JUDGMENT OF THE COURT (Fifth Chamber)
25 October 2001 *

In Case C-120/99,

Italian Republic, represented by U. Leanza, acting as Agent, assisted by P.G. Ferri and D. Del Gaizo, avvocati dello Stato, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by M. Sims and I. Díez Parra, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

Kingdom of Spain, represented by R. Silva de Lapuerta, acting as Agent, with an address for service in Luxembourg,

* Language of the case: Italian.

by

French Republic, represented by J.-F. Dobelle, K. Rispal-Bellanger and C. Vasak, acting as Agents, with an address for service in Luxembourg,

and by

Commission of the European Communities, represented by T. van Rijn and F.P. Ruggeri Laderchi, acting as Agents, with an address for service in Luxembourg,

interveners,

APPLICATION for the annulment of Article 2 of Council Regulation (EC) No 49/1999 of 18 December 1998 fixing, for certain stocks of highly migratory fish, the total allowable catches for 1999, their distribution in quotas to Member States and certain conditions under which they may be fished (OJ 1999 L 13, p. 54) and of the table relating to bluefin tuna annexed to that regulation,

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 May 2001, at which the Italian Republic was represented by D. Del Gaizo, the Council by M. Sims and F. Ruggeri Laderchi, acting as Agent, the Kingdom of Spain by R. Silva de Lapuerta and the Commission by T. van Rijn,

after hearing the Opinion of the Advocate General at the sitting on 14 June 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 April 1999 the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the annulment of Article 2 of Council Regulation (EC) No 49/1999 of 18 December 1998 fixing, for certain stocks of highly migratory fish, the total allowable catches for 1999, their distribution in quotas to Member States and certain conditions under which they may be fished (OJ 1999 L 13, p. 54) and of the table relating to bluefin tuna annexed to that regulation.

2 By orders of the President of the Court of 14 September and 24 November 1999, the Commission of the European Communities, the Kingdom of Spain and the French Republic were granted leave to intervene in support of the Council of the European Union.

Legal background

International provisions

3 The main purpose of the International Convention for the Conservation of Atlantic Tunas, which was signed in Rio de Janeiro, Brazil, on 14 May 1966 and entered into force on 21 March 1969 (hereinafter 'the Convention'), is to optimise the conservation and management of tuna in the Atlantic Ocean and adjacent seas. That objective is to be achieved through close cooperation between the contracting parties in order to maintain the populations of tuna at levels which will permit the maximum sustainable catch for food and other purposes.

4 To that end, the contracting parties agreed to establish a commission, known as the International Commission for the Conservation of Atlantic Tunas ('ICCAT'), whose role is to oversee implementation of the objectives of the Convention. Under Article VIII(1)(a) thereof, ICCAT is empowered, *inter alia*, on the basis of scientific evidence to 'make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch'. Those recommendations are to be applied by the contracting parties under the conditions laid down in Article VIII(2) and (3) of the Convention.

5 Article VIII(2) of the Convention provides that in principle ICCAT recommendations are to take effect, for all contracting parties, 'six months after the date of the notification from the Commission', whereas paragraph 3 of the same provision specifies the conditions for the entry into force of such recommendations where objections have been lodged within a period of six months by one or more parties to the Convention.

6 Article IX(1) of the Convention provides:

'The Contracting Parties agree to take all action necessary to ensure the enforcement of this Convention. Each Contracting Party shall transmit to the Commission, biennially or at such other times as may be required by the Commission, a statement of the action taken by it for these purposes.'

7 By reason of the over-exploitation of stocks disclosed by a number of scientific investigations, ICCAT adopted, with effect from 1994, several recommendations intended to impose an upper limit on catches of bluefin tuna:

— Recommendation 94-11 for the management of bluefin tuna fishing in the Eastern Atlantic Ocean and Mediterranean Sea, which was adopted at the ninth special meeting of ICCAT held in Madrid, Spain, in November and December 1994 and entered into force on 2 October 1995, whose purpose is to limit catches of bluefin tuna in 1995 to the highest level achieved by each of the contracting parties in 1993 or 1994 and to take, as from 1996, the measures needed to reduce their catches by 25% from that catch level, such reduction to be accomplished by the end of 1998 (hereinafter 'Recommendation No 94-11'):

— The recommendation on additional management measures for bluefin tuna in the Eastern Atlantic, adopted at ICCAT's 14th regular meeting, held in Madrid in November 1995, which entered into force on 22 June 1996, and laid down specific catch quotas for France during the period 1996 to 1998 because of the exceptional levels of French catches landed in 1994 (hereinafter 'the 1995 Recommendation');

— Recommendation No 96-14 regarding compliance in the bluefin tuna and north Atlantic swordfish fisheries adopted at the 10th special meeting of ICCAT, held in San Sebastian, Spain, in November 1996, officially notified to the Contracting Parties on 3 February 1997 and in force as from 4 August 1997, which imposed in particular the rule that annual catch limits would be reduced in the subsequent management period, if during a given year (as from 1997) any contracting party exceeded its catch limit (hereinafter 'Recommendation No 96-14'). That reduction is 100% of the amount in excess of the catch limit and can be raised to 125% if a contracting party exceeds its catch limit in two consecutive management periods;

— Recommendation No 98-5 on the limitation of catches of bluefin tuna in the Eastern Atlantic and Mediterranean, adopted at the 11th special meeting of ICCAT held in Santiago de Compostela, Spain, in November 1998 and in force from 20 August 1999, which fixes a total allowable catch ('TAC') of bluefin tuna of 32 000 metric tonnes for 1999 and 29 500 metric tonnes for 2000, of which the European Community was allocated, for the same years, 20 165 metric tonnes and 18 590 metric tonnes respectively (the quota was calculated on the basis of unrevised figures for catches in 1993 and 1994, the higher figures for each year being used) (hereinafter 'Recommendation No 98-5'); and

— Supplemental Recommendation No 98-13 regarding compliance in the bluefin tuna and Atlantic swordfish fisheries, also adopted at the 11th special meeting of ICCAT and in force from 21 June 1999, which, in particular, provides for the subtraction from catch quotas for 1999 any quantities fished in 1997 in excess of the catch quota available for the latter year (hereinafter 'Recommendation No 98-13').

8 The Italian Republic acceded to the Convention on 6 August 1997. It had previously already been a member of an international organisation which pursued objectives similar to those of ICCAT: the General Fisheries Council for the Mediterranean ('GFCM'). In May 1995, that organisation adopted Resolution No 95/1, paragraph 3 of which was drafted in terms almost identical to those of Recommendation No 94-11.

9 Council Decision No 86/238/EEC of 9 June 1986 (OJ 1986 L 162, p. 33) approved accession by the Community to the Convention, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984, and accession took effect on 14 November 1997. Under Article XIV(6) of the Convention, as amended by that Protocol, the Community was subrogated on that date to the rights and obligations of the Member States which were already parties to the Convention. Consequently, it took the place of those Member States within ICCAT.

Community legislation

10 Article 8(4) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389,

p. 1), as amended by Council Regulation (EC) No 1181/98 of 4 June 1998 (OJ 1998 L 164, p. 1, hereinafter 'Regulation No 3760/92'), provides:

'The Council, acting by qualified majority on a proposal from the Commission:

(i) shall determine for each fishery or group of fisheries, on a case-by-case basis, the total allowable catch together with the conditions linked to these restrictions of catches and/or the total allowable fishing effort, where appropriate on a multiannual basis. They shall be based on the management objectives and strategies where they have been established in accordance with paragraph 3;

(ii) shall distribute the fishing opportunities between Member States in such a way as to assure each Member State relative stability of fishing activities for each of the stocks concerned; however, following a request from the Member States directly concerned, account may be taken of the development of mini-quotas and regular quota swaps since 1983, with due regard to the overall balance of shares;

(iii) shall, where the Community establishes new fishing opportunities in a fishery or group of fisheries not previously prosecuted under the common fisheries policy, decide on the method of allocation taking into account the interests of all Member States;

(iv) may also, on a case-by-case basis, determine the conditions for adjusting fishing availabilities from one year to the next;

(v) may, based on scientific advice, make any necessary interim adjustments to the management objectives and strategies;

(vi) shall establish the fishing opportunities to be allocated to third countries and the specific conditions under which catches must be made.'

11 The second and third paragraphs of Article 1 of Council Regulation (EC) No 65/98 of 19 December 1997 fixing, for certain stocks of highly migratory fish, the total allowable catches for 1998, their distribution in quotas to Member States and certain conditions under which they may be fished (OJ 1998 L 12, p. 145) provide:

'TACs, Community shares, quotas and specific fishing conditions are hereby fixed for 1998 as set out in the Annex.

The Commission will negotiate within ICCAT the revision of catch figures for Member States in order to allow for the later adjustment of such Member States' quotas of bluefin tuna. Once agreed within ICCAT, the Commission will promptly adapt such quotas in the present regulation.'

12 For 1998, the annex to Regulation No 65/98 provides as follows with regard to bluefin tuna:

— The Community has a total share of 4 452 tonnes in the Atlantic Ocean, east of longitude 45 degrees west, allocated to the Member States as follows:

Greece:	3 tonnes
Spain:	3 809 tonnes
France:	400 tonnes
Portugal:	180 tonnes
Other Member States (as by-catches):	60 tonnes

— The Community has a total share of 11 621 tonnes in the Mediterranean, allocated to the Member States as follows:

Greece:	272 tonnes
Spain:	2 033 tonnes
France:	4 850 tonnes
Italy:	4 145 tonnes
Portugal:	321 tonnes.

13 Article 2 of Regulation No 49/1999 provides:

'1. The percentages allocated to Member States from the share available to the Community of bluefin tuna stocks in the Eastern Atlantic and the Mediterranean shall be as follows:

— France:	33.89%
— Greece:	1.77%
— Italy:	26.75%
— Portugal:	3.23%
— Spain:	34.35%.

2. However, the TACs, Community shares, quotas and specific conditions for bluefin tuna and swordfish for 1999 shall be set out in the Annex hereto.'

14 As far as bluefin tuna is concerned, that annex draws no distinction between catches in the Atlantic Ocean, east of longitude 45° west, and catches in the Mediterranean. It allocates to the Community an available share of 16 136 tonnes (out of an overall TAC of 32 000 tonnes), distributed as follows amongst the Member States:

— Greece:	126 tonnes
— Spain:	5 555 tonnes
— France:	6 413 tonnes
— Italy:	3 463 tonnes
— Portugal:	519 tonnes
— Other Member States: (by way of by-catches):	60 tonnes.

Facts

15 The dispute giving rise to these proceedings was prompted by the implementation of ICCAT recommendations by the Community and the repercussions thereof for the allocation of bluefin tuna catch quotas among the Member States.

16 Following accession by the Community to the Convention, as amended by the Protocol signed in Paris on 10 July 1984, the Council adopted two regulations designed to transpose ICCAT recommendations into Community law: Regulation No 65/98, which gives effect to Recommendation No 94-11 and the recommendation of 1995, and Regulation No 49/1999, which gives effect to Recommendations Nos 96/14, 98/5 and 98/13.

17 By Regulation No 65/98, which is not at issue in these proceedings, the Council fixed TACs for bluefin tuna and swordfish for 1998 and allocated the share available to the Community among the Member States in accordance with Article 8(4)(ii) of Regulation No 3760/92.

18 Regulation No 49/1999 carries out, in essence, the same operation as Regulation No 65/98; however, its period of validity is not limited to one year. Article 2(1) of Regulation No 49/99 determines, in general terms, the percentages allocated to Member States from the share available to the Community of bluefin tuna stocks in the Eastern Atlantic and the Mediterranean, whereas paragraph 2 of that article lays down specific conditions for the allocation of that stock only for

1999. It is necessary to refer to the Annex to Regulation No 49/1999 to determine, in quantitative terms, the TAC for bluefin tuna for 1999 and the allocation to the Member States of the share available to the Community.

19 The percentages allocated by Article 2(1) of Regulation No 49/1999 were determined on the basis of the same method of apportionment as that used by ICCAT, so that the catch quotas were allocated on the basis of unrevised figures for catches taken by the Member States concerned in 1993 or 1994, the higher annual figure being adopted for each Member State.

20 As regards allocation between the Member States of the share of bluefin tuna available to the Community for 1999, it appears from paragraph 12 of the Council's defence that it was carried out as follows:

(a) the Council first deducted from the Community quota of 20 165 tonnes a quantity of 60 tonnes which was reserved for all the Member States, with the exception of those awarded a specific quota, in order to take account of by-catches in other fisheries;

(b) the Council then converted the Member States' percentage shares into absolute quantities and deducted from them, for the five Member States principally involved in bluefin tuna fishing, namely the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic and the Portuguese Republic, the quantities fished in 1997 by those States in excess of the maximum authorised catch limits (totalling 4 029 tonnes, of which 2 666 tonnes were accounted for by the Italian Republic alone);

(c) finally, the Council effected a set-off in favour of the Member States on which the quota reduction resulting from the application of those deductions had the greatest impact; thus, the Council decided to introduce a solidarity mechanism under which 850 tonnes of bluefin tuna were deducted from the quota allocated to three Member States, namely the Kingdom of Spain, the French Republic and the Portuguese Republic, for reallocation to the Hellenic Republic and the Italian Republic, the former receiving 100 tonnes and the latter 750 tonnes.

21 It is against Regulation No 49/1999 that the present action has been brought by the Italian Republic, which bases its claim for partial annulment of the regulation on the claim that it has been adversely affected both by the permanent allocation of percentages of the TAC for bluefin tuna in Article 2(1) and by the quantitative allocation for 1999 provided for in Article 2(2).

The pleas in law relied on by the Italian Republic in support of its claim for annulment of Article 2(1) of Regulation No 49/1999

22 The Italian Republic puts forward three pleas in support of its claim for the annulment of Article 2(1) of Regulation No 49/1999. It alleges (i) lack of a statement of reasons for that provision, (ii) infringement of, collectively, Article 43 of the EC Treaty (now, after amendment, Article 37 EC), the general principles concerning the hierarchy of norms and Article 8(4)(ii) of Regulation No 3760/92, and (iii) manifest inappropriateness of the criteria relied on for implementation of the principle of 'relative stability'.

The first plea

23 By its first plea, the Italian Republic maintains that the only statement of reasons for Article 2(1) of Regulation No 49/1999 is to be found in the fourth recital in the preamble to that regulation, according to which 'the percentage shares of the Member States in catches from the Eastern Atlantic and Mediterranean stocks for bluefin tuna should be set'. In its view, that statement is merely a semblance of reasoning since it is self-evident that the TAC, which is intended to be exploited by the Member States, must be divided into national quotas.

24 Referring to case-law according to which the need for and adequacy of a statement of reasons depend on the content of the provision concerned, the Italian Government maintains that a specific statement of reasons is necessary regarding detailed arrangements for the allocation of the TAC among Member States. Since no such statement of reasons was given in this case, the provision at issue, being vitiated by a formal defect, should be annulled.

25 The Council, supported on this point by all the interveners, rejects the view that no statement of reasons was given.

26 First, the fourth recital in the preamble to Regulation No 49/1999 constitutes only part of the statement of reasons for Article 2(1) thereof: the measure in its entirety must be considered in the context of the Community's wider international obligations regarding conservation and management of the living resources of the sea and, in particular in the light of the United Nations Convention on the Law of the Sea and the ICCAT recommendations, which are referred to in the first and second recitals respectively in the preamble to Regulation No 49/1999.

27 Second, it is clear from settled case-law of the Court of Justice and, in particular, in Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others (II)* [1995] ECR I-3799 and Case C-183/95 *Affish* [1997] ECR I-4315 that the statement of reasons prescribed by Article 190 of the EC Treaty (now Article 253 EC) does not require the Community authority from which the contested measure emanates to specify all the relevant elements of fact and law. It is sufficient for the contested measure to disclose clearly the 'essential objective' pursued by that authority, as it did in the present case.

28 In that connection, it must be borne in mind that, according to settled case-law, the statement of reasons required by Article 190 of the Treaty must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (see, in particular, Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237, paragraph 82, and Joined Cases C-15/98 and C-105/99 *Italy and Sardinia Lines* v *Commission* [2000] ECR I-8855, paragraph 65).

29 At the same time, the Court has clarified the scope of that obligation, stating that the requirement to state reasons must be evaluated according to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Italy and Sardinia Lines* v *Commission*, cited above, paragraph 65). That is *a fortiori* the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying the measure (see Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraph 50).

30 In this case, the Italian Republic has not shown that the Council failed to fulfil that requirement regarding the statement of reasons.

31 First, the Council clearly indicates the circumstances surrounding the allocation among the Member States of the share available to the Community of bluefin tuna stocks in the Eastern Atlantic and the Mediterranean, in that the first three recitals in the preamble to Regulation No 49/1999 explicitly refer, respectively, to the United Nations Convention on the law of the sea, the binding recommendations of ICCAT and Article 8(4) of Regulation No 3760/92.

32 It is also clear from the documents before the Court and, in particular, a report from the Committee of Permanent Representatives of 9 December 1998, annexed to the Italian Republic's application, that the Italian Republic was closely associated in preparations for the 11th special meeting of ICCAT, during which Recommendations Nos 98-5 and 98-13 were adopted, and in the discussions leading to the adoption of Regulation No 49/1999.

33 In those circumstances, the Italian Republic could not be unaware of the reasons underlying the allocation of the TAC for bluefin tuna among the Member States, since the Council merely transposed into Community law the criteria adopted by ICCAT.

34 Accordingly, the first plea alleging lack of a statement of reasons for Article 2(1) of Regulation No 49/1999 must be rejected.

The second plea

35 The Italian Republic puts forward, in the alternative, a second plea alleging that Article 2(1) of Regulation No 49/1999 is unlawful. It is based on the view that the Council failed to observe the principle of relative stability of the fishing activities of each Member State.

36 Observing that, in contrast to Regulation No 65/98, the preamble to Regulation No 49/1999 does not refer expressly to Article 8(4)(ii) of Regulation No 3760/92, the Italian Government claims that the Council sought to allocate fishing opportunities among Member States without applying that fundamental principle of the common fisheries policy. First, that fact constitutes, in its view, a more serious defect regarding the statement of reasons than that referred to in the first plea, since the Council did not give the reasons for such a derogation in the preamble to Regulation No 49/1999. Second, there was an infringement of a general superior rule of law, in that the Council derogated from the principle of relative stability without relying on the same legal basis as that of Regulation No 3760/92 which laid down that principle, namely Article 43 of the EC Treaty.

37 The argument that the Council intended to derogate from the principle of relative stability by adopting the contested provision must be rejected outright.

38 First, it is common ground that, where reference is made to a provision of a measure, that reference covers all the constitutive elements of that provision, so that a reference to Article 8(4) of Regulation No 3760/92 necessarily implies a reference to all the subparagraphs of that paragraph, unless the contrary is expressly stated. In the absence of such an express statement in this case, the reference to Article 8(4) of Regulation No 3760/92 necessarily encompasses a

reference to Article 8(4)(ii), which enunciates the principle that 'each Member State [is to be assured of] relative stability of fishing activities for each of the stocks concerned'.

39 Second, it is clear from the legal and factual background to these proceedings as described, in particular, in paragraphs 16 to 20 of this judgment, that the Council had no intention whatsoever of derogating from the principle of relative stability in this case because it allocated percentages of the Community stock of bluefin tuna referred to in Article 2(1) of Regulation No 49/1999 on the basis of the same method of apportionment as that which had been used by ICCAT, so that the catch quotas were allocated on the basis of unrevised figures for the catches taken by the Member States concerned in 1993 or 1994, the higher annual figure being adopted for each Member State.

40 Accordingly, the second plea in support of the claim for annulment of Article 2(1) of Regulation No 49/1999 must also be rejected.

The third plea

41 In the further alternative, the Italian Republic alleges that the criteria adopted for implementation of the principle of relative stability were manifestly inappropriate. It criticises the Council for allocating percentages of the TAC on the basis of information about catches for only one year — not even a recent year — and not on the figures for the catches of several years, which would be more favourable to the Italian Republic.

42 It must observed, first, that neither in Community legislation nor in the case-law of the Court has it ever been established that application of the principle of relative stability to a stock of fish for which no TAC or quota has previously been fixed requires, whatever the circumstances, that the catch quotas should be based on a given number of years' fishing rather than on one year only. Flexibility regarding the reference period to be used is particularly important where the stock in question is managed under the auspices of an international fisheries organisation and the percentages allocated within the Community are normally based on decisions taken within the framework of that organisation.

43 Next, it is wrong to contend that, in this case, the Council relied on catch data for only one year since it is quite clear from the documents before the Court that two years were taken into account to determine the percentages of the TAC allocated to the Member States, namely 1993 and 1994, the Council having adopted, for each Member State concerned, the higher annual figure.

44 Finally, it is settled case-law that the Community legislature enjoys a considerable power of discretion in circumstances where it is necessary to evaluate a complex economic situation, as is the case as far as the common agricultural and fisheries policies are concerned. Its discretion is not limited solely to the nature and scope of the measures to be taken but also, to some extent, to the finding of basic facts. Accordingly, in reviewing the exercise of such a power, the Court must confine itself to examining whether there has been a manifest error or misuse of power or whether the authority in question has clearly exceeded the bounds of its discretion (see to that effect, in particular, Case 113/88 *Leukhardt* [1989] ECR 1991, paragraph 20, Case C-4/96 *NIFPO and Northern Ireland Fishermen's Federation* [1998] ECR I-681, paragraphs 41 and 42, and Case C-179/95 *Spain* v *Council* [1999] ECR I-6475, paragraph 29).

45 In this case, the applicant has certainly not shown that the Council acted in a manifestly inappropriate way in the exercise of its discretion.

46 First, the Council relied on information forwarded to it by ICCAT and on the recommendations adopted by that organisation, which are binding on the Community.

47 Second, the choice of 1993 and 1994 as reference years for determining the percentages to be allocated within the Community quota for bluefin tuna does not seem unreasonable since it was with effect from 1995 that both ICCAT, by virtue of the entry into force of Recommendation No 94-11, and the GFCM, of which the Italian Republic was then a member, set limits — which, moreover, were identical — for catches of tuna. As the Commission has rightly observed, if the Council had chosen more recent reference years, the Member States which complied with the ICCAT recommendations on limitation of catches would have been penalised.

48 Therefore, the Council has not exceeded its discretion and the plea alleging misapplication of the principle of relative stability must be rejected.

49 It follows that the claim for the annulment of Article 2(1) of Regulation No 49/1999 must be rejected in its entirety.

The pleas put forward by the Italian Republic in support of its claim for the annulment of Article 2(2) of Regulation No 49/1999 and the table relating to bluefin tuna in the annex to that regulation

50 The Italian Republic contends that, like Article 2(1), Article 2(2) of Regulation No 49/1999 and the table concerning the allocation to the Member States of the

Community share of bluefin tuna for 1999 set out in the annex to it are vitiated by the lack of a statement of reasons. In the alternative, it alleges, in essence, infringement of Article 8(4) of Regulation No 3760/92, breach of various general principles of law and of fundamental safeguards regarding penalties and a manifest error regarding application of the Convention.

The first plea

51 By its first plea, the Italian Republic claims that the only statement of reasons supporting Article 2(2) of Regulation No 49/1999 is to be found in the fifth recital in the preamble to that regulation to the effect that 'for 1999 an ad hoc distribution among the Member States should be made in view of the special circumstances due to the Community's accession to ICCAT'. Once again, in its view, this constitutes merely a semblance of a statement of reasons, which takes no account of the real reasons for the irregular allocation made in the table for bluefin tuna in the annex to that regulation, namely, in essence, the Council's wish to apply to the Hellenic Republic, the Kingdom of Spain and the Italian Republic the reductions required by ICCAT as a result the catch quotas having been exceeded in 1997.

52 The Council contends that the statement of reasons is adequate since, as in the case of Article 2(1) of Regulation No 49/1999, Article 2(2) must be viewed in the context of the Community's wider international obligations in relation to the conservation and management of living resources of the sea and, more particularly, the extension of the period of validity of Recommendation No 98-5 which contains, in paragraph 4, an express provision concerning reductions for overfishing. It would not therefore be appropriate to include a specific statement

giving details of each calculation made to determine the final share of each Member State, since the objective pursued by the Council is, in essence, apparent from that regulation and, in particular, from the first, second and fifth recitals in its preamble. According to the Council, such a statement is particularly inappropriate because, in this case, the allocation provided for in Article 2(2) of Regulation No 49/1999 is of an ad hoc nature and is applicable only for 1999.

53 The argument, implicit in the Council's defence, to the effect that the statement of reasons for a measure or part of a measure may be more succinct because it applies to one case only or because it derogates from a given rule must be rejected at the outset. On the contrary, the fact that the measure in question departs from a more general rule normally increases the need for a statement of reasons since the addressees of the measure must be in a position to assess the reasons which prompted the institution concerned to depart from the rule in question and to assess the breadth and scope of the derogation from that rule. That requirement is reinforced by the fact that the derogation changes the existing situation and is thereby liable to harm the interests of those addressees.

54 In this case, however, the Italian Republic has not shown that Article 2(2) of Regulation No 49/1999 is not supported by an adequate statement of reasons.

55 First, the regulation expressly refers to the Community's international obligations regarding the conservation and management of living resources of the sea and, particularly, the binding recommendations of ICCAT; the eighth recital in the preamble to Regulation No 49/1999 makes it clear in particular that that organisation has laid down a system of deductions for quantities overfished

'which differs from the system laid down in Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas' (OJ 1996 L 115, p. 3).

56 Second, as already pointed out in paragraph 32 of this judgment, the Italian Republic was closely associated with preparations for the 11th extraordinary meeting of ICCAT and with the discussions which led to the adoption of Regulation No 49/1999.

57 In those circumstances, the Italian Republic could not be unaware of the reasons underlying the allocation to the Member States of the Community quota for bluefin tuna for 1999, the Council having simply deducted from that quota, in accordance with the terms of Recommendation No 98-13, the quantities overfished by the Member States during 1997, whilst at the same time introducing a solidarity mechanism designed to mitigate the effect of that deduction for the Hellenic Republic and the Italian Republic.

58 The Italian Republic's plea alleging that Article 2(2) of Regulation No 49/1999 is not supported by a statement of reasons must therefore be rejected.

The pleas put forward in the alternative

59 The Italian Republic puts forward two further pleas in the alternative.

60 It claims, first, that the departure from the rule regarding allocation of the Community quota for bluefin tuna for 1999 cannot be objectively justified by any reason other than the wish to treat the Member States differently, and there is no basis for any such difference of treatment in the principles and rules of Community law, which include, in particular, Article 8(4) of Regulation No 3760/92.

61 Second, it alleges that the reduction of catch quotas made in 1999 following application of the ICCAT recommendations is unlawful. This plea comprises four parts. The Italian Republic alleges first that the 'penalties' which ICCAT sought to impose on the Member States imply individual liability for each contracting party and that, therefore, they could not be the subject of the negotiation provided for by Regulation No 65/98, which refers to the actual quotas allocated on a consistent basis to the contracting parties to ICCAT. It observes, second, that, if the contrary view were accepted, such negotiation of the penalties imposed by ICCAT on a given Member State could not, in any event, be conducted without the latter being guaranteed an opportunity to defend its position, and that was not done in this case. The Italian Government contends, third, that it did not become a contracting party to ICCAT until August 1997, some days after the entry into force of Recommendation No 96-14, which raises the question of the applicability of ICCAT penalties to the Italian Republic in respect of 1997. Fourth, the Italian Republic claims that the recommendation provides only for application of the offsetting penalty during the year following that in which the catch limit was exceeded. It was therefore in 1998, and not 1999, that, in the applicant's view, the reductions of catch limits should have been made.

The lawfulness of the reduction of catch quotas

62 By the first two parts of its second plea in the alternative, which it is appropriate to consider first, the Italian Republic alleges, in essence, that the Community's

negotiations within ICCAT, referred to in the third paragraph of Article 1 of Regulation No 65/98, could not have been concerned with reductions for overfishing carried out by certain Member States in 1997 and that, in any event, those Member States should have been given an opportunity to defend their interests in those negotiations.

63 As to that it must be borne in mind, first that, by acceding to the Convention, as amended by the Protocol signed in Paris on 10 July 1984, the Community was, under Article XIV(6) of that Convention, subrogated to the rights and obligations of the Member States which were already parties to it. The Community was therefore fully empowered to discuss, in the context of negotiations within ICCAT relating to the Community quota for which it alone was competent, all relevant parameters, including the consequences of overfishing on the part of certain Member States before the date of their accession to that organisation. The Community was therefore bound by the earlier ICCAT recommendations and, in particular, by Recommendation No 96-14 which imposes the principle that fishing quotas will be reduced if, during a given management period, a contracting party exceeded its catch limits. The reductions for overfishing in 1997 were in fact imposed on the Community, by way of deduction from the quota available to it for 1999.

64 In those circumstances, the Italian Republic cannot claim that it should have its own role in the proceedings of ICCAT regarding the manner in which account is taken of overfishing, since the Community has assumed full responsibility for such negotiations.

65 Nor can the Italian Republic claim, in that context, that it is entitled to defend its own particular interests. It was only through defence of the Community interest, a matter for which the Community and its institutions have sole responsibility,

that the interests of the Italian Republic, like those of the other Member States, were taken into account.

66 Finally, it must be remembered that the Italian Republic was closely associated with the conduct of negotiations within ICCAT since it participated, under the auspices of the Council, in the discussions relating to those negotiations. It therefore had every opportunity to submit its observations and to state any objections.

67 For those reasons, the first two parts of the second plea in the alternative must be rejected.

68 By the third part of this plea, the Italian Republic claims that, for allocation of the Community quota for bluefin tuna for 1999, the Council is not entitled to take account of catches by Italy in excess of the limits during 1977 since Italy did not accede to the Convention until two days after the entry into force of Recommendation No 96-14.

69 As already pointed out in paragraph 63 of this judgment, it was not on the Member States concerned but rather on the Community that ICCAT imposed the reductions for overfishing in 1997 when determining the Community quota for 1999. This part of the second plea in the alternative therefore raises the question whether the Community legislature, in allocating that reduced quota to the Member States concerned, was entitled to take account, as regards the Italian Republic, of overfishing by Italy in 1997 and to deduct from the proportion attributable to that Member State on the basis of the percentage established by Article 2(1) of Regulation No 49/1999 the quantity thus overfished, even though at the same time the consequences of that deduction were mitigated by the application of a Community solidarity mechanism.

70 It must be pointed out, first, that, as a member of the GFCM, the Italian Republic was fully acquainted with the measures to limit catches of bluefin tuna adopted with effect from 1995 by ICCAT since the quota set for that Member State by Recommendation No 94-11, when it was not yet a member of ICCAT, had been confirmed by GFCM Resolution No 95/1, adopted at a meeting held in Alicante, Spain, from 22 to 26 May 1995. The fact that that resolution was not binding does not in any way detract, in that regard, from the finding that the Italian Republic was apprised of the content of Recommendation No 94-11.

71 Second, it must be observed that, in preparing for accession to ICCAT, the Italian Republic had an opportunity fully to acquaint itself with those measures and, more particularly, with Recommendation No 96-14 establishing the mechanism for reduction in the event of overfishing, which was adopted in November 1996, that is to say more than eight months before Italy's accession to the Convention came into effect.

72 Third, it must be pointed out that, as confirmed by the Agent for the Italian Government at the hearing, the Italian Republic did not oppose the application of those measures limiting catches in the event of accession, either when preparing for accession or during the procedure which led to Italy's accession to the Convention on 6 August 1997, or by formulating reservations.

73 In those circumstances, it was entirely proper, and did not exceed the bounds of its discretion, for the Council, faced with the need to apply to the Member States concerned the reductions which related to overfishing by those Member States in 1997 but were imputed directly to the Community by ICCAT, to make the Italian

Republic bear the consequences of its overfishing in 1997, those consequences having nevertheless been mitigated by a Community solidarity mechanism.

74 As regards more particularly the Italian Republic's argument that the reduction of its quota because of overfishing in 1997 was tantamount to a retroactive penalty contrary to a general principle of law — since Recommendation No 96-14, which introduced those penalty rules, entered into force only two days before Italy's accession to the Convention and the overfishing occurred before that date — it need merely be pointed out, first, that the Italian Republic was required, upon accession, to respect the ICCAT recommendations, of which it was fully apprised before that date and regarding which it had expressed no reservation.

75 Second, and without its being necessary to answer the question whether in this case the reduction for overfishing in 1997 was in fact applied retroactively, it is plain that a measure designed to ensure that a Member State does not gain an advantage in the future from overfishing carried out in the past does not rank as a punitive penalty.

76 The Italian Republic's complaint in that regard is therefore unfounded.

77 As regards, finally, the fourth part of the second plea in the alternative put forward by the Italian Republic to the effect that, under Recommendation No 96-14, a reduction for overfishing could be applied only during the year following that in which the catch limit was exceeded, it must be borne in mind that Recommendation No 98-13 expressly derogated from that rule by providing for the reduction to be carried over to a management period following the period

immediately after the one during which the catch limits were exceeded, in cases where all the data for catches in that period are not available when the quotas are set. Under that recommendation, quantities overfished in 1997 could therefore be deducted in 1999.

78 For all the foregoing reasons, the second plea in the alternative must be rejected in its entirety.

Infringement of the principle of non-discrimination

79 As regards the first plea in the alternative, alleging infringement of the principle of non-discrimination, it must be observed that the Italian Republic has adduced no proof of such an infringement.

80 According to settled case-law, there can be no discrimination unless different rules are applied to comparable situations or the same rule is applied to different situations (see, in particular, Case 8/82 *Wagner* [1983] ECR 371, paragraph 18, Case 283/83 *Racke* [1984] ECR 3791, paragraph 7, and Case C-311/97 *Royal Bank of Scotland* [1999] ECR I-2651, paragraph 26).

81 However, in this case, the Council took fully into account the differences between the Member States concerned since the allocation of the Community quota for bluefin tuna for 1999 takes account both of the principle of relative stability of

fishing activities of those States and of any overfishing by them during 1997. The Council did not therefore infringe the principle of equal treatment in any way.

82 In those circumstances, the Italian Republic's first plea in the alternative must be rejected.

83 In view of the foregoing, the claim for the annulment of Article 2(2) of Regulation No 49/1999 and the table relating to bluefin tuna in the annex thereto must be rejected.

84 Therefore, the application must be dismissed in its entirety.

Costs

85 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs. Pursuant to the first subparagraph of Article 69(4), the Kingdom of Spain, the French Republic and the Commission, which intervened in the proceedings, must bear their own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the application;

2. Orders the Italian Republic to pay the costs;

3. Orders the Kingdom of Spain, the French Republic and the Commission of the European Communities to bear their own costs.

Jann von Bahr Edward

La Pergola Timmermans

Delivered in open court in Luxembourg on 25 October 2001.

R. Grass P. Jann

Registrar President of the Fifth Chamber