JUDGMENT OF THE COURT (Second Chamber)

9 September 2004 *

In Case C-304/01,

APPLICATION for annulment under Article 230 EC,

lodged at the Court on 2 August 2001,

Kingdom of Spain, originally represented by R. Silva de Lapuerta and subsequently by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by T. van Rijn and S. Pardo Quintillán, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, J.-P. Puissochet, J.N. Cunha Rodrigues and N. Colneric, Judges,

Advocate General: J. Kokott,
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and following the hearing on 16 October 2003,

after hearing the Opinion of the Advocate General at the sitting on 18 November 2003,

gives the following

Judgment

1 By its action, the Kingdom of Spain seeks the annulment of Commission Regulation (EC) No 1162/2001 of 14 June 2001 establishing measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d and e and associated conditions for the control of activities of fishing vessels (OJ 2001 L 159, p. 4, hereinafter 'the contested regulation').

Legal background

Regulation (EEC) No 3760/92

2 Article 2(1) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1), in force at the date when the present action was brought, provided:

'As concerns exploitation activities the general objectives of the common fisheries policy shall be to protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system, and in particular taking account of the needs of both producers and consumers.

To that end a Community system for the management of exploitation activities is established which must enable a balance to be achieved, on a permanent basis, between resources and exploitation in the various fishing areas.'

3 As is apparent from the wording of Regulation No 3760/92, the basic measures under this scheme are to be taken by the Council of the European Union, unless Community law expressly provides otherwise, on the basis of the procedure set out in Article 43 of the EC Treaty (now, after amendment, Article 37 EC). However, in certain situations, the Commission is also empowered to take emergency measures.

4 The 18th recital to that regulation thus states that 'provision should be made for the adoption of emergency measures in the event of serious upheaval liable to jeopardise the objectives of the conservation of resources'.

5 In this regard, Article 15 of Regulation No 3760/92 provides:

'1. In the event of serious and unexpected upheaval liable to jeopardise conservation of resources, the Commission, at the request of a Member State or on its own initiative, shall decide on appropriate measures which shall last no more than six months, and which shall be communicated to the Member States and the European Parliament and which shall have immediate effect.

2. Where the Commission receives a request from a Member State, it shall take a decision on the matter within 10 working days.

3. Member States may refer the decision taken by the Commission in accordance with paragraph 1 to the Council within 10 working days of notification of the decision.

4. The Council may take a different decision, by qualified majority, within one month.'

The contested regulation

6 The contested regulation was adopted on the basis of Article 15 of Regulation No 3760/92. That adoption followed warnings issued, in November 2000, by the International Council for the Exploration of the Sea ('ICES'), regarding the risk of collapse of the northern stock of hake, and a meeting of the 'Fisheries' Council on 14 and 15 December 2000, at which the Council and the Commission considered that a plan for the recovery of that stock should be put into place as a matter of urgency.

7 As is apparent from its fourth recital, the aim of the contested regulation is: '... immediate[ly] ... to reduce catches of juvenile hake by: establishing geographical areas in which juvenile hake occur in high abundance and specifying that fishing with towed nets may take place in these areas only if these nets are of high mesh size, establishing additional conditions to ensure that capture of juvenile hake by beam trawls is reduced'.

8 In light of that aim, Article 2 of the contested regulation provides:

'1. Notwithstanding the conditions laid down in Article 4(4) and Article 15 of Regulation (EC) No 850/98, catches of hake (*Merluccius merluccius*) retained on board any vessel carrying any towed gear of mesh size 55mm to 99mm may not be in excess of 20% of the weight of the total catch of marine organism retained on board.

2. The conditions of paragraph 1 shall not apply to any vessel of length less than 12 metres overall which returns to port within 24 hours of its most recent departure from port.'

9 Articles 3 to 5 of the contested regulation lay down a set of additional rules relating to the construction of the mesh of the trawls and nets used in the areas covered by the regulation and to the definition of geographical areas placed under particular protection because of their abundance of juvenile hake, whereas Articles 6 to 13 of the regulation include rules intended to ensure, firstly, the obtaining of reliable data on the catches of hake taken and landed and, secondly, compliance with the conservation measures enacted. The latter rules include, in particular, one relating to the presence of observers on board Community fishing vessels flying the flag of a Member State and one relating to the requirement to land catches of hake in ports designated for that purpose.

The facts of the case and the pleas in law advanced

10 The Kingdom of Spain, making use of the option available to it under Article 15(3) of Regulation No 3760/92, sent to the Council by letter of 21 June 2001 a suggested amendment to the contested regulation. That amendment sought the absolute deletion of Article 2(2) of the regulation, on the grounds of the alleged discriminatory nature of the derogation contained in it, with a view to offering the same fishing conditions to all trawlers regardless of their length or the duration of their voyages.

11 The Spanish proposal was initially considered by the Council's 'Internal Fisheries Policy' Group at its meeting on 28 June 2001, then by the Committee of Permanent

Representatives at its meeting of 11 July 2001, but it was finally rejected by the Council on 20 July 2001, no other Member State having supported it.

12 Considering that that rejection was likely to harm its interests, the Kingdom of Spain brought the present action, in which it raises three pleas in law claiming, respectively, that the Commission lacked competence to adopt the contested regulation and used the wrong legal basis, breach of the principle of non-discrimination, and insufficient statement of reasons for the regulation.

The action

The first plea

13 By its first plea, the Kingdom of Spain essentially disputes the Commission's competence to adopt the contested regulation. According to the Spanish Government, Article 15(1) of Regulation No 3760/92 — which is the sole legal basis of the contested regulation — confers on the Commission a limited legal competence which it may exercise only in the cases and on the conditions laid down by that provision, namely, in essence, in the event of serious and unexpected upheaval liable to jeopardise conservation of resources, where the measures adopted by the Commission are necessary and their duration is limited to six months. In the present case, the Spanish Government argues, two of those conditions are lacking. Whilst not disputing the critical situation of the stock of hake, it nevertheless submits that the emergency measures laid down by the contested regulation ('the contested measures') are not necessary as required by Article 15(1) of Regulation No 3760/92 and their application is not limited in time.

14 Firstly, regarding the necessity of the measures adopted under Article 15(1) of Regulation No 3760/92, the Spanish Government submits that that condition should be interpreted as meaning that it implies the adoption of exceptional emergency measures to overcome difficulties in the relevant fisheries sector. In the present case, however, the contested measures do not fulfil these requirements in any way since the contested regulation was adopted six months after the Council and the Commission decreed that a plan for the reconstitution of the stock of hake should be put into place as a matter of urgency. It follows that during that period of six months the Council had all the time needed to take the necessary measures in accordance with the usual rules and, in particular, by following the procedure laid down in Article 4 of Regulation No 3760/92, without needing to have recourse to the derogation procedure in Article 15 thereof.

15 The Spanish Government also expresses doubt as to the actual effectiveness of the contested measures. It submits, in this regard, that a ban on access to certain fishing areas or a ban on the fishing of a certain species of fish would have been measures far more suitable to the avoidance of irreversible damage to the stock of hake than measures — costly, moreover, both to fishermen and to the Member States — such as increasing the mesh size of nets or expressly designating landing ports.

16 Secondly, regarding the condition relating to the time limitation on the application of the measures adopted by the Commission, the Spanish Government submits that that is also lacking in the present case since the contested regulation contains no provision limiting the duration of its application.

17 In that regard, a preliminary point to note is that, although a reading of Regulation No 3760/92 shows that, in principle, the Council is the institution competent to adopt the measures necessary in order to establish a Community system for fisheries

and aquaculture, particularly under Article 4(1) of that regulation in order to establish Community measures laying down the conditions for access to waters and resources and for the pursuit of exploitation activities, the Commission is, however, competent, by virtue of Article 15(1) of that regulation, to decide upon appropriate measures 'in the event of serious and unexpected upheaval liable to jeopardise conservation of resources'. That competence, which may be exercised at the request of a Member State or on the Commission's own initiative, reflects the concerns expressed in the 18th recital to the abovementioned regulation, whereby provision should be made for the adoption of emergency measures 'in the event of serious upheaval liable to jeopardise the objectives of the conservation of resources'.

18 In the present case, the Spanish Government does not dispute the existence of such an upheaval, since the critical condition of the northern stock of hake was confirmed both at a Community level, by the Council and the Commission, and at an international level by ICES. Its criticisms are directed at the slowness of the procedure leading to the adoption of the contested measures, at their inappropriate nature and at the legal uncertainty linked to the absence from the contested regulation of further details regarding the duration of the measures' validity.

19 With regard to the first part of that plea, the wording of the second recital of Regulation No 3760/92 clearly shows that that regulation is intended to ensure the rational and responsible exploitation of living aquatic resources and of aquaculture, whilst recognising the interest of the fisheries sector in its long-term development and its economic and social conditions and the interest of consumers. In light of those aims, there are no grounds for a restrictive interpretation of Article 15(1) of that regulation, under which the Council has delegated the power to the Commission to take the measures necessary in the event of serious upheaval liable to jeopardise the objectives of the conservation of resources.

20 Although both the conditions to which the Council made the Commission's exercise of that power subject and the terms of the 18th recital to Regulation No 3760/92 make it clear that the Commission must adopt the necessary measures as quickly as possible, Article 15 of that regulation does not, however, make the exercise of that power subject to a specific condition of urgency. Neither does it lay down, in a case such as the present where the Commission did not receive a request from a Member State, a precise period of time within which the Commission is to act, failing which it loses its power. Furthermore, it is in no way apparent from that regulation that the Community legislature intended to limit that delegation of power to the Commission so as to render the Commission unable to act if the Council itself were in a position to take the necessary measures.

21 In the present case, the Commission cannot be accused of delaying the adoption of the contested measures unnecessarily. It is common ground that in January 2001 — only weeks after the Council and the Commission determined the urgent need to establish a recovery plan for the stock of hake — the Commission held the discussions needed to reach agreement on the type of measures to be taken and that those discussions, in which, moreover, the Spanish Government took full part, continued until the adoption of the contested regulation. Furthermore, it is not in dispute that at the date on which those measures were adopted, the condition that there should be serious upheaval liable to jeopardise the conservation of resources was still met, since the northern stock of hake remained at a critical level.

22 For those reasons, the argument of the Spanish Government that, on account of the delay in adopting the measures at issue, the Commission lost the power delegated to it under Article 15(1) of Regulation No 3760/92 cannot be accepted.

23 Furthermore, to the extent that, by the first part of its first plea in law the Spanish Government seeks to dispute the need for the contested measures by questioning their effectiveness, it must be stated that the Commission enjoys a considerable power of discretion in circumstances such as those of the present case where it is necessary to evaluate both a complex situation and the nature or scope of the measures to be taken. Accordingly, in reviewing the exercise of such a power, the Court must confine itself to examining whether there has been a manifest error or misuse of power or whether the authority in question has clearly exceeded the bounds of its discretion (see to that effect, in particular, Case C-4/96 *NIFPO and Northern Ireland Fishermen's Federation* [1998] ECR I-681, paragraphs 41 and 42; Case C-179/95 *Spain* v *Council* [1999] ECR I-6475, paragraph 29, and Case C-120/99 *Italy* v *Council* [2001] ECR I-7997, paragraph 44).

24 In the present case, the Spanish Government has not established that the Commission committed such an error in the exercise of its power or misused that power, or that it manifestly exceeded the bounds of its discretion. In that regard, by deciding upon measures which did not prohibit the fishing of hake or access by the fishing vessels to certain determined geographical areas, but, on the contrary, by merely limiting the number of permitted catches and increasing the mesh size of nets used for that purpose, the Commission clearly took account both of the need for appropriate protection of living aquatic resources and aquaculture and of the interest of the fishing industry in ensuring its long-term development. A total ban on catches would have been likely to involve far greater adverse consequences not only for hake fishermen, but also for fishermen of other species, since traditionally the fishing of hake, as the Commission points out, without contradiction from the Spanish Government, forms part of mixed catches.

25 It follows from the above that the first part of the first plea must be rejected.

26 With regard to the second part of the first plea, according to which the Commission exceeded its powers and breached the principle of legal certainty to the extent that there is no provision in the contested regulation which sets out the duration of the validity of the contested measures, the Court finds nothing in that regulation to support the argument that those measures are intended to be valid for more than six months.

27 The contested regulation is in fact expressly based on Article 15(1) of Regulation No 3760/92, which states clearly that the measures adopted by the Commission 'shall last no more than six months'. In the absence of an express provision to the contrary — and although the Commission should have stated expressly the duration of the contested regulation's validity — such a duration corresponds, of necessity, to a period of six months calculated with effect from the entry into force of the contested measures, as the Advocate General noted in paragraph 35 of her Opinion, that period being the maximum authorised by the relevant provision of Regulation No 3760/92, which forms the sole basis for the contested regulation.

28 In the light of all the above considerations, it must be held that the Commission was competent to adopt the contested regulation.

29 Consequently, the first plea in law must be rejected as unfounded.

The second plea in law

30 By its second plea in law, the Kingdom of Spain disputes the distinction drawn by the Commission, in Article 2(2) of the contested regulation, between vessels of length less than 12 metres overall — provided that they return to port within 24 hours of the most recent departure from port — and longer vessels. According to the Spanish Government, that distinction is discriminatory to the extent that it causes more harm to the Spanish fishing fleet than to the fleets of other Member States. Because of the great distance between the Spanish coast and the hake fishing areas covered by the contested regulation, the Spanish fishermen can only use vessels longer overall than 12 metres, making voyages of more than 24 hours, whereas fishermen from other Member States, whose coasts are nearer to the fishing areas in question, can operate vessels of a length overall of less than 12 metres and as a result can benefit from the derogation in Article 2(2) of the contested regulation.

31 Firstly, in that regard, the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.

32 In the present case, the vessels of a length overall of more than 12 metres are dealt with differently from those of a shorter length overall provided that the latter return to port within 24 hours of the most recent departure from port. The parties to the dispute differ as regards both the comparability of the situations to which that treatment applies and the question whether such different treatment can be justified objectively.

33 With regard to the comparability of the situations covered by the contested regulation, as the Commission has submitted, small vessels are, objectively, in a different situation from other vessels. On the one hand, their possible fishing areas are inevitably limited to coastal areas since, unlike vessels of greater dimensions or tonnage, small vessels are not normally capable of reaching fishing areas far out at sea. On the other hand, the latter boats' activities are 'opportunist' in nature to the extent that they catch those species of fish present in the areas which they cover and their fishing activities do not generally target a single species of fish.

34 It follows that, to that extent, the situation of small vessels cannot be considered comparable to that of vessels of a greater size.

35 With regard to the justification of the difference in treatment given by the contested regulation to the two categories of vessels, the Commission submits that the application of the scheme laid down by the contested regulation to small vessels would require the undertakings concerned to equip their vessels with fishing nets of a mesh size of 100 mm or greater, which would not only mean considerable economic investment for the owners of those small vessels, but could also lead to lower catches of other species of fish, which would call into question the very survival of the undertakings concerned. In those circumstances, to impose such a scheme on small vessels would therefore be disproportionate with regard also to the temporary nature of the contested measures, since their period of application is limited to six months.

36 In the light of such socio-economic factors, the derogation laid down in Article 2(2) of the contested regulation in favour of small vessels is, according to the

Commission, objectively justified; all the more so since the total level of catches of hake made by that category of vessel is low. The Commission submits, in that regard, that those catches account for, at most, 4% of the total catches of that species.

37 The Spanish Government challenges the derogation in Article 2(2) of the contested regulation on the ground of insufficient technical basis, arguing that the mesh of the nets has nothing to do with the length of the vessels, and that catches made by small vessels are more likely to prejudice the conservation of the stock of hake than those made by vessels of a length overall of more than 12 metres.

38 The Spanish Government's first argument cannot be accepted. As the Commission's observations show, the arguments which it has put forward to justify that derogation are not based on any relationship between the length of vessels and the mesh of their nets, but relates to the undesirable consequences which the full-scale application of the scheme laid down in the contested regulation would have for small vessels in view of the specific type of fishing carried out by them.

39 With regard to its second argument, the Spanish Government has provided no convincing evidence in support of its claim that the catches made by vessels of a length overall of less than 12 metres are more detrimental to the aim of conservation of the stock of hake than the catches made by vessels of a greater length overall.

40 Although the Commission stated at the hearing that it shared the view of the Spanish Government that there is a greater concentration of juvenile hake in the coastal areas frequented by small vessels than in more distant areas, it also reiterated that, as it submitted in its written pleadings, the catches of hake made by the vessels benefiting from the derogation in Article 2(2) of the contested regulation represent only a very small part, 4% at most, of the total catches of that species.

41 When asked expressly about that subject at the hearing, the Spanish Government, maintaining its disagreement with the percentage put forward by the Commission, could not produce other detailed figures relating to the catches of hake. In that regard, it merely stated that, in Spain, there were no vessels of less than 12 metres likely to benefit from that derogation and that, as a result, assessment of the catches made by that type of vessel should be carried out by the State whose flag the vessels fly.

42 In those circumstances, the Court must reject the claim that catches made by vessels of a length overall of less than 12 metres are more detrimental to the aim of conservation of the stock of hake than catches made by vessels of a greater length overall.

43 It follows that the Spanish Government has been able to disprove neither the Commission's argument that the situation of small vessels is not comparable to that of larger vessels, nor the arguments put forward by the Commission to show that the distinction made between those two categories of vessel is objectively justified. In those circumstances, the Spanish Government has not been able to establish that the distinction in Article 2(2) of the contested regulation is discriminatory.

44 That finding, moreover, is corroborated by a series of additional factors arising from the file submitted for the Court's consideration.

45 Firstly, it should be noted that, by restricting the application of the derogation to small vessels which return to port within 24 hours of their most recent departure from port, the Commission took a measure which would ensure that the benefit of the derogation adopted remained limited only to those vessels to which its justification applied, namely vessels whose fishing activities are necessarily limited to coastal areas and whose fishing is 'opportunist' in nature.

46 Contrary to the allegations made by the Spanish Government that the Spanish fleet is specifically penalised by the contested regulation, it should be noted, secondly, that the fleets of other Member States are in a comparable situation to that of the Spanish fleet to the extent that the distance which they must travel to the areas covered by the contested regulation is also too great for small vessels flying their flags to benefit from the derogation in Article 2(2) of the contested regulation. As is apparent from the file put before the Court, the Belgian and Netherlands fleets are particularly affected.

47 Finally, it should be noted that, in any event, the contested measures cannot apply to Spanish fishermen who own vessels of a length overall of less than 12 metres because it is clear both from the title of the contested regulation and from Article 1 thereof, relating to its territorial scope, that it is not applicable to ICES divisions VIII c and IX a and b, which in practice correspond to the areas along the Spanish and Portuguese coasts. As the Advocate General pointed out in paragraphs 48 and 50 of her Opinion, small Spanish vessels can therefore operate normally in those areas, within the limits of the quotas allocated to the Kingdom of Spain.

48 In the light of the above reasons, the plea based on a breach of the principle of non-discrimination must be rejected in its entirety.

The third plea in law

49 By its third plea, the Kingdom of Spain alleges a breach of the duty to state reasons laid down in Article 253 EC. It submits, in that regard, that the contested regulation does not include in its recitals any explanation regarding the reasons which led the Commission to make a distinction between vessels of less than 12 metres length overall and those of a length overall greater than 12 metres although there is no direct connection in the present case between the mesh of the nets or trawls and the length overall of the fishing vessels, and the derogation in Article 2(2) of the contested regulation is not a measure specifically favouring conservation of stocks of hake.

50 In this regard, the Court observes that, although it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review (see, inter alia, Case C-120/99 *Italy* v *Council*, cited above, paragraph 28, and Case C-445/00 *Austria* v *Council* [2003] ECR I-8549, paragraph 49), it is not necessary for the reasoning to go into all the relevant facts and points of law. The question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. This is *a fortiori* the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying that measure (see, inter alia, Case C-120/99 *Italy* v

Council, cited above, paragraph 29, Case C-445/00 *Austria* v *Council*, cited above, paragraph 99 and Case C-293/00 *Netherlands* v *Commission* [2003] ECR I-12775, paragraphs 55 and 56).

51 Furthermore, it is also clear that the Court has consistently held that the scope of the obligation to state reasons depends on the nature of the measure in question and that, in the case of measures of general application, the statement of reasons may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other. In that context, the Court has ruled in particular that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, inter alia, Case C-168/98 *Luxembourg* v *Parliament and Council* [2000] ECR I-9131, paragraph 62 and Case C-361/01 P *Kik* [2003] ECR I-8283, paragraph 102).

52 It cannot be disputed that such is exactly the situation in the present case. On the one hand, the Commission has clearly set out, in the fourth recital to the contested regulation, the objective pursued by the regulation and the measures intended to achieve that objective.

53 In addition, as has already been mentioned in paragraph 21 of this judgment, the Spanish Government was closely involved in the discussions and consultations which preceded the adoption of the contested regulation and was thus aware, in great detail, both of the reasons leading to the adoption of that regulation and the measures envisaged by the Commission to curb the collapse of the stock of hake, the Commission having taken into account, moreover, the particular difficulties that those measures could cause to certain groups of fishermen.

54 In those circumstances, the Commission was not required to set out in detail in the recitals to the contested regulation grounds justifying the derogation in Article 2(2) of that regulation favouring vessels of a length overall of less than 12 metres.

55 In the light of the above considerations, the third plea in law must also be rejected as unfounded.

56 Since none of the three pleas in law put forward by the Kingdom of Spain in support of its action can succeed, the action must be dismissed in its entirety.

Costs

57 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since costs were requested in the Commission's pleadings and the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the action;

2. Orders the Kingdom of Spain to pay the costs.

Signatures.