JUDGMENT OF THE COURT
8 June 1993 *

In Case C-52/91,

Commission of the European Communities, represented by R. C. Fisher, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of the Netherlands, represented by J. W. de Zwaan and T. Heukels, Deputy Legal Advisers at the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

defendant,

APPLICATION for a declaration that, by exceeding the catch quotas allocated to the Netherlands for 1986, the Kingdom of the Netherlands has failed to fulfil its obligations under the combined provisions of Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States (OJ 1982 L 220, p. 1) and Council Regulation (EEC) No 2374/86 of 24 July 1986 amending for the fourth time Regulation (EEC) No 3721/85 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1986 and certain conditions under which they may be fished (OJ 1985 L 206, p. 4),

* Language of the case: Dutch.

THE COURT,

composed of: C. N. Kakouris, President of Chamber, acting for the President, G. C. Rodríguez Iglesias and M. Zuleeg (Presidents of Chambers), R. Joliet, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

having heard oral argument from the representatives of the parties at the hearing on 2 February 1993,

after hearing the Opinion of the Advocate General at the sitting on 10 March 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 February 1991, the Commission of the European Communities brought an action under the second paragraph of Article 169 of the EEC Treaty for a declaration that, by exceeding the catch quotas allocated to the Netherlands for 1986, the Kingdom of the Netherlands has failed to fulfil its obligations under the combined provisions of Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States (OJ 1982 L 220, p. 1) (hereinafter 'the control Regulation') and Council Regulation (EEC) No 2374/86 of 24 July 1986 amending for the fourth time Regulation (EEC) No 3721/85 fixing, for certain fish stocks or groups of fish stocks, the total allowable catches for 1986 and certain conditions under which they may be fished (OJ 1986 L 206, p. 4) (hereinafter 'the Regulation amending for the fourth time the Regulation fixing quotas for 1986').

2 By Regulation (EEC) No 170/83 of 25 January 1983 (hereinafter 'the Regulation establishing the conservation system'), the Council established a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1). Articles 2, 3 and 4 of that regulation permit it to limit catches. The volume of catches available is distributed annually among the Member States in the form of quotas. Under Article 5(2) of the same regulation, the Member States must determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them.

3 For 1986, the quotas were fixed by Council Regulation (EEC) No 3721/85 of 20 December 1985 (OJ 1985 L 361, p. 5) (hereinafter 'the Regulation fixing quotas for 1986'), which was subsequently amended on four occasions, most recently by the said Regulation (EEC) No 2374/86.

4 The control Regulation prescribes certain measures relating to fishing activities by vessels of the Member States. Pursuant to Article 1(1) of that regulation, each Member State must, within its maritime waters, inspect fishing vessels of all the Member States in order to ensure compliance with all the regulations concerning conservation and control measures. Pursuant to Article 1(2), if an infringement is observed, the competent authorities are to take penal or administrative action against the skipper of the vessel. In addition, under Article 9 of the same regulation, each Member State is to notify the Commission each month of the quantities of each stock or groups of stocks subject to a quota which are landed during the preceding month, indicating the location of the catches and the nationality of the fishing vessels concerned.

5 Pursuant to Article 10(1) of the same regulation, all catches subject to quota made by fishing vessels flying the flag of a Member State or registered in a Member State are to be charged against the quota applicable to that State, irrespective of the place of landing. In addition, under Article 10(2), the Member States are to determine the date from which the catches subject to quota made by the fishing vessels flying its flag or registered in that Member State are to be deemed to have exhausted the quota in question. As from that date, the Member State must provisionally prohibit fishing for that stock or group of stocks, as well as the retention on board,

the transshipment and the landing of fish taken after that date. That measure must be notified forthwith to the Commission, which is then to inform the other Member States.

6 As the complaints addressed by the Commission to the Kingdom of the Netherlands concerning compliance with these provisions have been amended throughout the proceedings, it is necessary to recapitulate the position in order to define the subject-matter of the action for failure to fulfil obligations which is finally before the Court.

7 First of all, on 2 October 1986 the Commission sent the Netherlands Government a letter of formal notice relating to breaches of three quotas allocated to the Netherlands for 1986 and to six cases of fishing in various zones for certain species of fish for which quotas had not been allocated to the Kingdom of the Netherlands. The Commission reserved the right to amend those figures if it received fresh information. In any case, it considered that the quotas had been exceeded as a result of the infringement of Article 5(2) of the Regulation establishing the conservation system, of several provisions of the Regulation fixing quotas for 1986 and Articles 1 and 10 of the control Regulation. It asked to be informed of the penal or administrative action taken against the skippers of the vessels responsible for those catches.

8 The Netherlands Government replied by letter of 17 February 1987. Whilst admitting that the quotas had been exceeded, it contended that that was not attributable to failure by the Kingdom of the Netherlands to comply with the Community measures for limiting the fishing effort. It was explained by reasons beyond the control of the Netherlands Government such as illegal catches, incorrect declarations by fishermen or by the fact that the national authorities had not been given information concerning landings until after the official closure of fishing. The Netherlands Government went on to give details of the surveillance procedures which it had set up for fishing activities.

9 On 13 May 1987 the Commission then sent the Netherlands Government a letter in which, after referring to the same regulations as those cited in the letter of formal notice, it now reported 14 cases of breaches of quotas allocated to the Kingdom of the Netherlands, that is, 11 more than those mentioned in the letter of formal notice, and 12 cases of fishing for species for which no quota had been allocated to the Kingdom of the Netherlands, that is, six cases more than previously mentioned. In a reply of 7 July 1987, the Netherlands Government again explained the measures taken by it to ensure compliance with the Community provisions.

10 On 21 November 1988 the Commission sent the Netherlands authorities a reasoned opinion referring to the breaches of 12 quotas, that is, those cited in the letter of 13 May 1987, with the exception of the quotas for fishing for cod and haddock in certain zones, in respect of which the excess was deemed negligible. The Commission took the view that there were two causes for the alleged breaches. First, the Netherlands Government had failed to fulfil its obligations of inspection and punishment of infringements, as required by Article 1(1) of the control Regulation. Secondly, it was responsible for not prohibiting catches in good time. The opinion concluded that the Kingdom of the Netherlands had failed to fulfil its obligations under Article 5(2) of the Regulation establishing the conservation system, and Articles 1 and 6 to 10 of the control Regulation, in conjunction with the Regulation fixing quotas for 1986.

11 The Netherlands Government replied to these complaints by letters of 9 January 1989 and 13 June 1990.

12 Finding the replies to be unsatisfactory, the Commission decided to bring this action.

13 In its application, the Commissions states that it withdraws its complaints concerning fishing for species for which no quota had been allocated to the Kingdom of the Netherlands and concentrates its criticism on the 12 cases of breach of quotas. In this connection it alleges that the Kingdom of the Netherlands did not

order the closure of fishing in ten cases and decided to do so only belatedly in two others. It regards this as a failure to fulfil the obligations laid down by Article 10(2) of the control Regulation and by the Regulation fixing quotas for 1986. The Commission also refrains from pursuing any shortcomings with regard to bringing prosecutions and imposing sanctions.

14 In its reply, after noting the defence submissions of the Netherlands Government, the Commission admits that it was mistaken in its application because, of the ten quotas in relation to which it complained that the Netherlands Government had not prohibited fishing, nine had in fact been the subject of a provisional prohibition of catches. However, the Commission observes that the Netherlands authorities omitted to notify it of seven of those prohibitions, although it was required to do so by Article 10(2) of the control Regulation. The Commission withdraws its complaints with regard to the quota for which no prohibition had been imposed, that is, that for herring fished in Zones IVc (namely the southern part of the North Sea) and VIId (namely the eastern Channel). In any case, it points out that, for the 11 cases remaining at issue, the provisional prohibitions of catches did not succeed in preventing the quotas from being exceeded and therefore did not attain their objective.

15 At the hearing, the Commission's representative withdrew the complaint concerning the failure to notify provisional prohibitions of fishing and stated that the Commission maintained only the complaint relating to the belated closure of fishing, that is, failure to comply with Article 10(2) of the control Regulation, with regard to the 11 quotas. Of these 11, two were referred to in the letter of formal notice and nine in the corrective letter of 13 May 1987.

16 It must therefore be concluded that the Commission's action is now limited to an application for a declaration that, by exceeding 11 catch quotas allocated to the Kingdom of the Netherlands for 1986, that Member State has failed to fulfil its obligations under Article 10(2) of the control Regulation.

17 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

18 At the hearing the Netherlands Government argued that the application was inadmissible because the operative part concerned an infringement of the regulation amending for the fourth time the Regulation fixing quotas for 1986, whereas that amending regulation related to the quota for herring in Zone IIIa (namely the Skagerrak and the Kattegat), a quota which had not been allocated to the Kingdom of the Netherlands and on which its nationals had not drawn.

19 That objection serves no purpose. At the hearing the Commission's complaints were limited to the failure to comply with a provision of the control Regulation.

Complaint concerning the belated closure of fishing

20 First of all, it is necessary to examine the Netherlands Government's argument that, in the absence of Community rules, the detailed rules for the utilization of quotas, and therefore the organization of the monitoring of quotas and the system for registering catches, are the sole responsibility of the Member States. In this connection the Government relies on Article 5(2) of the Regulation establishing the conservation system.

21 That argument cannot be upheld. Although the abovementioned provision permits the Member States to determine the detailed rules for the utilization of quotas, it also requires the national rules to be fixed in accordance with the applicable Community provisions. It follows that the Member States cannot lay down those rules without regard to their own obligations, particularly in relation to the provisional closure of fishing as prescribed by Article 10(2) of the control Regulation.

22 The Netherlands Government then claims that, to assess the conduct of the national authorities with regard to the provisional prohibition of fishing, account should be taken only of the information available to those authorities at the time at which they took their decisions, and not of the information which was supplied later and which shows that the quotas had already been exceeded at the date of the decisions. On this point it states that, when it decided to prohibit catches, it did not possess the final figures relating to the breaches of quotas, as referred to by the Commission in its letters of 2 October 1986 and 13 May 1987. Those figures cannot therefore be used against it.

23 To assess the relevance of that argument, it is appropriate to divide the 11 contested quotas into three groups, on the basis of the information which the Netherlands Government alleges was available to it at the time at which it decided to close fishing and of the actual situation with regard to catches at that time, according to the Commission's figures.

The first group of quotas

24 The first group comprises the quotas for which, without there being any need to go into the Commission's figures, it is clear from the information supplied by the Netherlands Government itself that it ordered the provisional closure of fishing at a time when it knew that the quotas were already exhausted.

25 That is the case, first, as regards the common sole fished in Zone VIII (EC) (commonly called the Bay of Biscay) for which a quota of 105 tonnes was allocated to the Netherlands in 1986 and to which a decision on the provisional prohibition of catches of 2 April 1986 relates, whereas on 18 March the Netherlands authorities had already registered catches totalling 161 tonnes. The same applies to whiting fished in Zone VII, except Zone VIIa (that is, the west of Ireland and Porcupine Bank, the south coast of Ireland, the Bristol Channel and the English Channel), for which a quota of 100 tonnes was allocated and to which a provisional closure decision of 29 April 1986 relates, whereas on 15 April the Netherlands authorities had already recorded catches of 117 tonnes. The position is the same with regard to haddock fished in Zone IIIa, b, c, d (EC) (namely the Skagerrak, the Kattegat,

the Sound, the Belts and Baltic Sea), the quota for which was 10 tonnes and to which a provisional closure decision of 3 July 1986 relates, although the Netherlands authorities had known since 15 June that that quota had already been exceeded. Finally, the same applies to whiting in Zones IIa (EC) (the Norwegian Sea) and IV (the North Sea), for which a quota of 12 422 tonnes had been allocated and for which provisional closure was ordered on 10 December 1986, although the Netherlands authorities knew at that date that the quota was already exhausted.

26 However, it is clear from the judgments in Case C-62/89 *Commission* v *France* [1990] ECR I-925, paragraphs 17 and 18, and in Case C-244/89 *Commission* v *France* [1991] ECR I-163, paragraph 17, that Article 10(2) of the control Regulation implies that the Member States are to adopt in good time all the measures necessary to prevent the quotas at issue being exceeded, so as to ensure compliance with the quotas allocated to the Member States for the purpose of conserving fishery resources. It follows that the Member States have an obligation to take binding measures to prohibit provisionally all fishing activity even before the quotas are exhausted.

27 Consequently it must be declared that, by deciding to close fishing for the four quotas in question, at a time when it was aware that the quotas had been exceeded, the Netherlands Government was manifestly too late in adopting the measures required by Article 10(2) of the control Regulation.

The second group of quotas

28 The second group of quotas comprises six quotas for which the catch figures on the basis of which the Netherlands Government ordered the provisional closure of fishing do not indicate that any quota was exceeded. For its part, the Commission has produced the figures for the actual catches at the date of the decisions on provisional prohibition of fishing and these are said to show that the quotas were exceeded. In reply, the Kingdom of the Netherlands stated that that information was not known until after the decisions on closure.

29 Thus, with regard to mackerel in Zones II (excluding the EC Zone, namely the Norwegian Sea, Spitzbergen and Bear Island), Vb (EC, the Faroes fishing grounds), VI (Rockall and the west of Scotland), VII, VIII (EC) and XII (the north of the Azores), the quota for which was 31 170 tonnes, the Netherlands Government decided on 2 June 1986 to prohibit fishing on the basis of information showing a catch of 22 271 tonnes whereas, according to the Commission's figures, 51 312 tonnes of that fish had been caught in May. For plaice in Zone IIIa (the Skagerrak and the Kattegat), the quota for which was 2 170 tonnes, closure was ordered on 13 August 1986 on the basis of information showing 2 160 tonnes caught up to that date whereas, according to the Commission, the catch already totalled 2 752 tonnes in June. With regard to mackerel in Zones IIa (EC), IIIa, IIIb, c, d (EC) (the Sound, the Belts and the Baltic Sea) and IV, the quota for which was 1 200 tonnes, the Kingdom of the Netherlands ordered the closure of fishing on 10 October 1986 whereas at that date it had registered catches totalling 919 tonnes. At the same time, however, 1 746 tonnes had already been caught. As regards herring in Zones VIa (Rockall) and VIIb and c (the west of Ireland and Porcupine Bank), the quota for which was 1 550 tonnes, the Netherlands Government ordered the closure of fishing on 31 October 1986, stating that it was aware only of a catch amounting to 1 391 tonnes whereas, according to the Commission's figures, catches already totalled 2 109 tonnes at that date. For herring in Zones Vb (EC), VIa (the west of Ireland) and VIb (Rockall), the quota for which was 5 160 tonnes, the Netherlands Government states that, when it decided on the provisional prohibition of fishing on 21 November 1986, it knew of catches totalling 4 763 tonnes whereas at that date, according to the Commission's figures, 8 314 tonnes had already been caught. With regard to cod in Zones IIa (EC) and IV, the quota for which is 18 670 tonnes, the Netherlands Government decided on 21 November 1986 to prohibit fishing because it was aware of catches amounting to 16 264 tonnes whereas at that date the total catch was 22 276 tonnes.

30 The Netherlands Government puts forward three reasons for the differences between its figures and those of the Commission.

31 First of all, it states that, when it orders the closure of fishing, it takes three factors into account. First, the information available concerning catches already made and registered, secondly, estimates of catches made but not yet registered and, finally, forecasts of catches which may yet be made before the date when the closure took

effect. Its decisions are therefore to a large extent taken on the basis of estimates, which explains why the final catch figure is sometimes higher than the figures known at the date of closure.

32 Secondly, the Netherlands Government claims that a certain period elapses between the time of landing and that of registering catches. It explains that, under its system, landings are communicated to the Ministry of Agriculture and Fisheries in principle once a month, normally towards the 15th of the month. In that way the national authorities are kept informed of the level of catches made up to the end of the previous month. It is not unusual for some delay to occur in the monthly notifications. On this point, the Netherlands Government emphasizes that Article 9 of the control Regulation has adopted an identical system with regard to notifications to the Commission of landings.

33 Thirdly, the Netherlands Government observes that sizeable landings are sometimes made in other Member States and that in 1986 the system for informing the Commission operated with a time lag. Generally it took one month for the information relating to landings by Netherlands fishing vessels in other Member States to reach the national authorities, which made it impossible to take that information into account when taking decisions on the provisional prohibition of fishing.

34 In this connection it should be observed that there are considerable differences between the figures which the Netherlands Government states were available to it on the dates on which it took the decisions to close fishing and the final figures for catches at those dates, as supplied by the Commission, which are not disputed by the Netherlands.

35 These substantial differences can be explained only by the fact either that the registration of catches was late, or that the Netherlands Government underestimated the catches which had not yet been registered or which were going to be registered during the implementation of the provisional closure procedure.

36 However, it must be borne in mind that the Court has consistently held that a Member State cannot plead provisions, practices or situations in its internal legal system to justify non-compliance with obligations and time-limits arising from rules of Community law.

37 In any case, it should be observed that the Community rules provided the Netherlands authorities with the means of obtaining rapid information on the actual figures for catches.

38 Thus it is clear from point 4.2.1 of Annex IV to Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish (OJ 1983 L 276, p. 1) that, in the case of landings in a port in the Member State whose flag the vessel is flying or in which it is registered, the original or originals of the log-book containing the quantities of fish caught and retained on board and of the landing declaration must be handed over or dispatched by the master of the vessel to the authorities of his Member State within 48 hours of completion of the landing operations. This system therefore enables catches to be registered practically at the time of landing. In addition, under Annex VIII to that regulation, in cases in which the landing or transshipment takes place more than 15 days after the catch was taken, information regarding the quantities of each species caught and kept on board or transshipped or landed outside the Community's fishing zone, and the zone where the catches were taken must be transmitted via the radio stations usually used. The masters of the vessels must then take the necessary measures to ensure that the information transmitted to radio stations may be passed on in writing to the relevant authorities. That system therefore permits the national authorities to be informed of distant catches even before they are landed.

39 Consequently the objections of the Netherlands Government must be rejected and it must be declared that, for the six quotas in question, the Government could have taken at an earlier date the measures required by Article 10(2) of the control Regulation, subject to organizing rapid collection of the information relating to catches.

The third group

40 The third group comprises only one quota, that for common sole in Zones IIIa and IIIb, c, d (EC), namely 50 tonnes.

41 For that quota the Commission has not produced the figures for catches up to 17 April 1986, the date of the Netherlands decision to close fishing, but the total of all catches for the year, that is, 111 tonnes.

42 As stated in the judgment in Case 290/87 *Commission* v *Netherlands* [1989] ECR 3083, at paragraph 13, it is therefore impossible for the Court to determine whether the established breaches of quotas were due to the late prohibition of fishing or to illegal catches made after the decision by the national authorities.

43 Consequently it must be declared that for that quota the Commission has not proved the alleged failure to fulfil obligations.

44 It follows from all the foregoing considerations that it must be declared that, in so far as in 1986 it did not in good time close fishing for common sole in Zone VIII (EC), whiting in Zone VII, except for VIIa, haddock in Zone IIIa, b, c, d (EC), whiting in Zones IIa (EC) and IV, mackerel in Zones II, Vb (EC), VI, VII, VIII (EC) and XII, plaice in Zone IIIa, mackerel in Zones IIa (EC), IIIa, IIIb, c, d (EC) and IV, herring in Zones VIa and VIIb, c, herring in Zones Vb (EC), VIa and VIb and cod in Zones IIa (EC) and IV, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States.

Costs

45 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. However, under Article 69(3) the Court may order that the costs are to be shared if the circumstances are exceptional.

46 It is appropriate to make use of that power in this case. It is clear that these proceedings were brought by the Commission without appropriate inquiry, which therefore made it necessary for the Commission to amend its complaints continually and made the Netherlands Government's defence more difficult. The costs must therefore be shared.

On those grounds,

THE COURT

hereby:

1. Declares that, in so far as in 1986 it did not in good time close fishing for common sole in Zone VIII (EC), whiting in Zone VII, except for VIIa, haddock in Zone IIIa, b, c, d (EC), whiting in Zones IIa (EC) and IV, mackerel in Zones II, Vb (EC), VI, VII, VIII (EC) and XII, plaice in Zone IIIa, mackerel in Zones IIa (EC), IIIa, IIIb, c, d (EC) and IV, herring in Zones VIa and VIIb, c, herring in Zones Vb (EC), VIa and VIb, and cod in Zones IIa (EC) and IV, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States;

2. Dismisses the remainder of the application;

3. Orders the parties to bear their own costs.

Kakouris Rodríguez Iglesias Zuleeg Joliet

Moitinho de Almeida Grévisse Diez de Velasco Kapteyn Edward

Delivered in open court in Luxembourg on 8 June 1993.

J.-G. Giraud

Registrar

C. N. Kakouris

President of Chamber
For the President