by the inaction of the Council and by the maintenance, in principle, of the conservation measures in force the Member States have an obligation to undertake detailed consultations with the Commission and to seek its approval in good time and also a duty not to lay down national conservation measures in spite of objections, reservations or conditions which may be formulated by the Commission.

2. Where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law, a conviction in those proceedings is likewise incompatible with Community law. On the contrary, it is for the Member States to enforce compliance in the zone coming within its jurisdiction with those measures adopted by it in conformity with its Community obligations.

3. Substantive rules of Community law must be interpreted, in order to ensure respect for the principles of legal certainty and the protection of legitimate expectation, as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them.

4. Neither Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources nor any subsequent regulations extending its validity have retroactive effect.

In Case 21/81

REFERENCE to the Court under Article 177 of the EEC Treaty, by the Rechtbank van Eerste Aanleg [Court of First Instance], Bruges, for a preliminary ruling in the action pending before that court between

OPENBAAR MINISTERIE [Public Prosecutor],

and

1. DANIËL BOUT,

2. BVI BOUT EN ZONEN, Kortgene, Netherlands,

on the interpretation of Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources (Official Journal 1980 L 258, p. 1) and as to the compatibility with Community law of measures adopted by the Belgian Royal Decree of 23 April 1979 laying down measures for the protection of resources in fish, crustaceans and molluscs in the Belgian fishing zone, as amended by the Royal Decree of 20 December 1979 laying down similar temporary measures in respect of the North Sea,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

On 20 October 1970, pursuant *inter alia* to Articles 42 and 43 of the EEC Treaty, the Council of the European Communities adopted Regulation (EEC) No 2141/70 laying down a common structural policy for the fishing industry (Official Journal, English Special Edition 1970 (III), p. 703) and Regulation (EEC) No 2142/70 on the common organization of the market in fishery products (Official Journal, English Special Edition 1970 (III), p. 707).

The Act concerning the Conditions of Accession and the Adjustments to the Treaties, annexed to the Treaty, and dated 22 January 1972, known as "the Act of Accession", contains in Articles 98 to 103 provisions relating to fisheries. In particular, Article 102 provides that the Council, acting on a proposal from the Commission, from the sixth year after accession at the latest, is to determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

On 19 January 1976, the Council adopted Regulation (EEC) No 100/76 on the common organization of the market in fishery products (Official Journal 1976 L 20, p. 1) and Regulation (EEC) No 101/76 laying down a common structural policy for the fishing industry (Official Journal 1976 L 20, p. 19). The former regulation repeals Regulation (EEC) No 2142/70, the latter Regulation (EEC) No 2141/70.

Article 4 of Regulation (EEC) No 101/76 provides:

"Where there is a risk of over-fishing of certain stocks in the maritime waters referred to in Article 2, of one or other

Member State, the Council, acting in accordance with the procedure provided for in Article 32 (2) of the Treaty on a proposal from the Commission, may adopt the necessary conservation measures.

In particular, these measures may include restrictions relating to the catching of certain species, to areas, to fishing seasons, to methods of fishing and to fishing gear."

The Council agreed upon, at its meeting in The Hague on 30 October 1976, and formally adopted on 3 November 1976, a Resolution whereby the Member States agreed that they would, as from 1 January 1977, by means of concerted action, extend the limits of their fishing zones to 200 miles off their North Sea and North Atlantic coasts.

On the same occasion the Council approved a statement of the Commission (Annex VI to the Resolution) in the following terms:

"Pending the implementation of the Community measures at present in preparation relating to the conservation of resources, the Member States will not take any unilateral measures in respect of the conservation of resources.

However, if no agreement is reached for 1977 within the international fisheries commissions and if subsequently no autonomous Community measures could be adopted immediately, the Member States could then adopt, as an interim measure and in a form which avoids discrimination, appropriate measures to ensure the protection of resources situated in the fishing zones off their coasts.

Before adopting such measures, the Member State concerned will seek the approval of the Commission, which must be consulted at all stages of the procedures.

Any such measure shall not prejudice the guidelines to be adopted for the implementation of Community provisions on the conservation of resources."

Whilst on 18 February 1977 the Council adopted Regulation (EEC) No 350/77 laying down interim measures for the conservation and management of fishery resources (Official Journal 1977 L 48, p. 28) it was necessary, so far as the year 1978 was concerned, to take advantage of the possibility provided for in the second paragraph of Annex VI of The Hague Resolution under the terms of which Member States are empowered, in the absence of autonomous Community measures, to adopt appropriate measures.

When in December 1978, at the end of the transitional period provided for in Article 102 of the Act of Accession, it appeared to the Council that it would not be possible to adopt in good time the necessary conservation measures for the year 1979, it decided on 19 December 1978 that:

"1. . . .

2. As regards technical measures for the conservation and surveillance of fishery resources, Member States shall apply the same measures as they applied on 3 November 1976, and other measures taken in accordance with the procedures and criteria of Annex VI to the Council Resolution of 3 November 1976."

The scheme thus established has been extended at three-monthly intervals by Council decisions adopted on 9 April 1979 (Official Journal 1979 L 93, p. 40), on 25 June 1979 (Official Journal 1979

L 161, p. 46), on 29 October 1979 (Official Journal 1979 L 277, p. 10), on 3 December 1979 (Official Journal 1979 L 312, p. 31) and on 26 March 1980 (Official Journal 1980 L 84, p. 41).

In application of those Council decisions, the Belgian Government introduced, by means of a Koninklijke Besluit [Royal Decree] dated 23 April 1979, measures for the protection of resources in fish, crustaceans and molluscs in the Belgian fishing zone. Those measures, as they apply to the present case, constitute a prohibition on fishing by means of boom trawl and on fishing for sole and plaice even by using other fishing gear, in coastal waters, with a vessel having a gross registered tonnage (GRT) of more than 50 tonnes, and were approved by the Commission on 12 July 1979 (Official Journal 1980 C 133, p. 2). By Royal Decree of 20 December 1979, the Belgian Government introduced temporary measures for the protection of resources in fish, crustaceans and molluscs in the North Sea, amending the aforementioned decree inasmuch as the minimum mesh-size of double-twine nets was increased from 75 to 80 mm. That measure was not submitted to the Commission for approval.

Finally, Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources (Official Journal 1980 L 258, p. 1), which entered into force on 1 October 1980, raised the tonnage limit to 70 GRT and fixed the minimum mesh-size for double-twine nets at 75 mm.

Meanwhile, on 7 May 1980, the fishing vessel *Christina*, having a tonnage of 67 GRT and flying the Netherlands flag, fished for sole, plaice and cod in Belgian coastal waters with a double-twine net having an average mesh-size of 79 mm.

In the course of the criminal proceedings brought against the captain of the vessel and the company which owned it, the Rechtbank van Eerste Aanleg, Bruges, by judgment of 9 January 1981, requested the Court to rule on the following questions:

"1. Did the Member States at the time of the occurrences submitted for judgment to this court remain competent to enact provisions for the limitation of fishing such as those embodied in the Royal Decree of 23 April 1979 laying down measures for the protection of resources in fish, crustaceans and molluscs in the Belgian fishing zone (Belgisch Staatsblad [Belgian Gazette] of 15 May 1979) and were they entitled to enforce compliance with such provisions within the zone coming within their jurisdiction having regard to Articles 30, 34, 38 to 47 of the EEC Treaty of 25 March 1957, Article 102 of the Act of Accession and of Regulations (EEC) Nos 100/76 and 101/76 on the common organization of the market in fishery products and laying down a common structural policy for the fishing industry respectively (Official Journal 1976, L 20)?

2. May retroactive effect be conferred upon Council Regulation (EEC) No 2527/80 laying down technical measures for the conservation of fishery resources or any subsequent regulations governing the same matters?"

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Belgian Government, represented by W. Collins, Director of Administration at the Ministry for Foreign Affairs, and by the Commission,

represented by H. Bronkhorst, a member of its Legal Department, acting as Agent.

II — Written observations

A — The first question

The *Belgian Government* is of the opinion that, at the material time, Member States had the power to adopt measures such as those adopted in the Royal Decree of 23 April 1979. In support of that statement it relies on the aforementioned Council Decision 79/383 of 9 April 1979 and furthermore emphasizes that the Commission, by its approval of 12 July 1979, declared the measures to be compatible with the Decision which, in the version of Council Decision 80/365 of 26 March 1980, was still in force at the time of the occurrences on 7 May 1980.

The *Commission* states that after the expiry, on 31 December 1978, of the period provided for in Article 102 of the Act of Accession, Member States have no longer the power to adopt conservation measures although it itself may authorize their adoption. It follows that the Royal Decree of 23 April 1979, which was submitted to the Commission and approved by it, satisfies the requirements of Community law, whilst the Royal Decree of 20 December 1979, which was not so submitted, is incompatible with Community law.

B — The second question

The *Belgian Government* and the *Commission* agree that a regulation may not be applied retroactively where the date of its entry into force is fixed in the regulation itself at 1 October 1980 and where the regulation contains no other provision to that effect.

III — Oral procedure

The Court invited the parties to bring their observations up to date at the hearing in the light of its judgment of 5 May 1981 in Case 804/79, *Commission* v *United Kingdom* [1981] ECR 1045.

At the sitting on 29 September 1981, the Commission represented by J.-F. Verstrynge, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 11 November 1981.

Decision

1 By judgment of 19 January 1981, received at the Court on 5 February 1981, the Rechtbank van Eerste Aanleg [Court of First Instance], Bruges, referred to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling two questions relating to the interpretation, in the light of the Belgian measures relating to fisheries, of Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties of 22 January 1972 and of Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources (Official Journal 1980 L 258, p. 1).

2 Those questions were raised in the course of criminal proceedings brought against Daniël Bout, the captain of the Netherlands fishing vessel *Christina*, for offences against, *inter alia*, the Belgian Koninklijke Besluit [Royal Decree] of 23 April 1979 adopting measures for the protection of resources of fish, crustaceans and molluscs in the Belgian fishing zone (Belgisch Staatsblad [Belgian Gazette] of 15 May 1979 at p. 5791), as amended by the Royal Decree of 20 December 1979 adopting similar temporary measures in respect of the North Sea (Belgisch Staatsblad [Belgian Gazette] of 29 February 1980 at p. 2566). The former decree prohibited, *inter alia*, fishing for sole and plaice in Belgian coastal waters with a vessel having a gross registered tonnage (GRT) of more than 50 registered tonnes, as well as the use of double-twine nets with an average mesh-size smaller than 75 mm. The latter decree, of 20 December 1979, raised the minimum mesh-size from 75 to 80 mm.

3 On 7 May 1980 the fishing vessel *Christina*, having a tonnage of 67 GRT, fished for sole and plaice in Belgian coastal waters using a double-twine net having a mesh-size of more than 75 mm but less than 80 mm.

4 In the course of the criminal proceedings, the accused claimed that the aforementioned Council Regulation (EEC) No 2527/80 of 30 September 1980, which entered into force on 1 October 1980, contained provisions more favourable to him inasmuch as it raised the tonnage limit to 70 GRT and fixed the minimum mesh-size for double-twine nets at 75 mm. Considering that a ruling of the Court of Justice was necessary not merely for the purpose of adjudicating upon that submission but also and above all of judging whether the Belgian measures mentioned above were compatible with Community law, the Rechtbank van Eerste Aanleg requested the Court to give a preliminary ruling on the following questions:

"1. Did the Member States at the time of the occurrences submitted for judgment to this court remain competent to enact provisions for the limitation of fishing such as those embodied in the Royal Decree of 23 April 1979 laying down measures for the protection of resources in fish, crustaceans and mulloscs in the Belgian fishing zone (Belgisch Staatsblad [Belgian Gazette] of 15 May 1979) and were they entitled to enforce compliance with such provisions within the zone coming within their jurisdiction having regard to Articles 30, 34, 38 to 47 of the EEC

Treaty of 25 March 1957, Article 102 of the Act of Accession and of Regulations (EEC) Nos 100/76 and 101/76 on the common organization of the market in fishery products and laying down a common structural policy for the fishing industry respectively (Official Journal 1976, L 20)?

2. May retroactive effect be conferred upon Council Regulation (EEC) No 2527/80 laying down technical measures for the conservation of fishery resources or any subsequent regulations governing the same matters?"

The first question

5 The first question inquires whether the Member States still retained power after 31 December 1978 to adopt conservation measures of the kind contained in the Belgian Royal Decrees in question.

6 As the Court has already held in its judgment of 5 May 1981 in Case 804/79 *Commission* v *United Kingdom* [1981] ECR 1045, the power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Communities since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the Act of Accession so that after that date the Member States are no longer entitled to exercise any power of their own in this matter and may henceforth only act as trustees of the common interest, in the absence of appropriate action on the part of the Council.

7 The Court consequently held that, in a situation characterized by the inaction of the Council and by the maintenance, in principle, of the conservation measures in force the Member States have an obligation to undertake detailed consultations with the Commission and to seek its approval in good faith and also a duty not to lay down national conservation measures in spite of objections, reservations or conditions which may be formulated by the Commission.

8 As regards the Belgian Royal Decree of 23 April 1979, it is apparent from the communication from the Commission, published in the Official Journal of the European Communities of 4 June 1980, (C 133, p. 2), that the Commission was consulted concerning that decree on 12 January and 6 April 1979 and that it was approved by the Commission on 12 July 1979. It follows therefore that the decree was adopted in conformity with those obligations of the Member States as described above.

9 However, it is clear from the information given by the Commission that the Royal Decree of 20 December 1979 was not the subject of consultation. A national measure adopted under those conditions does not comply with the above-mentioned obligations.

10 The national court also asks whether the Member States are entitled to enforce compliance with such national provisions in the zone coming within their jurisdiction.

11 In that respect the Court has already held, most recently in its judgment of 16 December 1981 in Case 269/80 *Robert Tymen* [1981] ECR (non-published), that where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law, a conviction in those proceedings is likewise incompatible with Community law. On the contrary, it is for the Member State to enforce compliance in the zone coming within its jurisdiction with those measures adopted by it in conformity with its Community obligations.

12 The reply to the first question must accordingly be that, after the expiry of the period referred to in Article 102 of the Act of Accession, a Member State does not have power to adopt and bring into force, without appropriate prior consultation with the Commission and in spite of objections, reservations or conditions formulated by the Commission, fishery conservation measures of the kind contained in the Belgian Royal Decrees of 23 April and 20 December 1979 adopting measures for the protection of resources in fish, crustaceans and molluscs, and that the Member State is not entitled to enforce compliance with such measures in the zone coming within its jurisdiction, if the measures have not been adopted in conformity with the above-mentioned obligations.

The second question

13 The second question raises the issue whether Regulation (EEC) No 2527/80 mentioned above must be interpreted as having retroactive effect. In that respect it should be noted that, according to well-established case-law of the Court, confirmed most recently in the Court's judgment of 12 November 1981 in Joined Cases 212 and 217/80 *Salumi and Others* [1981] ECR (non-published), substantive rules of Community law must be interpreted, in order to ensure respect for the principles of legal certainty and the protection of legitimate expectation, as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them.

14 By virtue of Article 22 of Regulation (EEC) No 2527/80, that regulation entered into force on 1 October 1980. There is nothing in the regulation, or in subsequent regulations extending its validity, to justify the conclusion that it is intended to apply to situations existing prior to that date.

15 The reply to the second question must accordingly be that neither Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources nor any subsequent regulations extending its validity have retroactive effect.

Costs

16 The costs incurred by the Belgian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Rechtbank van Eerste Aanleg, Bruges, by judgment of 19 January 1981, hereby rules:

1. **After the expiry of the period provided for in Article 102 of the Act of Accession, a Member State does not have power to adopt, without appropriate prior consultation with the Commission and in spite of objections, reservations or conditions formulated by the Commission, fishery conservation measures such as those contained in the Belgian Royal Decrees of 23 April and 20 December 1979 laying down measures for the protection of resources in fish, crustaceans and mulluscs; nor does a Member State have the right to enforce compliance with such measures in the zone coming within its jurisdiction if the measures have not been adopted in conformity with the above-mentioned obligations.**

2. **Neither Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources nor any subsequent regulations extending its validity have retroactive effect.**

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 10 February 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President