OPINION OF ADVOCATE GENERAL LENZ
delivered on 6 May 1992 *

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Mr President,
Members of the Court,

A — Facts of the Case

1. Joined Cases C-63/90 and C-67/90 and Cases C-70/90, C-71/90 and C-73/90 Spain and Portugal seek the annulment under Article 173 of the EEC Treaty of regulations under which the Community share of fishery resources subject to catch limitations in the fishing zones of Norway, Sweden, Greenland and the Faroe Islands was divided up in the form of quotas among the Member States. The basis for the allocation of those catch quantities, the apportionment of which among the Member States is the cause of complaint, is provided by fishery agreements between the Community and Norway and Sweden and between the Community on the one hand and, on the other, the Government of Denmark, the regional Government of the Faroe Islands and the local Government of Greenland.

2. The individual regulations which have been challenged are as follows:

(1) In joined Cases C-63/90 (Portugal) and C-67/90 (Spain): Regulation No 4054/89 (in respect of Greenland waters and the year 1990); [1]

(2) In Case C-70/90 (Spain): Regulation No 4053/89 (in respect of Faroese waters and the year 1990); [2]

(3) In Case C-71/90 (Spain): Regulation No 4049/89 (in respect of Norway's exclusive economic zone and the fishing zone around Jan Mayen and the year 1990); [3]

(4) In Case C-73/90 (Spain): Regulation No 4051/89 (in respect of Swedish waters and the year 1990); [4] and Regulation No 4057/89 (second amendment to Regulation No 4198/88 concerning Swedish waters and the year 1989). [5]

1 — OJ 1989 L 389, p. 65.
2 — OJ 1989 L 389, p. 63.
3 — OJ 1989 L 389, p. 78.
4 — OJ 1989 L 389, p. 53.
5 — OJ 1989 L 389, p. 78.

* Original language: German.

3. The origin of the dispute lies in the fact that none of the contested regulations includes Spain and Portugal in the distribution formula, but only the Member States of Belgium, Denmark, Germany, France, the Netherlands and the United Kingdom, in a composition which varies according to the particular regulation. Regulation No 4054/89 (Case C-71/90) alone provides for quotas in favour of the applicant Member States (810 tonnes of redfish for Portugal and 190 tonnes of the same for Spain), which Norway, however, granted separate from the catch quantities for the Community (3 000 tonnes of redfish divided up among Germany, the United Kingdom and France). The distribution formula referred to above reflects a proportional allocation among the Member States of quantities granted to the Community; that formula has since 1983 remained essentially unchanged by annual regulations allocating quotas and was also not amended following the accession of Spain and Portugal. In 1983 Regulation No 172/83 [6] for the first time allocated among the Member States, with retroactive effect for 1982, stocks in Community waters subject to total catch quantities. The criteria for allocation were set out in the fourth recital in the preamble to that regulation: traditional fishing activities (it was not disputed that this concerned a reference period from 1973 to 1978), the specific needs of areas particularly dependent on fishing and its dependent industries and the loss of fishing potential in the waters of third countries (which was connected with the extension by third countries of exclusive economic zones up to 200 nautical miles). Regulations Nos 173/83, 174/83, 175/83, 176/83 and 177/83 [7] similarly allocated for the first time catch quantities granted to the Community in the waters of third countries.

4. The system of annual quota allocations is based on Regulation No 170/83 [8] (hereinafter 'the basic regulation'), which forms the legal framework of these cases, along with the 'Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties' (hereinafter 'the Act of Accession', OJ 1985 L 302, p. 1).

5. Article 1 of the basic regulation describes the purpose behind the Community system for the conservation and management of fishery resources, which is to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions. As a conservation measure necessary to achieve those aims, Article 2 provides *inter alia* for the restriction of fishing effort, in particular by limits on catches.

6. The first paragraph of Article 3 provides in this regard:

'Where, in the case of one species or a group of related species, it becomes necessary to limit the catch, the total allowable catch for each stock or group of stocks, the shares available to the Community as well as, where

6 — Council Regulation of 25 January 1983 fixing for certain fish stocks and groups of fish stocks occurring in the Community's fishing zone, total allowable catches for 1982, the share of these catches available to the Community, the allocation of that share between the Member States and the conditions under which the total allowable catches may be fished, OJ 1983 L 24, p. 30.

7 — OJ 1983 L 24, pp. 68, 70, 72, 75 and 77.

8 — Council Regulation establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1).

applicable, the total catch allocated to third countries, and the specific conditions for taking these catches, shall be fixed each year.'

7. Under the second paragraph of Article 3 the shares referred to in the first paragraph are to be increased by the total of Community catches outside the waters under the jurisdiction or sovereignty of the Member States.

8. The pivotal issue in the cases with which I am today dealing is the criterion set out in Article 4(1) of the basic regulation concerning the distribution among Member States of the catch volume referred to in Article 3. Article 4(1) provides as follows:

'The volume of the catches available to the Community referred to in Article 3 shall be distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered.'

9. While Article 11 empowers the Council to adopt the distribution measures referred to in Article 4(1), the fifth, sixth and seventh recitals in the preamble to the regulation provide some indication as to the meaning of the distribution criterion of relative stability:

'... conservation and management resources must contribute to a greater stability of fishing activities and must be appraised on the basis of a reference allocation reflecting the orientations given by the Council;

... in other respects, that stability, given the temporary biological situation of stocks, must safeguard the particular needs of regions where local populations are especially dependent on fisheries and related industries as decided by the Council in its resolution of 3 November 1976, and in particular Annex VII thereto;

... therefore, it is in this sense that the notion of relative stability aimed at must be understood.'

10. Article 4(2) of the basic regulation deals with the adjustments which it may prove necessary to make to the distribution of resources in consequence of the application of Article 4(1). On the basis of the report referred to in Article 8, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, has to decide on those adjustments. The Commission is required under Article 8(1) to submit to the Council before 31 December 1991 a report on the fisheries situation in the Community, the economic and social development of the coastal areas and the state of the stocks and their likely evolution.

11. Member States may under Article 5(1) exchange all or part of the quotas in respect of a species or group of species allocated to them under Article 4, provided that prior notice is given to the Commission.

12. With regard to the Act of Accession, Article 154 et seq. (Spain) and Article 346 et seq. (Portugal) deal with the transitional measures in the area of fisheries. These contain in the first place general provisions

(Articles 154, 155 and 346), as well as provisions which govern details concerning access of the acceding Member States to waters falling under the sovereignty or within the jurisdiction of the original Member States and covered by the International Council for the Exploration of the Sea, as well as to the corresponding resources [9] (Article 156 et seq in the case of Spain; Article 347 et seq. in the case of Portugal). [10] Articles 167 and 354, each of which is contained in a special section entitled 'external resources', provide as follows:

'(1) Upon accession, the administration of fisheries agreements concluded by the Kingdom of Spain (the Portuguese Republic) with third countries shall be the responsibility of the Community.

(2) The rights and obligations flowing from the agreements referred to in the first paragraph for the Kingdom of Spain (the Portuguese Republic) shall not be affected during the period when the provisions of such agreements are provisionally maintained.

(3) As soon as possible, and in any event before the expiry of the agreements referred to in paragraph 1, the decisions appropriate for the continuation of fishing activities resulting therefrom shall be adopted in each case by the Council, acting by a qualified majority on a proposal from the Commission, including the possibility of prolonging certain agreements for periods not exceeding one year.'

9 — The judgment of the Court of Justice in Case C-258/89 *Commission* v *Spain* [1991] ECR I-3977 makes it clear that these rules also apply in part to resources in international waters.

10 — The provisions also cover the rights of access of the original Member States to the waters and resources of the new Member States and the reciprocal rights of access of the acceding Member States.

13. Neither of the acceding States had, at the time of accession, concluded fisheries agreements in respect of the resources here at issue, with the exception of Spain, which had concluded such an agreement with Norway valid until 31 December 1986 (Case C-71/90).

14. I shall refer where necessary to other details of the facts in the cases in the following opinion; for the rest, I would refer to the Report for the Hearing.

B — Opinion

15. I.1. The grounds on which the applicants argue that the disputed regulations must be annulled for infringement of *substantive* provisions of Community law may be placed in two groups. In the first place, it is argued that there has been a breach of the *principle of relative stability* as laid down in Article 4(1) of the basic regulation, and secondly that there has been a breach of *general principles of law*, whether specified in the Treaty or unwritten.

16. 2. Those arguments cannot, however, be considered until the effects of the Act of Accession in respect of the fisheries resources here in question have been more closely examined. This method of procedure is necessitated by the submission of the Commission, whose views on this issue diverge in one clear respect from those of the other parties. While all sides correctly agree that the Act of Accession does not contain any provision which would justify a claim

by the applicant Member States for an allocation of quotas for 1990 (or 1989) in the disputed waters of third countries (with the result that such a claim could at best find support in Article 4(1) of the basic regulation or general Treaty principles), the Commission is alone in taking the view, if I have correctly understood it, that the Act of Accession precludes any reference being made to that provision in the basic regulation. According to the Commission, the Act of Accession provides for special rules of a transitional nature with regard to the inclusion of the new Member States in the fisheries policy of the Community concerning its *external resources*. Those rules, the Commission claims, imply that the participation of the new Member States in those resources is to be maintained until the expiry of the transitional period at the level laid down in the Act of Accession (with the exception of resources opened up by way of agreements entered into by the Community *after* accession). The participation envisaged by the Act of Accession is limited to those external resources which *were based on agreements entered into by the acceding Member States*, pursuant to which the Community had undertaken to respect those fisheries activities which resulted from those agreements. [11] In the absence of an express provision in the Act of Accession, the expiry of the transitional period is determined by Article 4 of the basic regulation, and is thus simultaneous with the adjustments in respect of the distribution of resources of the Community of Ten under Article 4(2) of the basic regulation.

17. In other words: there is no possibility of participation in the resources previously distributed among the Ten Member States of the Community before the latter point in time (in any event, therefore, before the end of 1991), and the acceding Member States cannot argue in favour of a different result on the basis of Article 4(1) of the basic regulation.

18. The Commission submits only in the alternative that a correct application of the principle of relative stability would lead to the same result, that is, to the dismissal in all five cases of the claims by the applicant Member States to a distribution of catch quotas in the waters in question.

19. If one were consistently to follow the view expressed by the Commission, this would have major repercussions for the examination of the present cases (although not necessarily on the ultimate decision). Not only would an examination of the principle of relative stability under Article 4(1) of the basic regulation be impossible, but it would also not be possible to examine the legal situation with the help of general principles of law, since these would be based on *rules derived from the law of the Treaties* and the Court of Justice could for that reason not rule on their legality. [12]

20. With these arguments (which are exhaustively set out at Section 19B of the Report for the Hearing), the Commission offers a simple and easily manageable solution to the problems arising from what is quite a complex factual and legal situation. There is

11 — See Articles 167 and 354 of the Act of Accession.

12 — Judgment in Joined Cases 31/86 and 35/86 *LAISA* v *Council* [1988] ECR 2285, at paragraphs 14 and 18.

a correspondingly great temptation to accept this solution. In order to ascertain whether we should give in to the temptation or whether we ought to resist it, it is not sufficient to assess the arguments of the Commission one after the other; we must rather have regard to the salient features which distinguish the situation.

21. Articles 167 and 354 are to be found in Part Four of the Act of Accession and accordingly constitute 'transitional measures' in respect of fisheries, in accordance with the title of Chapter 4, which is included under Title II (transitional measures concerning Spain) and Title III (transitional measures concerning Portugal) of Part Four. If we now consider the Community fisheries system, it will become apparent that the basic regulation constitutes the core of the common fisheries policy introduced in 1983.

22. The difficulties experienced by the Community legislature in reaching agreement on the principles which form the basis of that common policy may be inferred from the period of time which had elapsed since the expiry of the deadline agreed on in Article 102 of the 1972 Act of Accession (31 December 1978) (OJ 1973 L 2 of 1 January 1973, p. 1).

23. In view of the fact that the basic regulation has now become part of the *acquis communautaire* within the meaning of Article 2 of the Act of Accession and was not amended by reason of the accession of Spain and Portugal (apart from one area which need not detain us here), [13] those who drafted the Act of Accession were required, when drawing up the 'transitional measures', to include the fishery fleets of the new Member States within the system established by the basic regulation, in so far as that was necessary. Articles 156 and 347 of the Act of Accession refer expressly to this objective, while the provisions following those articles refer on a regular basis to the implementing procedures set out in Articles 11 and 14 of the regulation.

24. We have become aware in the course of the present proceedings of one of the difficulties with which those who drafted the Act of Accession were confronted in this task. This problem arises (in respect of the Community's catch possibilities, the extent of which is limited) from the criterion of relative stability set out in Article 4(1) of the basic regulation. As I pointed out during my presentation of the facts, the first allocation of quotas among Member States had been based on this criterion, as had the subsequent practice of retaining the distribution formula originally selected in respect of each stock. The Court of Justice confirmed the correctness in law of that practice in its judgment in *Romkes*. [14] The Court ruled at paragraph 17 of its judgment in that case that where the volume of the catches available to the Community is to be distributed between the Member States in accordance with the requirement of relative stability

'each Member State is to retain a fixed percentage'.

25. The Court went on to explain this view as follows:

'In specifying that provisions effecting the adjustments that it may prove necessary to make to the distribution of the resources among Member States are to be enacted by the Council in accordance with the

13 — See Article 8 of Section XV of Annex I to the Act of Accession.

14 — Judgment in Case 46/86 *Romkes* v *Officier van Justitie* [1987] ECR 2671.

procedure laid down in Article 43 of the Treaty, Article 4(2) shows that the distribution formula originally laid down under Article 4(1) on the basis of Article 11 is to continue to apply until an amending regulation is adopted in accordance with the procedure followed for Regulation No 170/83.'

26. The criterion of relative stability could not therefore be usefully applied for the purpose of including the fleets of the new Member States within the fisheries policy of the Community: rather, it represented an obstacle in the path of such inclusion, in view of the fact that the retention of the proportional formula selected would necessarily have led to the exclusion of fishermen from the new Member States.

27. The situation would have been different if this criterion supplied the formula not only for an appropriate distribution among an identical number of Member States but also for what might have been a desirable *new distribution* following an enlargement of the Community. The applicant Member States are in favour of the latter hypothesis. They refer to their historic fishing activities in the waters concerned during the reference period 1973 to 1978 (Cases C-63/90, C-67/90, C-70/90 and C-71/90) and they take the view (in respect of the claims which they have made) that the criterion must be applied in a manner which takes proper account of the new composition of the Community. If this view should be correct, the persons who drew up the Act of Accession could have saved themselves much of the work which they put into the drafting of Articles 156 and 347 and the provisions which follow each of those articles. That view is, however, incorrect. The principle set out in Article 4(1) of the basic regulation is one of continuity. There is nothing to indicate that the accession of additional Member States should change it in any way. It is in particular not possible to imply that the Community legislature intended to regulate the case of accession irrespective of the fisheries structure of the acceding States, of the existing interests of the old and new Member States at the time of accession and of the positions of relative strength which become apparent during discussions. By so doing, the Community legislature would have subjected the position of the fisheries policy, attained with so much difficulty, to a series of major imponderables.

28. The criteria governing the inclusion of the new Member States in the system established by the basic regulation, which thus had to be defined at the time of accession, are set out separately in the Act of Accession on the basis of two types of geographical area. Articles 156 et seq. and 347 et seq. govern access to waters falling under the sovereignty or within the jurisdiction of the then Member States and covered by the International Council for the Exploration of the Sea, as well as access to the resources in those waters and in part to the neighbouring resources in international waters. [15] While Article 161 fixes precisely by species and by zone (and expresses them in percentages to three decimal places) the TAC share, for species subject to TAC and quotas, to be allocated to Spain, [16] Article 349 (which applies

15 — See the judgment in Case C-258/89 *Commission* v *Kingdom of Spain* [1991] ECR I-3977, at paragraph 16.

16 — Academic writing on this point would suggest that the allocation specified corresponds approximately to that which Spain enjoyed prior to its accession: see Churchill, *EEC Fisheries Law*, Dordrecht, 1987, at p. 161.

to Portugal) imposes only a geographical restriction on catch possibilities and also leaves to a large extent the determination of such possibilities to the Council, particularly with regard to the application of quotas under Article 349(2).

29. So far as concerns the so-called external 'resources', the Act of Accession limits itself to Articles 167 and 354, the identical text of which I have already set out in my presentation of the facts. The Commission correctly proceeds on the assumption that with regard to these resources paragraph 3 of each Article, in the absence of other identifiable sources, sets out the criterion under which new Member States should be included within the system established by the basic regulation. This is to happen through the continuation of fishing activities which result from fishing agreements concluded between the acceding Member States and non-member countries.

30. What effect does this have on the present cases, in which (subject to an examination of Case C-71/90) [17] *there were no such fishing activities at the time of accession?* This is the question which the Commission seeks to answer with its 'exclusion' theory, which thus is based on an *a contrario* conclusion drawn from those provisions. My views on this question may be divided into two stages. In the first stage, it is necessary to examine whether paragraph 3 of Articles 167 and 354 at all justify such an *a contrario* conclusion for cases of this kind. The second stage is designed to help in determining the exact content of this *a contrario* conclusion.

31. I share the Commission's view that the provisions referred to limit the inclusion of the new Member States within the quota system (in so far as that system applies to external resources) not only in a positive, but also to some degree in a negative manner. This is because, as becomes evident from the above considerations, they are to be understood as constituting a reply to the question engendered by the principle of relative stability. [18] What is at issue is the scope of the fishing activities through which the new Member States were to participate, from the date of their accession, in this system based on continuity. It also has to be borne in mind that this system has as its object the distribution of scarce resources and that consequently the matter of compliance with the prohibition of discrimination (or other general principles of law which have Treaty status) is particularly important. It is in this regard that attention has to be paid to the fact that the Act of Accession, which is a constituent part of Treaty law, laid down a degree of participation (which can be precisely determined) by the new Member States in certain resources to which they were entitled by reason of accession. If the relevant provisions are viewed in this light, it becomes obvious that those rules were designed to exclude any discussion as to whether accession might necessarily have led, pursuant to the *general principles of the Treaty* (that is to say, Articles 7 and 40(3)), to a more extensive

17 — On this point, see below at paragraph 73 et seq.

18 — Even though according to their unambiguous wording they also apply to resources which are not subject to any catch limitations.

participation. From all this I conclude that the provisions referred to imply not only that the new Member States should be guaranteed that their existing fishing activities be allowed to continue, but also that that is where the matter should rest.

32. It is a more difficult proposition to identify the exact scope of this *a contrario* conclusion. The Commission's views on this matter go, I believe, much too far. Its 'exclusion' theory is based on *prohibiting* the Council (at least up to and including 1991) from allocating quotas greater than those provided for in the Act of Accession and based on *secondary legislation*. Such a result does not correspond with the text of the Act. The undertaking given by the Community in that document is 'to adopt the necessary decisions' to preserve the traditional fishing activities of the new Member States. This formula fits exactly into the logic of the basic regulation. If the Council adopts the decisions necessary in the above sense in respect of a stock subject to catch limitations, the continuity of the fishing activities at issue is ensured by reason of the principle of relative stability. Provided that the Council has complied with this obligation, the inclusion of the new Member States within the system established by the basic regulation is achieved. A special transitional period is unnecessary.

33. The *a contrario* conclusion from this rule of law is not, as the Commission argues, that the Council is precluded from acting in such a way as to afford the new Member States a greater measure of participation. Rather, it signifies only that there is no obligation to act in such a way. This purely logical consideration is confirmed by the context and objective of the system under the Act of Accession. As is clear from the nature and manner of the inclusion of the new Member States within the system established by the basic regulation, in so far as external resources are concerned, this procedure should impinge as little as possible on that system. There is no indication in the context of the rules that the application of this system should be temporarily suspended inasmuch as it makes it possible (exceptionally) for a greater degree of participation by the new Member States. In particular, the provision makes no mention of a transitional period. It ought to be noted that the Commission finds itself obliged to infer such a period from Article 4(2) of the basic regulation, even though the Act of Accession does not refer to that provision. [19]

34. The distinction between those two opinions is, in view of the Treaty status of the provisions under discussion, of determinant significance for the application of secondary law. If a path of action by Community institutions is prohibited under the law of the Treaties, this means that not only are legal measures which directly contravene the prohibition inapplicable, but also measures which make it possible or compulsory to adopt such a course of action. Consequently, from the point of view of the Commission, Article 4(1) of the basic regulation cannot be applied in so far as that provision (according to the applicant Member States) gives rise to a claim to specific participation in resources with which those States were not involved prior to their accession. On the other hand,

19 — *Aliter*, for example, Articles 60 and 220 of the Act of Accession which link the expiry of the transitional period provided for therein to the adoption of provisions of secondary law; on this point, see the judgment in Case C-99/89 *Yañez Campoy* v *Bundesanstalt für Arbeit* [1990] ECR I-4097, in particular at paragraph 16.

a principle of Treaty law under which Community institutions are not required to act in a particular regard does not, by its very nature, affect powers and obligations derived from secondary law. If we are to follow the views expressed here (which are in accordance with the guidelines set out under section 5 of the Report for the Hearing, which, in view of the issues here in dispute concerning agreements entered into by the Community of Ten with non-member countries, refer to the *acquis communautaire*) the applicant Member States are entitled to rely on Article 4(1) of the basic regulation and it is necessary to examine whether that provision supports the claims which have been made.

35. The *a contrario* conclusion from Articles 167 and 354 of the Act of Accession is to the effect that the Council is not obliged under Treaty law to grant a share in the external resources of the Community which is larger than that stipulated in those provisions.

36. So far as regards the limits of its chronological scope, the Act of Accession quite correctly abstained from setting down any transitional period. Those limits may be inferred from the legal context in which the two provisions are inserted. In this regard two special features are of significance: first, that the rule relates to the Act of Accession, and secondly, that it is intended (at least in so far as concerns us here) as a reply to those questions [20] to which the principle of relative stability gives rise in the case of external resources. It thus follows that this principle concerns only the *initial position* in which the new Member States are placed within the system established by the basic regulation, as the Act of Accession found it. They cannot therefore call this initial position into question. However, they may well be entitled to *challenge subsequent amendments as such* and request the Court of Justice to examine whether such amendments are compatible with Treaty law particularly in respect of equal treatment under Articles 7 and 40(3) of the Treaty. Conversely, they may not be precluded from relying on the principles just mentioned for the purpose of *requesting amendments* to take account of the change in their situation resulting from circumstances which arose *following their accession*. The latter may in particular assume importance in the context of Article 4(2) of the basic regulation; of course, account must be taken of the wide discretion enjoyed by the Council under Article 43 of the Treaty.

37. With regard to the cases for decision, the *result* must be that the Act of Accession, *per se*, neither makes compulsory the allocation of quotas argued for by the applicant Member States nor, so far as concerns secondary law, excludes such allocation.

38. II. It is now necessary to examine whether the Council, through the method of quota distribution which it has chosen, has

20 — See footnote 18.

infringed Article 4(1) of the basic regulation, possibly along with provisions of the Act of Accession. [21]

39. (1) It is first of all necessary to make a few explanatory comments on the requirement of relative stability. These concern the point of reference provided by the rule on fixed percentages laid down by the Court, the influence of that rule on the Council's discretion and, in connection therewith, the conditions under which that rule may be overturned.

40. (a) Under Article 4(1) of the basic regulation the distribution of the volume of catches should ensure a relative stability

— for each Member State, and

— for each of the stocks considered.

It follows from this that the point of reference of the rule laid down by the Court of Justice is the volume of the catches available to the Community in respect of a precisely defined 'stock'. Admittedly, this concept relates to *geographical limits*, ie, those of the catch area to which the catch limitation applies. [22] However, it does *not* refer to specific *quantities*, since the 'measures for the conservation of stocks' under the basic regulation do not, according to their objective, cover only specific quantities of fish in a specific area, but rather all fish — subject to the proviso, of course, that they belong to the same species or group of species, given that measures to conserve stocks are adopted for each species or group of species (Article 2(1) and (2) of the basic regulation). If the quantities of a stock can vary depending on the period in question, the same must be the case in respect of total catch quantities and also for the Community's volume of catches, in view of the logic behind the catch limitations. The Community's volume of catches may also be restricted or expanded in accordance with the wider or narrower scope given to the fishing interests of non-member countries in the context of valid agreements. This applies to the waters of the Community, but also (and this is of particular importance for present purposes) to the waters of non-member countries, depending on the provisions of the particular fisheries agreement in question.

41. Since the Community legislature was aware of the above two mechanisms which may influence the Community's volume of catches in respect of a specific stock, we must assume that the requirement of relative stability and the rule of fixed percentages which the Court's case-law has derived therefrom refer to every catch volume, irrespective of its size, for a precisely defined stock.

42. Conversely, it also follows that the distribution of a catch volume in respect of a stock to which the Community previously had no access constitutes an initial distribution for which a proportional distribution formula must first of all be laid down.

43. However, an initial distribution in this sense is not involved where the total catch

21 — Case C-71/90.

22 — Cf. Article 3(1) Regulation No 2057/82, (OJ 1982 L 220, p. 1).

quantity is first laid down within the framework of fisheries agreements entered into with non-member countries, after they had previously been laid down independently during a specified period of time. It would appear from the two paragraphs of Article 3 of the basic regulation, read in conjunction with Article 4(1) thereof, that both these cases are subject to the same rules in respect of the distribution of quotas. If, then, the total volume of allowable catches (and the Community's share thereof) for the waters around Greenland (Cases C-63/90 and C-67/90), which was part of the Community until 1 February 1985, was set independently, as was the total volume of catches of the Community in the (formerly international) 'white zone' (Case C-73/90), even though subsequently the Community's volume of catches in those waters was laid down in fisheries agreements, these factors in no way alter the principles previously worked out.

44. (b) In order to be able to determine whether the rule thus identified, under which the percentages originally selected remain unchanged, confers exceptionally a degree of latitude on the Council within which it may or must accede to the request made by the applicant Member States, that rule must be examined in its proper context.

45. (aa) It is important in this regard to bear in mind that, when it is considered in closer detail, Article 4(1) of the basic regulation covers *three separate cases* (for the period prior to the adjustments under Article 4(2)).

46. The *first case* is the initial distribution of all resources available to the Community at the relevant date which are subject to catch limitations and quotas. What concerns us is the *determination of the starting point* for fisheries policy, in so far as that policy is pursued by the methods specified. This was marked by the historical distribution provided for by Regulation No 172/83 and the amending regulations already cited. [23] Admittedly, the objective set out for this initial distribution in the preamble to the basic regulation does not differ from that relating to subsequent distributions. There is in fact a common denominator, namely, the objective of safeguarding traditional activities and thereby the interests of local populations which in the individual Member States are particularly dependent on fishing and related industries. [24] However, in contrast to subsequent distributions, it was in this case necessary to overcome the special problem posed by the fact that numerous non-member countries had extended their fishery zones to 200 nautical miles and that the fishing vessels of the Member States had thereby lost a range of catch possibilities. [25] In this distribution it was therefore necessary to establish a *new overall equilibrium* which was as close as possible to the original equilibrium between fishing activities.

47. It is obvious that the Council enjoyed a wide measure of discretion in view of the complex economic situation which it was required to regulate.

23 — See paragraph 3 above.

24 — See the fourth recital in the preamble to Regulation No 172/83.

25 — See previous footnote; judgment in Case C-3/87 *The Queen* v *Ministry of Agriculture, Fisheries and Food*, ex parte Agegate [1989] ECR 4459, at paragraph 24; also the judgment in Case C-216/87 *The Queen* v *Ministry of Agriculture, Fisheries and Food, ex parte* Jaderow Ltd [1989] ECR 4509, at paragraph 23.

48. The *second case* is represented by the subsequent distributions, under which, logically, traditional fishing activities are to be safeguarded *in the context of this new equilibrium*. It is here that the rule relating to fixed percentages applies; it ensures that the *proportions* for the fishing activities of the Member States remain unchanged and thereby guarantees, quite literally, 'relative' stability.

49. As we have already seen, the Act of Accession brought the new Member States within this system in a manner which avoided any alteration of the proportions, as those had been laid down at the time of distribution among the original Member States. Instead, the Act of Accession 'added' the fishing activities 'brought in' by the new Member States to the original distribution, without making it necessary to organise a new distribution corresponding to that of the first case.

50. The *third case* concerns distributions in respect of stocks which accrue to the Community at periods subsequent to the original distribution. The objective of stability does not allow the total overall equilibrium and consequently the traditional distribution formula to be in any way called in question. The Council therefore has the task of extending the existing equilibrium to cover this new stock by laying down a distribution formula in respect of that stock (which thereby becomes subject to the rule on fixed percentages). There is no precise formula for that purpose. The Council must in this regard exercise its discretion on a case-by-case basis, while always bearing in mind the objectives set out in the preamble to the basic regulation.

51. (bb) It would appear prima facie from the above review that the Council has a discretion only in the first and third cases, with the result that in the case of all distribution rules based on the original distribution and which do not concern new stocks it remains bound by the proportional formula originally selected. It is at this point unnecessary to consider how this question should be treated in general. With reference to the cases at present before the Court, however, it must be held that this inflexible solution fails to take account of the connection between the first and third cases into which the second case fits.

52. (1) So far as concerns the *connection with the first case*, it does admittedly correspond to the meaning and purpose of the system to preserve the fishing activities of the Member States in the context of the equilibrium attained at the time of the initial distribution (an equilibrium which may have been complemented by the Act of Accession) in the event of subsequent distributions at least until the adjustments provided for under Article 4(2) of the basic regulation have been completed. The following, however, is the reverse side of this logic: if the circumstances underlying this original equilibrium should subsequently be changed in a fundamental manner, it may become necessary, depending on the nature of the case, to amend the distribution formula in order to recreate that equilibrium, if only approximately. It appears to me that it is precisely this conclusion which underlies the declaration relating to Article 4 included in the statement entered in the minutes at the time of the adoption of the basic regulation, [26] according to which the Council was to take into consideration, when determining the relative stability of the quotas to be allocated

26 — See Section 2 of the Report for the Hearing.

to the Member States, the various circumstances which might substantially affect the general situation in the light of which the Council had decided on the initial allocation.

53. Reference was quite rightly made during the discussions before the Court in this connection to the example of an ecological disaster which destroys a stock subject to a quota allocation. Situations may here arise which resemble that which existed at the time of the initial allocation, since even at that period it was necessary to find a new equilibrium in the context of *permanently reduced fishing possibilities*.

54. The Council must therefore treat such events as an opportunity to examine the extent to which they impair the original equilibrium and permit or even require measures to establish a new equilibrium as similar as possible to the old one.

55. It is certainly possible to imagine the Council being confronted with such a situation; as becomes clear from the above considerations, however, this ought in general to be restricted to cases of *reduced* catch possibilities. In practical terms it appears to me scarcely possible to imagine an extension of catch possibilities which would place the Council in the situation with which it was faced on the occasion of the initial allocation.

56. With regard to the present cases, however, there do not appear to be any such circumstances. Rather, the facts in these cases lead me to distinguish between two arrangements, neither of which meets the conditions for such a special situation.

57. In accordance with my views on the reference point of the rule relating to fixed percentages, [27] it must first be noted that a *simple increase in the volume of catches* of the Community in respect of a specific stock, such as can occur *at any time from one year to the next*, does not, contrary to the view put forward by the Portuguese Government (Case C-63/90), oblige the Council to exercise its discretion in order to address the issue of a new distribution. This is because such developments lack the characteristic of *permanence* (see Article 1 of the basic regulation), which justifies a new *fundamental* decision regarding the distribution formula. As the Council rightly pointed out, participation of Member States, who up to that point had not been included in the distribution formula, would have to be reduced or discontinued in the event of a subsequent diminution of catch possibilities. The result of such a solution would be that the holders of the quotas allocated under the normal formula would be deprived, at least temporarily, of the fruits of their prudent fishing policy and their compensation for periods of lower Community quotas, without this necessarily corresponding to a *permanent* ('stable') advantage for the Member States who had just recently become parties to the distribution, as is the intention under Article 4(1) of the basic regulation.

58. It is also, however, conceivable that there may be increases in the Community's volume of catches in respect of one and the same stock, which represent not merely annual fluctuations but are permanent in nature. Such changes may arise as the result of an *alteration* in the *legal position on which*

27 — See above at paragraphs 40 and 41.

the calculation of the Community's volume of catches is based. A development of that kind does not give rise to any obligation on the Council to exercise its discretion in order to ascertain whether it is necessary to define a new equilibrium. The situation just outlined is in no way analogous to that which existed at the time of the original distribution. It can at most be assimilated to the situation which arises at the time of (initial) distribution in respect of a stock to which the Community previously had no access (third case). However, as I have pointed out, the objective of the system here applicable requires in the latter situation, not the establishment of a new equilibrium, but rather the extension of the original equilibrium to cover the new stock through the application to that stock of the same criteria as had been applied to the old stocks.

59. Accordingly, the approach of a new definition of equilibrium in the fishing activities of Member States — i.e., the approach which emerges in relation to the characteristics of Article 4(1) as the basis of the original distribution — does not in this case justify a breach of the rule on fixed percentages.

60. (2) However, the views just expressed make it clear that such a breach may have to be considered in a case which is analogous to the initial distribution of a stock which is new for the Community (third case). As already pointed out, the Council must, in the case of initial distribution in respect of such a 'new' stock, exercise its discretion to determine which Member States shall participate to what extent in the volume of catches allocated to the Community; in this case the formula chosen must again be subject to the rule on fixed percentages.

61. These reflections, *arising from the context of the third case*, however, can oblige the Council, in the case of a stock already subject to normal distribution, to consider the introduction of a new formula only if two conditions are satisfied. Comparability with the position of the third case depends on these conditions. First, the amounts at issue must not be *totally insignificant* when measured against the amounts normally permitted in the context of the fisheries agreement. The Council may otherwise attach greater importance to the interests of effective management (see the third recital in the preamble to Regulation No 172/83) and forgo any thoughts of a new distribution. Secondly, it must be presumed, in view of the legal basis on which the increase of the Community catch volume rests, that the change is a *permanent one.* If these conditions are satisfied, the Court of Justice examines on a case-by-case basis whether the Council has properly exercised its discretion in respect of the preservation or amendment of the formula and, if at issue, the selection of the beneficiary Member States and their percentages.

62. 2. It is on this basis that I wish to examine the special features of the individual cases before me. For the sake of clarity I will consider the cases in their numerical sequence. I shall deal with the arguments concerning the underuse of national quotas together in a separate section (3).

(a) To start with, I shall now look at *Joined Cases C-63/90 and C-67/90*

63. I would remind the Court that under the fisheries agreement between the Community and Greenland [28] implementation protocols (Article 2(1)) were agreed on concerning the operations in Greenland waters of fishing vessels flying the flag of a Member State, under which the first protocol [29] applied from 1 February 1985 to 31 December 1989, while the second protocol [30] covers the period from 1 January 1990 to 31 December 1994 (first paragraph of Article 1). The amounts of cod to which the Community is entitled under the second protocol come to 16 000 tonnes (western stocks — NAFO 0/1) and 15 000 tonnes (eastern stocks — ICES XIV/V) and thereby exceed those under the first protocol by 4 000 tonnes and 2 500 tonnes respectively. Under the disputed Regulation No 4054/89 the 'catch quota' of the Community for 1990 (the first year covered by the second protocol) was divided up in the above total amount, in accordance with the normal formula, between the United Kingdom and Germany. The applicant Member States interpret this as a breach of the principle of relative stability and they take the view that the increase in the Community's catch allocation resulting from the second protocol ought to have led to catch quotas being allocated to them also.

64. For the purpose of assessing this submission, it follows from the above principles that there cannot in any event be an objection to the retention of the original distribution formula in the absence of a case which is analogous to that of an initial distribution in respect of a 'new' stock.

65. There is here no such case, since under the legal bases applicable to the increase under the second protocol the requisite element of permanence is not guaranteed.

66. The fisheries agreement contains a range of mechanisms which can increase but also, in particular, reduce the amount most recently allocated to the Community (of whatever species) vis-à-vis the amount laid down in the protocol. Such a *reduction* is possible under Article 7. Under that provision the quotas agreed with the Community shall be reduced, without such reduction affecting the level of financial compensation provided for under the relevant protocol, where biological circumstances for a given fishing year require the total volume of catches from a particular stock to be fixed at a level which does not permit Greenland to meet the obligation arising from Article 2 and, at the same time, maintain its fishing activities at a level corresponding to minimum quantities laid down in the protocols referred to in Article 2(1). An *increase* is possible under Article 8. According to Article 8(1) the authorities responsible for Greenland shall offer a special priority for the Community on access to supplementary catch possibilities, which exceed the catch capacities of the Greenland fleet and the annual quotas agreed for the Community

28 — Regulation No 223/85, OJ 1985 L 29, p. 8.
29 — Regulation No 224/85, OJ 1985 L 29, p. 13.
30 — Council Decision 89/650, OJ 1989 L 389, p. 80.

under the protocols referred to in Article 2(1). Article 8(2) provides that the authorities responsible for Greenland shall, in allocating the supplementary catch possibilities referred to in paragraph 1, offer to the Community, against appropriate payment, quantities which correspond, for cod of the western stock of Greenland, to at least 20% of an increase in the TAC above 75 000 tonnes.

67. By reason of these mechanisms the year 1988, according to the undisputed figures supplied by the Council (annexed to the defence in both cases) and following a complete *suspension* of quotas in respect of western cod stocks for 1986 and 1987, witnessed a *reduction* of 5 000 tonnes to 7 000 tonnes, [31] and in 1989 an increase of 4 000 tonnes to 16 000 tonnes. [32] Thus, the amount actually guaranteed remained lower than the amount set out in the first protocol during three consecutive years. This illustrates very clearly that the forecasts on which the figures laid down are based may be overly optimistic, and also that the expectations expressed in those figures may be exceeded during individual years. It is for that reason not possible to state categorically that the difference between the two protocols represents a legally secure and permanent alteration, *a fortiori* since it cannot be excluded that the third protocol (for the period commencing 1 January 1995) may, corresponding to the development of stocks, lay down even more restrictive catch quotas than the second protocol.

31 — Cf. Regulations No 3982/87 (OJ 1987 L 375, p. 53) and No 2963/88 (OJ 1988 L 269, p. 3).

32 — Cf. Regulation No 1578/89, OJ 1989 L 156, p. 3.

68. The Spanish Government also submitted on this point that the increase in the financial adjustment and the opening of the Community market were the factors which brought about the increase in the cod quota under the second protocol. However, I am unable to understand what significance these arguments can have with regard to the issue of the permanence of the new amendment. In any event, the action alleged by Spain, and which the Council moreover disputes, would be at variance with Article 2(2) of the fisheries agreement. To that extent there is no evidence to counter the presumption that the agreement was applied in the correct manner.

69. The Spanish Government finally submitted that the Community had rejected, in 1986, 1987 and 1988, several offers of quotas relating to a number of species (other than cod) which Denmark had proposed on behalf of Greenland. The Community had not accepted these by reason of the lack of interest shown by Member States considered for the purpose of allocation, even though Spain had itself expressed an interest in those quotas. On the other hand, the Community accepted in 1989 additional quotas relating to cod and capelin. It must therefore be recognized, so the argument runs, that the rejection or acceptance of offers depended solely on the interests of the Member States which possessed quotas.

70. I would point out first of all in this regard that the distribution of quotas here at issue concerns only the actual amounts granted to the Community under the second protocol and does not relate to any quantities which the Community might have been in a position to accept as additional quotas in

the past. Secondly, there is no indication of factors which suggest that the rejection of the earlier offers constituted an improper exercise of discretion.

71. There is therefore no clear argument in favour of the view that the application of the principle of fixed percentages is incorrect.

72. (b) Case C-70/90 need not detain us long. There does not in this case even appear to be an increase in the catch quantities granted to the Community in 1990 (either vis-à-vis 1982 or vis-à-vis 1989), [33] with the exception of a minimal increase in the case of 'other species'; these, however, are not, so far as we can ascertain, based on an amendment of the legal bases applicable. There is accordingly no basis for the view that we have here an event capable of bringing in question the application of the principle of fixed percentages.

73. (c) *Case C-71/90* is the only one in which the legal position of the applicant (Spain) must be examined in the light of the Act of Accession.

74. (aa) It appears in this regard from the documents appertaining to the case that there was a fisheries agreement between Spain and Norway relating to a number of the stocks covered by the disputed regulation, and that the period of validity of that agreement expired on 31 December 1986.

75. Under that agreement Spanish fishing vessels were to be allowed to fish in Norway's exclusive economic zone in the waters to the north of 62° N at a distance of 12 nautical miles from the baselines. Under the agreement the Norwegian Government was to lay down an appropriate portion of that part of the total catch quantity which exceeded Norwegian fishing capacity.

76. It is not disputed that no further quantities were offered to Spain under this agreement from the beginning of 1982, since Norway was prepared to do so only if Spain limited its fishing activities in the Spitzbergen area. According to the applicant Member State, this condition was based on an interpretation of the Treaty of Paris [34] with which Spain does not agree.

77. The applicant takes the view that, since the Community accepts the limitations relating to the Spitzbergen area, the Council was under an obligation pursuant to the principle of relative stability to grant Spain quotas for cod, haddock, saithe and redfish corresponding to its traditional fishing activities. The quota of 190 tonnes for redfish — a species of limited economic value — to which the disputed regulation limited Spain's participation and which Norway in any case had conceded only outside the agreement with the Community, does not, according to Spain, satisfy those requirements. The quantity specified is also so minimal that it is 'technically impossible' to catch it.

78. I would first point out in this regard that it is not disputed that the accession of Spain to the Community did not have the result

33 — The (undisputed) figures for the years up to 1989 are contained in the annex to the statement of defence. In 1982 the Community did not yet hold catch quotas for mackerel.

34 — Treaty on Spitzbergen, signed on 9 February 1920, LNTS volume 2, p. 7.

that larger catch quantities than would otherwise have been available were allocated to the Community pursuant to this fisheries agreement with Norway (regard being had to the expiry of the period of validity of the agreement with Spain). [35] There is accordingly no evidence of any breach of the principle of relative stability, as that principle is set out in Article 167(3) of the Act of Accession.

79. It is a quite separate issue whether the Community was placed under an obligation by that provision to arrange a distribution of larger quantities in view of the agreement signed by Spain, if necessary by means of an amendment to its own fisheries agreement with Norway. That, however, may be considered only if fishing activities were being carried out under the former agreement at the time of Spanish accession. Even if it is necessary, for the purposes of this assumption, to consider the case as if there had been no dispute concerning fishing activities in the Spitzbergen area, it is nonetheless totally unclear whether and to what extent catch possibilities arose under that fisheries agreement. It is in particular impossible to determine whether such possibilities, extrapolated to the year 1990, would have led to the allocation of larger quantities or additional species to those provided for in the disputed regulation. Under the general rules, however, the onus is on the applicant Member State to dispel that uncertainty. It might be noted in this regard that, as Spain itself submits, from 1981 (the first year of the agreement's validity) Norway did not grant any share of its resources except in relation to redfish (and another species which is not the subject of Spain's requests). With regard to all the species to which Spain believes that its claim for allocation of quotas relates, the allocations granted to Spain by Norway between 1978 and 1980, made on the basis of an agreement dating from 1977, indicate sizable reductions. This agreement [36] had in any event not yet limited the Spanish allocations to a portion of the quantities which exceeded the Norwegian catch capacity. From the point of view of Spain's fishing activities prior to accession, there is accordingly no evidence of a breach of Article 167(3) of the Act of Accession or of Article 4(1) of the basic regulation, in so far as that provision applied in conjunction with the former provision.

80. (bb) So far as concerns the application of Article 4(1) of the basic regulation, Spain argues that the fisheries agreement with Norway was upgraded and stabilized, since restrictions were imposed on the Spanish fleet in the Spitzbergen area and trading relations between the Community and Norway were adapted through the conclusion of agreements in the areas of agriculture and fisheries. [37] One of those agreements actually provides (Exchange of Letters No 3) that with effect from 1 March 1986 the provisions agreed on in 1973 regarding tariff concessions for certain fishery products should be applied to the enlarged Community. In addition, the Community grants the Kingdom of Norway preferential treatment in the form of total or partial duty reductions on certain fishery products originating in Norway and imported into the Community. Provision is also made for a number of other concessions

35 — Regulation No 2214/80, OJ 1980 L 226, p. 47.

36 — Annex II to the application in Case C-71/90.

37 — Council Decision 86/557 of 15 September 1986, OJ 1986 L 328, p. 76.

by the Community in view of its enlargement; these concern imports in the fisheries sector (cf. No II of Exchange of Letters No 1). The Council does not appear disposed to deny that there is a connection between this alteration to the Community's import system and the development of catch quantities allocated to the Community since 1986. The Council nonetheless takes the view that increases in those quantities must, under the principle of relative stability, operate in favour of those Member States which had participated in the earlier allocations. The adaptation of agreements between the Community and the EFTA Member States is a necessary corollary of the enlargement of the Community.

81. I am in this connection unable to identify any error of judgment on the part of the Council. There is no evidence to suggest that there has been a permanent alteration to the legal basis for distribution of catch quotas to the Community. In particular, there was no agreement in the exchanges of letters cited above on allocations going beyond those existing under the fisheries agreement. [38] There also does not appear to have been a permanent alteration in the application of the fisheries agreement itself.

82. It appears from the table submitted by the Council that there was in 1986 an increase vis-à-vis the previous year in a number of species (cod, haddock and mackerel), and that this increase was in part maintained and in part continued in 1987. Nonetheless, the figures in the disputed regulation are once again significantly lower than those for 1986 (with the exception of mackerel, for which, however, the Community's catch share did not suffer a decrease until 1989).

83. There is accordingly also no evidence in Case C-71/90 to suggest that the Council improperly exercised its discretion.

84. (d) I now come finally to *Case C-73/90*.

85. (aa) So far as concerns the quantities distributed under *Regulation No 4051/89*, it is necessary to draw a distinction between two separate aspects.

86. One of those relates to the allocation of quantities normally granted under the 1979 fisheries agreement with Sweden. [39] This concerns 2 500 tonnes of cod, 1 500 tonnes of herring and 40 tonnes of salmon. Spain does not dispute the fact that those quantities were distributed in the normal manner.

87. The second aspect is the distribution of quantities granted to the Community by Sweden in the formerly international 'white zone'. Those quantities were allocated for the first time in 1989 pursuant to the agreement with Sweden. [40] Spain takes the view that the resultant increase in catch quotas for the Community (for 1990: 5 000 tonnes of cod and 150 tonnes of salmon) ought to have

38 — Regulation No 2214/80, OJ 1980 L 226, p. 47.

39 — Regulation No 2209/80, OJ 1980 L 226, p. 1.

40 — See Regulation No 297/89, OJ 1989 L 33, p. 42.

resulted in a change in the method of distribution which took account of the new Member States.

88. At the time when the catch area in question still lay in international waters, the Community had laid down total catch quantities in respect of *cod* stocks; these quantities were indisputably higher than the catch share, the distribution of which concerns us here today. Following the integration of those fishing activities within the scheme of the fisheries agreement, no change was made to the distribution formula. In view of the equation between the Community's share in total catch quantities set independently and the catch share of the Community granted in the context of total catch quantities in the waters of non-member States, [41] the quantities for distribution among the Member States relating to the white zone cannot be treated as an increase in the quantities normally granted under the fisheries agreement, as the Council has correctly pointed out. Since there was no increase in quantities of cod (but on the contrary a reduction) [42] even after the integration of those stocks into the agreement, the Council did not incorrectly exercise its discretion in this regard.

89. The position in respect of *salmon* stocks in the white zone is slightly different. Fishing activities of Community vessels were not subject to catch limitations in respect of these stocks until the latter were brought within the 1977 agreement. The distribution among the Member States of the catch share allocated thereunder to the Community had therefore in this regard the character of an initial distribution. [43] The Council has submitted, without being contradicted, that this was achieved following consideration of the normal catch activities. Neither in that regard nor in respect of the maintenance of the formula selected at that time [44] (the Community catch quota for salmon in the white zone fell from 170 tonnes in 1989 to 150 tonnes in 1990) is there any evidence to support a finding that the Council improperly exercised its discretion.

90. (bb) Under the contested Regulation No 4057/89 the additional catch quota of herring granted to the Community for 1989 (5 000 tonnes) was distributed among the Member States in accordance with the normal distribution formula. I cannot see any misuse of powers in that. In the absence of sufficient evidence, this additional quantity cannot be treated as indicative of a permanent alteration anchored in the applicable legal foundations. Rather, in comparison with Regulation No 4051/89, in which the Community's catch quota for herring is again set at 1 500 tonnes, it appears that the increase in the quantities for distribution is merely sporadic in its nature and cannot place in jeopardy the principle of fixed percentages.

91. (cc) The Spanish Government also argued that the Community's catch share in Swedish waters had been increased by reason of the agreement of 14 July 1986 between the Community and Sweden. [45] The letters which concluded that agreement jointly

41 — See paragraph 43 above.

42 — 1989: 6 000 tonnes, cf. footnote 2 of Regulation No 297/89; 1990: 5 000 tonnes, cf. footnote 2 of Regulation No 4051/89.

43 — See paragraph 50 above.

44 — Denmark: 90%; Germany: 10%; cf. footnotes 3, 6 and 7 of Regulation No 297/89 and Regulation No 4057/89.

45 — Council Decision 86/558 of 15 September 1986, OJ 1986 L 328, p. 89.

consented that the Swedish authorities would provide to vessels flying the flag of Member States of the Community the opportunity to fish, supplementary to those agreed annually in the framework of the fisheries agreement between the Kingdom of Sweden and the Community, the following quantities:

— Baltic cod: 2 500 tonnes

— Baltic herring: 1 500 tonnes.

92. In this regard, however, it is sufficient to hold that these additional quantities are not the subject of the contested regulations. The distribution of those quantities was undertaken rather by Regulation No 1655/90, [46] which is not mentioned in the application in Case C-73/90.

93. 3. In examining Article 4(1) of the basic regulation it is finally necessary to consider the argument put forward by Spain (in Cases C-67/90, C-70/90 and C-71/90) that the Member States which held quotas relating to specific stocks had for certain years *not exhausted* those *quotas* prior to the period of validity of the disputed regulation.

94. The Court ought in my view to reject that argument. The applicant has failed to demonstrate that catches which were in fact possible and economically profitable were nevertheless not actually made. Similarly, there is insufficient evidence to support the view that these or similar circumstances allow the conclusion to be drawn that the Member States which received quotas pursuant to the disputed regulation did not exhaust *those new quotas* so far as was economically profitable. Until evidence is produced to the contrary, we must assume that use was made of those catch possibilities which were economically advantageous or that they became the subject of an exchange under Article 5(1) of the basic regulation.

95. It is significant in this regard that the fish quotas set for the Community under fisheries agreements do not necessarily reflect the quantities the catching of which is in fact possible and economically profitable. The determination of the total catch quantity and the catch shares of participating parties (in particular the non-member country in question and the Community) is based on forecasts, particularly those concerning the condition and development of the stock in question, and these need not necessarily turn out to be accurate. The argument put forward must for that reason be rejected.

96. 4. The *result* of the above considerations must be that the contested regulations do not infringe Article 4(1) of the basic regulation, read if necessary in conjunction with the Act of Accession.

46 — OJ 1990 L 155, p. 3.

97. III. In connection with the above, I might just briefly examine the complaint made by Spain (Cases C-67/90, C-70/90, C-71/90 and C-73/90) to the effect that the manner in which Article 4(1) of the basic regulation was applied constitutes a *misuse of powers*. However, the applicant adduces no additional evidence in this regard but merely bases its complaint on those arguments with which I have already dealt individually.

98. Without it being necessary to examine the question to what extent the individual disputed measures were at all adopted in exercise of the Council's discretion, it is sufficient to hold that a measure under Community law may be regarded as constituting a misuse of powers only under limited conditions. It is necessary that there should be objective, conclusive and consistent indicia to support the conclusion that the measure in question was adopted for purposes other than those provided for in the corresponding rules. [47] The Spanish Government has, however, failed to produce such indicia. The complaint of misuse of powers must for that reason be rejected.

99. IV. In the context of the treatment of heads of complaint relating to substantive law, I must finally address the submission which relates to the infringement of *general principles of law*.

100. (1) Both applicants contend — basing themselves on different aspects — that the disputed regulations infringe the *prohibition of discrimination laid down in Article 7 of the EEC Treaty*.

101. (a) The first of those aspects concerns the application of the principle of relative stability in the light of the accession of two new Member States to the Community. *Portugal* refers in *Case C-63/90* to its fishing activities during the reference period (1973 to 1978) [48] and argues that if it had been a member of the Community in 1982 when the chosen distribution formula was being drawn up, it would have been entitled to quotas for cod and redfish. In this regard, it is the victim of discrimination occasioned by rigid compliance with the first distribution formula; this, it argues, is not justified by the fact that Portugal did not accede to the Community until 1986. Portugal was immediately integrated into the Community fisheries policy by reason of that accession. The circumstances on which the adoption of the principle of relative stability and the first distribution formula were based were fundamentally altered by that accession and by the correlation between increased catch possibilities in Greenland waters and the legitimate demands made by Portugal.

102. A similar argument was put forward by the *Spanish Government* (in Cases C-67/90, C-70/90, C-71/90 and C-73/90), which focuses on the loss of competence on the part of the new Member States to conclude fisheries agreements. In view of that loss, the Community could not negotiate new catch possibilities exclusively for the benefit of specific Member States without thereby breaching the prohibition of discrimination.

47 — See for example the judgment in Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, at paragraph 134.

48 — See paragraph 3 above.

103. There are essentially two issues underlying all these arguments. [49] The first issue is whether a more extensive participation in the external resources of the Community ought to have been granted to new Member States on the occasion of their accession, without, however, thereby encroaching on the principle of relative stability as evolved in the practice of the Council and confirmed by the Court of Justice. The Act of Accession provides a conclusive answer to that question, as I have already explained in an earlier section of my Opinion. [50] For that reason, the degree of participation chosen for new Member States cannot be assessed in the light of Article 7 of the Treaty.

104. The second issue is whether the Council was required under that provision to depart, at the time of accession, from the rule of fixed percentages in order to ensure a smoother application of the principle of relative stability. This question must also clearly be answered in the negative. It is unnecessary to decide whether such action would have been at all possible without an amendment to Article 4 of the basic regulation and how one might assess the obstacles arising from the interaction of that provision with the Act of Accession. [51] In any event, the submission of these questions confuses two separate issues, namely the conformity with the Treaty of the system of the common fisheries policy which existed at that time pursuant to the basic regulation, and the manner in which new Member States were to participate in that system. If we proceed on the assumption, as is here being suggested, that no criticism can be levelled at the manner in which the new Member States participate by virtue of the Treaty, then doubt can fall only on the system itself. It must, however, be pointed out in this regard that the inflexibility of the system of which the applicants complain affects in equal measure, both positive and negative, the fishermen of all Member States. It therefore does not *per se* constitute a basis for discrimination on grounds of nationality within the meaning of Article 7 of the Treaty. This would appear to have been directly confirmed by the judgment of the Court in the *Romkes* case. Admittedly, the Court of Justice, in its examination under Article 7 of the regulation disputed in that case, dealt only with the criteria on which the selected distribution formula was based:

'As regards the compatibility of the system established by Regulation No 1/85 with Article 7 of the Treaty, it should be observed that, according to the documents before the Court, the percentages allocated to the various Member States were fixed according to the quantities of fish caught during a reference period by their respective fleets which reflected their fishing capacity at that time. Such a method is not contrary to the prohibition of discrimination laid down in Article 7 of the Treaty since it requires the fishermen of each Member State to make an effort to restrict their catches to levels in proportion to the catches they were taking before the entry into force of the Community system for the conservation of fishery resources.' [52]

49 — These two issues are not properly distinguished, just as the Spanish Government has failed in its submissions properly to distinguish between the internal and external relations of the Community. However, it is not, for the purposes of resolving the present cases, necessary to examine this matter.

50 — See paragraph 30 et seq. above.

51 — See in particular Article 161; Advocate General Mischo (Opinion in Case C-3/87 [1989] ECR 4459, (see above at footnote 25) beginning at p. 4474) has even expressed the view that the Act of Accession gives 'treaty status' to quotas under the basic regulation (final sentence of point 69) and that 'the quota system has treaty status' (final sentence of point 91).

52 — Paragraph 23 of the judgment.

105. However, the Court laid down in that same judgment the rule of fixed percentages; it would certainly not have done so if it had considered such a rule to be dubious in the light of Article 7 of the Treaty, about the infringement of which the applicant in the main proceedings had expressly complained.

106. All these considerations must, however, be made subject to an important proviso consistent with the previously developed arguments on the interpretation of the Act of Accession [53] and with the principle of relative stability. [54] The continuity which is a major feature of this system can remain unequivocally free from discrimination only so long as the factors underlying the manner of participation of the original Member States in the creation of the system (to which the judgment in *Romkes* refers) and the participation of the new Member States at the time of accession (to which the Act of Accession refers) themselves remain essentially the same. If the necessary consequences are not drawn from such an alteration of determinant factors, it may happen that the distinctions drawn according to the flags of the fishing vessels concerned no longer correspond to the differences in the particular position of the fishermen. The result may consequently be discrimination on grounds of nationality. However, no facts have been adduced in the present cases which would lead us to conclude that there have been such alterations of determinant factors. All things considered, I can accordingly hold that there has, under the aspect here dealt with, been no infringement of Article 7 of the Treaty. [55]

107. (b) In the opinion of Spain (Cases C-71/90 and C-73/90), the contested regulations also infringe Article 7 of the EEC Treaty in so far as the increases in the Community's catch share which occurred as a result of the opening of the Spanish market to products from the non-member country in question by reason of accession did not benefit the new Member States, but rather exclusively those Member States which were included in the existing distribution formula. Similarly, in Case C-70/90, the opening of the Spanish market to products from the Faroes did not result in any increase in Spain's fishing opportunities (in the waters in question). At Section III.12 of its application in Case C-63/90, Portugal complains (from the point of view of fairness) that it acted in conjunction with the other Member States in paying the consideration imposed in the agreement relating to Greenland waters, but that it had nevertheless not been given an opportunity to fish pursuant to that agreement.

53 — See Paragraph 36 above.

54 — See Paragraph 52 above.

55 — It also follows from the Order of the President of the Court of Justice (Case C-246/89R, *Commission* v *United Kingdom* [1989] ECR 3125, at paragraphs 26 and 27) that the system of quotas under the basic regulation constitutes a derogation from the principle of equal access for Community fishermen to fishing grounds and to the exploitation thereof in waters coming within the jurisdiction of the Member States (cf. Article 2(1) of Regulation No 101/76, OJ 1976 L 20, p. 19) (also the judgment in Case C-216/87 (above at footnote 25), at paragraph 24), a principle which is itself a specific expression of the principle of non-discrimination laid down in Article 40(3) of the EEC Treaty. As the Order makes clear, however, that derogation is justified, according to the recitals in the preamble to the basic regulation, by the need, in a situation where there is a dearth of fishery resources, to ensure a relative stability in regard to fishing activities.
These considerations, which of course refer to the internal resources of the Community, also argue against a finding that there has been a breach of Article 40(3) in so far as the system referred to affects external resources.

108. It suffices in this regard to point out [56] that the charges mentioned by the applicant Member States (the opening under customs law of the market to the EFTA Member States, contributions to the Community budget) reflect only the general status of the applicants as Member States and are not connected in any specific regard with the Community's fishery policy. There is no principle of Community law that such general charges must have as their corollary specific benefits in individual areas of Community policy. So far as concerns the prohibition of discrimination under Article 7 of the Treaty in particular, this does not deal with the connection between general charges and specific benefits, but only with the criteria under which benefits or charges are allocated to economic participants within individual areas of regulation. Such criteria may not give rise to preference or disadvantage based on nationality.

109. In this regard also, the submissions of the applicant Member States should be dismissed.

110. (c) It now remains, finally, for the sake of completion, to examine the submissions made by Spain in its replies (Cases C-67/90, C-70/90, C-71/90 and C-73/90), [57] according to which there was discrimination in the differing treatment of the old and new Member States with regard to access to those external resources which were the subject of bilateral agreements concluded prior to the accession of the new Member States. The Kingdom of Spain points out in this regard that the other Member States had received their share under bilateral agreements which Spain had signed with non-member countries prior to its accession and which had been renegotiated after its accession to the Community, and that they had in this manner, thanks to Spain's acceptance in the Community, acquired new fishing opportunities, whereas Spain itself was not allowed to have a share of the quotas which the Community received by virtue of agreements into which it had entered with non-member countries prior to Spain's accession. That, Spain argues, is a practice which is unequivocally discriminatory.

111. It is common ground that no quantitative catch limitations apply in the waters (of the southern hemisphere) covered by the agreements recently negotiated by the Community and with which the applicant Member States are concerned; as a result, the principle of relative stability is also not applicable. The fact that access to the resources in question may be limited in one case to precisely specified Member States, and not so restricted in another case, depending on the applicability or inapplicability of that principle, is conditional on the distinction in the particular factual and legal situation to which individual resources are subject. The situation in one case is one of scarcity, and in the other it is not. This criterion of distinction has nothing to do with nationality and accordingly cannot constitute a breach of Article 7 of the Treaty.

112. (2) Portugal also argues in *Case C-63/90* that there has been an infringement of a number of other general principles of law.

113. (a) The applicant first of all takes the view that the contested Regulation No 4054/89 infringes the *principle of proportionality*.

56 — It is unnecessary here to examine the question arising in regard to the above complaint made by Spain as to whether there is in fact a connection between the opening of the Spanish market and the size of the catch share in question; cf. paragraph 80 et seq. and paragraph 91.

57 — Portugal submitted a similar argument in Case C-63/90, but dealt with it from the point of view of 'Community solidarity'; on this see paragraph 131 et seq. below.

114. In so far as that regulation failed to provide catch quotas for those new Member States which could demonstrate a long and well-established fishing tradition in Greenland waters, Portugal argues that this is disproportionate when measured against the objective of relative stability. The Portuguese Government alludes in this connection to the significance to the interests of the Portuguese fleet, interests which have been damaged by the obstacles placed over the last few years on access to the waters of the North Atlantic and the consequent fall in cod catches, as well as to Portuguese traditions with regard to cod fishing and eating habits.

115. In my view, those arguments — with the exception of the submission concerning the increased difficulty of access to the waters of the North Atlantic, which, however, has not been adequately developed — add nothing new to the arguments relating to the prohibition of discrimination.

116. Essentially, they concern once again the starting position at which the Act of Accession places the new Member States (a position which cannot, however, be criticised in view of the Treaty nature of the regulations in question), as well as the characteristic of continuity, which is a feature of the system established by the basic regulation.

117. So far as the latter point is concerned, it suffices to refer to my views on the application of the rule of fixed percentages. The application of that rule is *appropriate* for the maintenance of relative stability of the fishing activities engaged in by the beneficiary Member States; it is also *necessary* for that purpose, so long as the Community does not acquire any new catch possibilities relating to the stock in question which may be treated as permanent by virtue of their basis in law. Finally, it is *reasonable* [58] with regard to that objective, since the exercise of their trade by fishermen from those Member States which remain excluded from distribution as a result of that rule would, in the event of the non-application of that rule, result in advantages which would be uncertain both as to their extent and duration, but which would, however, deprive fishermen from the beneficiary Member States of the fruits of their fishing efforts and compensation for fishing years with lower Community quotas.

118. I am accordingly unable to find any evidence of an infringement of the principle of proportionality.

119. (b) Portugal also considers the disputed regulation to be incompatible with the principle of fairness.

120. So far as concerns the validity of that principle in Community law, the Court of Justice has in the past always ruled on individual aspects, which the particular parties involved had represented as features of that principle.

121. In *Balkan-Import-Export* v *Hauptzollamt Berlin-Packhof* [59] the Court of Justice first ruled that a national customs authority was not entitled to set aside charges due

58 — The three elements underlined together make up the requirement of proportionality: judgment in Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, at paragraph 21.

59 — Judgment in Case 118/76 [1977] ECR 1177.

under Community law on grounds of natural justice. The Court thereby established that there was no legal basis in Community law for setting aside monetary compensatory amounts on grounds of natural justice.

122. In its later judgment in *Neumann* v *BALM* [60] the Court of Justice ruled that there was no general legal principle in Community law that a Community provision in force might not be applied by a national authority if it caused the person concerned hardship which the Community legislature would clearly have sought to avoid if it had envisaged that eventuality when enacting that provision.

123. In *Hoche* v *BALM*, [61] the Court summed up that rule as follows:

'the Court has already ruled that there is no such thing as a general principle of objective unfairness under Community law'.

124. However, the Court used Hoche's complaint of unfair treatment in that case as an opportunity to work out the distribution of the risks arising from the applicable legislation in the light of its objective. [62] It came to the conclusion that a risk had materialized in the facts of the main proceedings and that that risk was one which the traders involved themselves had to bear. [63]

125. In my opinion, the above three judgments demonstrate that the Court has always (or at least also) examined arguments based on the legal concept of 'fairness' in such a way that it has gone beyond that abstract concept in order to assess the actual facts in the light of the recognized rules of Community law which the party involved was following through its reference to that legal concept.

126. I would like here to proceed in the same manner. It appears from the reply of the applicant [64] that in its view the principle of fairness constitutes a subsidiary criterion for the interpretation of Community law which cannot be fully covered by the requirements of equal treatment and proportionality. This criterion, so the argument runs, allows the Community Courts fairly to assess conflicting interests without thereby reversing the meaning of the text.

127. The applicant fails in this argument to appreciate that the requirement of relative stability is based on a consideration of the fishing interests of the fleets of the individual Member States which can already be ascertained from its context and objectives. According to the fifth recital in the preamble to the basic regulation, the Community legislature considered the objective of 'stability' as the primary criterion to be taken into account by a 'reference allocation'. It thus attached greater importance to stability for the benefit of all Member States than to the interest in short-term changes for the benefit of those Member States who had previously been overlooked with regard to a particular stock. The subsequent development by the Court of Justice of the rule of fixed percentages is no more than the concrete expression

60 — Judgment in Case 299/84 [1985] ECR 3663.

61 — Judgment in Case C-174/89 [1990] ECR I-2681, at paragraph 31.

62 — Paragraphs 33 and 34 of the judgment.

63 — Paragraphs 34, 35 and 36 of the judgment.

64 — Bottom of p. 26.

of this assessment made by the Community legislature.

128. To request the Court of Justice to depart from this and replace the views of the Community legislature with its own assessment would be at variance with the Court's interpretative task. Subject to the requirements of an interpretation in accordance with the Treaty and principles of equal status, this task consists in giving effect to such intention of the Community legislature as may be inferred from the wording, context and objective of the provision; it is not to add the Court's own views on what it considers to be appropriate.

129. Furthermore, in so far as the Council enjoys a discretion when adopting its annual regulation on the distribution of the Community quotas, the Court of Justice may supervise the exercise of that discretion only with regard to errors of law. In particular, it cannot replace the Council's consideration in the exercise of that discretion with its own considerations. This follows from an *a contrario* interpretation of Article 172 of the EEC Treaty, which provides for unlimited jurisdiction only in regard to the special cases there mentioned.

130. For those reasons the complaint made by Portugal based on the legal concept of fairness must also be rejected.

131. (c) Finally, the Portuguese Government takes the view that the Council breached in this case the *principle of 'Community solidarity'*, which may be derived from the second paragraph of Article 5 of the EEC Treaty. In its opinion, the decision to exclude the new Member States from the distribution of the catch possibilities arising under the agreement necessarily has a negative effect on the extent of integration and the realization of the common fisheries policy.

132. I would point out in this regard that according to the case-law of the Court the second paragraph of Article 5 not only requires the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law, but also imposes on Member States and the Community institutions mutual duties of sincere cooperation. [65] There can in the present case be no question of an infringement by the Council of the duty of sincere cooperation for the precise reason that it acted on the basis of legal provisions which clearly constitute the standard for the lawfulness of measures of this kind and which (so far as concerns secondary law) must be regarded as valid in the absence of other points of reference. Since the examination of the complaints made here has failed to cast any doubt on the legality of the disputed measure in the light of Community law, there can be no question of an infringement by the Council of its duty of sincere cooperation.

133. V. It finally remains to examine the submission made by the Portuguese Government (Case C-63/90) that the disputed Regulation No 4054/89 provides an *inadequate statement of the reasons on which it is based*, as required under Article 190 of the EEC Treaty, and that it consequently infringes essential requirements as to form. There are two distinct complaints in this regard and they must be examined separately.

65 — Order in Case C-2/88 Imm. *Zwartfeld and Others* [1990] ECR I-3365, at paragraph 17.

134. 1. First of all, the Portuguese Government takes the view that the contested regulation does not contain all the facts on which the distribution of catch quotas among certain Member States was based (pursuant to the second protocol to the applicable fisheries agreement). In particular, the exclusion of Portugal ought to have been explained in view of that Member State's requests to participate in the cod and redfish quotas, and of the fact that it would have been possible simultaneously, by reason of the increased catch possibilities for those species, [66] to take account of Portugal's interests and ensure to the beneficiary Member States absolute stability of their shares.

135. The statement of reasons provided for a measure must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. [67] A statement of reasons, however, must be examined and assessed not only in the light of its wording, but also in the context of the whole of the rules applicable in the particular area. [68] The contested regulation, the fifth recital in the preamble to which contains, as an explanation of the distribution methods selected, the provision setting out the determinant criterion, [69] satisfies the requirements of Article 190 of the EEC Treaty thus defined.

136. With its predecessors it forms a closed group which, considered as a totality, gives expression to the rule of fixed percentages derived from Article 4 of the basic regulation. It follows that the Council did not intend to deviate from that rule in the disputed regulation. The parties to which it is addressed can accordingly form a sufficiently clear picture of the factors on which it was based. Furthermore, I do not believe that the Council is under an obligation to indicate why it refused to accommodate such and such a demand. The statement of reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part. [70] This qualification to the duty to provide a statement of reasons imposed by the Court is, in my opinion, particularly justified in the case of factors which the Council has ultimately *not* considered to be decisive, in particular where it was confronted with demands from Member States and market operators that it should act in a particular and specific manner. [71] The duty to state reasons under Article 190 would otherwise be transformed into a duty to justify.

137. 2. Secondly, the applicant takes the view that the contested regulation refers in the citation in its preamble only in a general manner to the EEC Treaty, but does not

66 — It ought to be mentioned as an ancillary point that the second protocol and the disputed regulation provide for a smaller amount of redfish, and not a larger amount, than the first protocol.

67 — Judgment in Case 250/84 *Eridania and Others* v *Cassa Conguaglia Zucchero and Others* [1986] ECR 117, at paragraph 37.

68 — Judgment in Case 125/77 *Koninklijke Scholten-Honig and Others* v *Hoofdproduktschap voor Akkerbouwprodukten* [1978] ECR 1991, at paragraph 19.

69 — '...To ensure efficient management of the catch possibilities available, they should be shared out among the Member States by means of quotas in accordance with Article 4 of Regulation (EEC) No 170/83 ...'.

70 — Judgment in Case 250/84, cited above, at paragraph 38.

71 — Cf in this context the judgment in Joined Cases C-240, 241, 242, 261, 262, 268 and 269/82 *Stichting Sigarettenindustrie and Others* v *Commission* [1985] ECR 3831, at paragraphs 86, 87 and 88.

indicate which provision in that Treaty was taken into consideration. The reference in the second citation to the basic regulation adopted pursuant to Article 43 of the Treaty does not suffice to indicate with the requisite degree of clarity the grounds in law on which the contested regulation was based.

138. It is sufficient in this regard to point out that the contested regulation confines itself to the distribution provided for in Article 4 of the basic regulation in respect of the stocks in question for 1990. As the Court ruled in paragraph 16 of its judgment in *Romkes*, regulations of this kind find adequate support in Article 11 of the basic regulation, without it being necessary to refer back to Article 43 of the Treaty. The requirements of Article 190 of the EEC Treaty are therefore satisfied if the institution adopting the regulation expressly refers to Article 11 of the basic regulation as its legal basis (as is the case in the second citation in the contested regulation). The reference to the EEC Treaty, which explains only the general outline of the measure, need not be more closely defined through specific mention of Article 43.

139. It is not necessary to decide whether, as the Council argues, a specific reference to Article 43 would (in view of the duty to consult the Parliament which that provision imposes) have introduced into the regulation an element of uncertainty which would have been undesirable from the legal point of view. It is also unnecessary to examine the case outlined by the Portuguese Government in its reply, to the effect that, in addition merely to distribution, the regulation in question also determines the consideration under Article 6 of the fisheries agreement. [72]

140. On the above grounds, the complaint of an inadequate statement of reasons must also be rejected.

C — Conclusion

141. None of the complaints brought by the applicant Member States in the five cases which I have here dealt with together has proved to be based on solid grounds. I would for that reason propose that the Court should:

(1) dismiss the applications as unfounded;

(2) order the applicants to pay the costs, under Article 69(2) of the Rules of Procedure, with the exception of the costs which the Commission and the intervening Member States are required themselves to bear pursuant to Article 69(4).

72 — Cf. Regulation No 2/85, OJ 1985 L 1, p. 36.