amount receivable shall constitute recognition of the right of the Communities in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.

36 In the present case, the authorising officer, namely the Commission, in accordance with Article 59(1) of Regulation No 1605/2002, verifies that the debt exists and, the conditions for payment of that debt being satisfied, requests the French Republic to pay it in compliance with the judgment of the Court of Justice.

37 Where a judgment of the Court of Justice, delivered pursuant to Article 228(2) EC, orders a Member State to pay a penalty payment to the Commission, into the account 'European Community own resources', and since, under Article 274 EC, the Commission implements the budget, the latter is responsible for recovering the amounts that would be due to the budget of the EU pursuant to the judgment, in accordance with the provisions of the regulations made under Article 279 EC (*Portugal* v *Commission*, paragraph 62).

38 It follows from the foregoing that the Commission has, in principle, competence to require payment of a penalty payment set by the Court of Justice and, consequently, that the plea in law alleging lack of competence of the Commission must be rejected.

39 However, the French Republic explained in its response to the question put by the General Court and at the hearing that, although the Commission had to be able to assess the measures adopted by the Member State to comply with the judgment of the Court of Justice, 'the Commission had to limit itself at most to monitoring a clear breach of the judgment of the Court of Justice'.

40 In that regard, it is apparent from paragraph 82 of the judgment in *Portugal* v *Commission* that the exercise of that power of appraisal by the Commission can prejudice neither the rights — and in particular the procedural rights — of the Member States, as they result from the procedure set out in Article 226 EC, nor the exclusive jurisdiction of the Court of Justice to rule on the compliance of national legislation with Community law. It is necessary, therefore, in the context in particular of the third plea

raised by the French Republic, alleging incorrect assessment of the measures taken, to review the observance by the Commission of the limits on its discretion set by the judgments of the Court of Justice.

*The second plea in law, alleging breach of the rights of the defence*

41 The French Republic complains that the Commission did not afford it the opportunity properly to make known its views, before the contested decision was adopted, on the truth and relevance of the facts, complaints and circumstances relied on by the Commission. It takes the view that, for it to be able properly to submit its observations, the Commission ought to have mentioned to it the criteria which it intended to use in order to assess whether it had fully complied with the judgment of 12 June 2005.

42 Although Article 228 EC does not specify the period for compliance with a judgment of the Court establishing that a Member State has failed to fulfil its obligations, it follows from settled case-law that the importance of immediate and uniform application of EU law means that the process of compliance must be initiated at once and completed as soon as possible (see Case C-121/07 *Commission* v *France* [2008] ECR I-9159, paragraph 21 and the case-law cited).

43 It is apparent from the spirit of the Treaty and the relationship between Articles 226 EC and 228 EC that a judgment of the Court of Justice finding a failure to fulfil obligations and a judgment subsequently finding lack of full compliance with the first judgment must be regarded as a legal framework enabling the Member State to

determine precisely the requisite measures to be implemented in order to comply with EU law.

44 Following the judgment of 12 July 2005, the French Republic ought to have presented the Commission with concrete results, from old and any new measures, responding to the complaints upheld by the Court of Justice and accordingly showing full compliance with the judgment of 11 June 1991. Although a constructive dialogue between a Member State and the Commission must always be sought in the context of sincere cooperation arising from Article 4(3) TEU, which applies to both the Member States and the EU institutions, a new finding of default pronounced by the Court of Justice requires that the Member State takes the initiative to comply with its obligations with regard to EU law and inform the Commission of them, having regard to its role as the institution responsible for supervising the proper implementation of that law by the Member States.

45 As regards the assessment of the proper implementation of the judgment of 11 June 1991, the assessment criteria used for that purpose were determined by the Court of Justice in the judgment of 12 July 2005. Moreover, they were clarified by the Commission during the meeting of 18 July 2005 and in its note of 28 September 2005, that is within a reasonable period of a little more than two months after the delivery of the judgment of 12 July 2005, accordingly giving the French authorities the opportunity to express their views on two occasions on the criteria adopted. In any event, the fact that the French authorities consider that they were unable to submit their comments on the relevance of those criteria does not affect the fact that they still had not fully complied with the judgment of 11 June 1991, in the light of the judgment of 12 July 2005, at the end of the first period of six months.

46 The first inspections took place in October 2005, three months after the judgment of 12 July 2005, and the reports relating to those inspections were communicated at the end of December, that is within a reasonable period of two months following on-the-spot checks. It should be pointed out that the requests for an extension made by the French Republic were granted by the Commission. In addition, it must be noted

that the contested decision was finally adopted on 1 March 2006, that is one and a half months after the end of the first period of six months, set by the Court of Justice as 12 January 2006, and following new on-the-spot inspections by the Commission, without the French Republic requesting a new extension.

47 In that regard it is important to note that, although the Commission is obliged to cooperate in good faith with the Member States in order to facilitate the implementation of EU law, it cannot be held against the Commission that, in the course of that dialogue, an initial period has expired at the end of which a Member State must pay a penalty payment for failure to fully comply with a judgment for failure to act.

48 Therefore, the plea in law alleging infringement of the rights of the defence must be rejected.

*The third plea in law, alleging incorrect assessment of the measures taken to comply with the judgments of the Court*

49 The French Republic is of the opinion that it fully complied with the judgment of 12 July 2005.

50 It should be noted at the outset that the Court of Justice, in the judgment of 12 July 2005, found that the French Republic had failed to fully comply with the judgment of 11 June 1991 concerning its infringement of its obligations under EU law. It is apparent from that finding that any measure referred to by the French Republic, whether that be before the Commission during the first six-monthly assessment or before the General Court in the context of the present proceedings, is only relevant in so far as it concerns the production of specific results with regard to the assessment of full

compliance with the judgment of 11 June 1991 and responds to the complaints upheld by the Court of Justice. In fact, on 12 July 2005, the Court of Justice found a continuation of the failure to fulfil obligations.

51 Moreover, it should be noted that an error of assessment by the Commission would be relevant only if the French Republic had shown that it had fully complied with the judgment of 11 June 1991. Compliance in part would have no effect on the penalty payment being due, the Court of Justice having expressly decided that, if the judgment of 11 June 1991 was not fully complied with six months after delivery of the judgment of 12 July 2005 and for each period of six months thereafter, the French Republic would have to pay a penalty payment of EUR 57 761 250. In fact, the French Republic was obliged to fully comply with the judgment of 11 June 1991 before 12 January 2006.

52 In addition, it is apparent from the case-law that, if the Commission has a serious and reasonable doubt with regard to the checks carried out by the national authorities, the Member State cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. It is for that State to adduce the most detailed and comprehensive evidence that its checks are accurate and, if appropriate, that the Commission's assertions are incorrect (see, by analogy, judgment of 27 October 2005 in Case C-387/03 *Greece* v *Commission*, not published in the ECR, paragraph 96 and the case-law cited). That is particularly true in the context of a procedure for the enforcement of a judgment of the Court of Justice for failure to fulfil obligations since it is for the Member State to show that it has put an end to that failure.

53 Indeed, in the course of enforcing a judgment of the Court of Justice imposing a penalty payment on a Member State, the Commission must be able to assess the measures adopted by the Member State to comply with the judgment of the Court of Justice in order, inter alia, to prevent the Member State which has failed to fulfil its

obligations from simply taking measures that, in reality, have the same content as those that were the subject of the judgment of the Court of Justice (*Portugal* v *Commission*, paragraph 81).

54 However, the exercise of that power of appraisal can prejudice neither the rights — and in particular the procedural rights — of the Member States, as they result from the procedure set out in Article 226 EC, nor the exclusive jurisdiction of the Court of Justice to rule on the compliance of national legislation with Community law (*Portugal* v *Commission*, paragraph 82).

55 Consequently, before recovering a fine, the Commission is required to verify if the complaints upheld by the Court of Justice in the context of a judgment based on Article 228 EC still remain on the date set by the Court of Justice.

56 In the judgment of 11 June 1991, the Court upheld five complaints against the French Republic:

— inadequate controls in relation to the minimum mesh size for nets (paragraphs 12 to 15 of the judgment);

— inadequate controls in relation to the attachment to nets of devices prohibited by the Community rules (paragraphs 16 and 17 of the judgment);

— failure to fulfil control obligations in relation to by-catches (paragraphs 18 and 19 of the judgment);

— failure to fulfil control obligations so far as concerns compliance with the technical measures of conservation prohibiting the sale of undersized fish (paragraphs 20 to 23 of the judgment);

— failure to fulfil the obligation to take action in respect of infringements (paragraph 24 of the judgment).

57 In the judgment of 12 July 2005, the Court of Justice confirmed the complaints establishing the persistence of a breach of Community rules by the French Republic:

— inadequate controls (paragraphs 44 to 62);

— inadequacy of action taken (paragraphs 69 to 74).

58 As the Court points out in paragraphs 32 to 38 of the judgment of 12 July 2005, Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1) provides specific indications as to the content of the measures which must be taken by the Member States and which must seek to ensure that fishery operations are conducted properly with the objective of both preventing any breaches and punishing such breaches. That objective means that the measures implemented must be effective, proportionate and a deterrent.

59 The French Republic cannot therefore reasonably claim not to have specific knowledge of the breach and the measures which are necessary in order to ensure compliance with Community rules as well as full compliance with the judgments of the Court of Justice.

60 It should be considered next whether the Commission, in the contested decision, adduced sufficient proof of the continued existence of the two complaints upheld by the Court of Justice in the judgment of 12 July 2005.

Inadequate controls

61 It is relevant that, at paragraph 2 of the contested decision, the situations and conduct which had led the Court of Justice to find the failure of the French Republic to fulfil its obligations arising from EU law in the judgments of 11 June 1991 and of 12 July 2005 continued until the end of 2005 and the start of 2006. In so doing, the Commission did not establish a new breach, but a lack of significant change in the findings made by the Court of Justice in the two earlier judgments. In order to fully comply with the judgment of 11 June 1991, it was necessary for the French Republic to alter the conduct which led to the failure to comply with EU law. Therefore, the Commission cannot be criticised for making those findings in the contested decision. On the contrary, those findings are such as to clarify, if necessary, for the French authorities what was the conduct which led to the perpetuation of the breach found from 11 June 1991 by the Court of Justice, and allow the French authorities to define the requisite measures in order to best remedy that conduct in the future.

62 This is all the more so as the Court of Justice, in the judgment of 12 July 2005, had emphasised the seriousness of the infringement, and, in particular, the effects which the failure to comply had on the common fisheries policy. The public interest consists in rational and responsible exploitation of aquatic resources on a sustainable basis, in appropriate economic and social conditions. In this context, the protection of juvenile fish is decisive for re-establishing stocks. Failure to comply with the technical measures of conservation prescribed by the common policy, in particular the requirements regarding the minimum size of fish, therefore constitutes a serious threat to the maintenance of certain species and certain fishing grounds and jeopardises pursuit of

the fundamental objective of the common fisheries policy (judgment of 12 July 2005, paragraph 105).

63 The French Republic disputes, in essence, the quality of the inspections carried out by the Commission, without however adducing evidence that those inspections had influenced the practice of the competent French services, contributing to the failure to fully comply with the judgment of 11 June 1991. Furthermore, the Commission's finding of the lack of efficient integration of checks on the different levels of the fishing sector, in particular by a systematic cross-check of data, cannot be contradicted solely by the French Republic's statement that a cross-check of data was a 'regular practice of the service' with reference to a circular of 30 May 2005.

64 Indeed, the finding, during an inspection carried out at the market in Rungis in December 2005 of a lack of checks of the transport documents, which would have enabled the origin of various batches to be known and checks to be planned as a result, and, during the inspections at Guilvinec, Loctudy, Saint-Gilles-Croix-de-Vie and La Cotinière in February 2006, of a lack of systematic cross-validation by the national inspectors of logbooks, landing declarations and sales notes are not directly challenged by the French Republic. Yet those findings suffice in themselves to show the lack of full compliance with the judgment of 11 June 1991 and render the penalty payment imposed by the Court of Justice payable, in accordance with the contested decision.

65 As the Court indicated at paragraphs 51 and 52 of the judgment of 12 July 2005, this evidence enables it to be found that, in the absence of effective action by the competent national authorities, a practice of offering undersized fish for sale persisted which was sufficiently constant and widespread to prejudice seriously, by reason of its cumulative effect, the objectives of the Community system for conservation and management of fishery resources.

66 Moreover, the similarity and recurrence of the situations recorded in all the reports enable it to be held that those instances can only have resulted from structural inadequacy of the measures implemented by the French authorities and, consequently, from a failure on their part to fulfil the obligation imposed on them by the Community rules to carry out controls that are effective, proportionate and a deterrent (see judgment of 12 July 2005, paragraph 52 and the case-law cited).

67 The findings of the Commission's inspectors during the inspections of December 2005 and February 2006 concerning the failure to master elementary inspection techniques, the lack of sufficient knowledge of Community rules and the French inspectors' lack of knowledge of techniques to measure fish and of biological differences to enable distinguishing the species subject to different rules, cannot be called into question by the training measures adopted by the French Republic before the on-the-spot inspections were carried out.

68 Although it is probable that such measures will contribute to full compliance with the judgment of 11 June 1991 in the future, it must be stated that six months after the judgment of 12 July 2005 the Commission found that the quality of inspections was insufficient, without the French Republic adducing evidence to the contrary in this regard. The failure to check the logbooks in particular makes it impossible to compare the quantities of undersized fish declared in the landing declaration with those referred to in the sales note and to prevent the detection of potential breaches.

69 The difficulties encountered by the Commission to determine the resources available each day assigned to inspection activities, as well as to verify adherence to the 1 % inspection rate on landing, are not called into question by the arguments of the French Republic. The question is not that of determining a theoretical figure of resources which might be available to carry out an inspection visit, but that of the actual number of qualified inspectors carrying out systematic on-the-spot inspections for the period between 12 July 2005 and the date of adoption of the contested decision.

Those resources cannot be determined precisely and the 1 % inspection rate on landing, the crucial moment with regard to determining the quantity of undersized fish caught, remains insufficient for the purposes of full compliance with the judgment of 11 June 1991.

70 Lastly, and in general terms, where the Commission has adduced sufficient evidence to show that the breach of obligations has persisted, it is for the Member State concerned to challenge in substance and in detail the information produced and its consequences (see judgment of 12 July 2005, paragraph 56 and the case-law cited).

71 Even if the different information provided by the French Republic can be regarded as showing an improvement in the situation, the fact remains that the efforts made cannot excuse the failures that occurred (see judgment of 12 July 2005, paragraph 56 and the case-law cited).

The inadequacy of action taken

72 The Commission alleges that the French Republic did not systematically correct the breaches and did not produce a detailed account of the inspections carried out. Accordingly, concerning undersized hake, no penalty was imposed following official records drawn up for the period from 1 January 2004 to 12 January 2006 and this fact was not disputed by the French authorities.

73 The French Republic sets out in its documents the reasons, linked to its internal organisation, which prevented it from providing certain information requested by the Commission, namely, for example, the action taken following the legal proceedings brought before 2004, or that led to it providing partial information. Those explanations tend to confirm the incomplete nature of the information provided, and, more generally, the inability of the French authorities to show the efficiency of the national system of prosecutions and sanctions concerning infringements of the rules on undersized fish.

74 However, as the Court indicated at paragraph 70 of the judgment of 12 July 2005, since it has been established that infringements which the national authorities could have found to exist were not recorded and since official reports were not drawn up in respect of offenders, it is clear that those authorities failed to fulfil the obligation to take action which the Community rules impose on them (see, to this effect, judgment of 11 June 1991, paragraph 24).

75 Accordingly, in light of the detailed evidence submitted by the Commission, the information adduced by the French authorities is not sufficiently substantial to demonstrate that the measures which they have implemented so far as concerns the taking of action in respect of infringements of the fisheries rules display the efficacy, proportionality and deterrence necessary to meet its obligation to ensure the effectiveness of the Community system for conservation and management of fishery resources (see, to this effect, judgment of 12 July 2005, paragraphs 37, 38 and 73).

76 It follows from the foregoing that, first, the French Republic has not shown that the contested decision was vitiated by an error of assessment and, second, that the Commission did not exceed the limits of its competence since, in the contested decision, it merely showed the persistence of the two complaints upheld by the Court of Justice in its judgment of 12 July 2005. The third plea in law must therefore be rejected.

*The fourth plea in law, alleging the Commission's obligation to set the penalty payment at a lower level*

77 The French Republic considers that the Commission ought to have taken account of the efforts made in order to fully comply with the judgment of 12 July 2005, and, consequently, reduce the penalty payment set by the Court of Justice.

78 However, in the judgment of 12 July 2005, the Court of Justice decided to apply a set penalty payment which is payable after each six-month period from the announcement of the judgment at the end of which the judgment of 11 June 1991 had not been fully complied with. It must be inferred that partial compliance with that judgment does not give the right to a reduction of the amount of the penalty payment.

79 Indeed, the Court of Justice expressly applied a 'set penalty payment' and not a 'gradually decreasing penalty payment' as it did in the judgment in Case C-278/01 *Commission* v *Spain* [2003] ECR I-14141, paragraphs 49 to 62. The Commission, being bound by the judgment of the Court, therefore had no jurisdiction to reduce the amount of that penalty payment.

80 Accordingly, despite some progress made by the French Republic in compliance with the judgment of 11 June 1991, it had still not fully complied with it on 1 March 2006. The penalty payment of EUR 57 761 250 was therefore payable in full.

81 Moreover, as regards the alternative plea of the General Court's potential unlimited jurisdiction to reduce the amount of the penalty payment itself, it must be noted that

any setting of a penalty payment and its amount as regards failure to implement a judgment for failure to fulfil obligations falls within the exclusive jurisdiction of the Court of Justice. It would therefore be contrary to the coherence of the Treaty if the General Court reduced it in the context of an action for annulment. Finally, Article 229 EC requires that that jurisdiction be explicit. That cannot be inferred either from the wording of Article 226 EC or from that of Article 228 EC.

82 If follows from the foregoing that the plea alleging the Commission's obligation to set the penalty payment at a lower level and, in the alternative, the General Court's jurisdiction to make that reduction itself, must be rejected.

83 Therefore, it follows that the action must be dismissed in its entirety.

**Costs**

84 Under Article 87(2) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under the first subparagraph of Article 87(4) of those same rules, Member States intervening in the proceedings are to bear their own costs.

85 Since the French Republic has been unsuccessful, it must be ordered to pay its own costs as well as those costs incurred by the Commission, in accordance with the forms of order sought by the Commission. The United Kingdom shall bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the French Republic to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Moavero Milanesi Wahl Soldevila Fragoso

Delivered in open court in Luxembourg on 19 October 2011.

[Signatures]