JUDGMENT OF THE COURT (Third Chamber)

23 March 2006 *

In Case C-535/03,

REFERENCE for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), made by decision of 10 December 2003, received at the Court on 19 December 2003, in the proceedings

The Queen on the application of:

Unitymark Ltd,

North Sea Fishermen's Organisation

v

Department for Environment, Food and Rural Affairs,

* Language of the case: English.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, S. von Bahr (Rapporteur) and A. Borg Barthet, Judges,

Advocate General: P. Léger,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 17 March 2005,

after considering the observations submitted on behalf of:

— Unitymark Ltd and the North Sea Fishermen's Organisation, by A. Lewis, Barrister, instructed by A. Oliver and A. Jackson, Solicitors,

— the United Kingdom Government, by K. Manji, acting as Agent, and M. Hoskins, Barrister,

— the Council of the European Union, by T. Middleton and F. Florindo Gijón, acting as Agents,

— the Commission of the European Communities, by T. van Rijn and B. Doherty, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the validity of paragraphs 4(b) and 6(a) of Annex XVII to Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2002 L 356, p. 12), of paragraphs 4(b) and 6(a) of that annex as amended by Council Regulation (EC) No 671/2003 of 10 April 2003 (OJ 2003 L 97, p. 11; hereinafter 'Annex XVII as amended') and of Article 1 of Commission Decision 2003/185/EC of 14 March 2003 on the allocation of additional days absent from port to Member States in accordance with Annex XVII to Regulation No 2341/2002 (OJ 2003 L 71, p. 28) (hereinafter collectively referred to as 'the contested measures').

2 The reference was made in proceedings brought by Unitymark Ltd (hereinafter 'Unitymark') and the North Sea Fishermen's Organisation (hereinafter 'NSFO') against the Department for Environment, Food and Rural Affairs concerning the validity of two orders adopted by the latter in order to implement Annex XVII to Regulation No 2341/2002 and Annex XVII as amended.

Legal context

Community rules

Annex XVII to Regulation No 2341/2002

3 Annex XVII to Regulation No 2341/2002 lays down the number of days allowed to be spent at sea by vessels at least 10 metres in length fishing principally for cod or catching it incidentally.

4 Paragraphs 1 and 2 of Annex XVII define respectively the period covered, which extends from 1 February to 31 December 2003, and the fishing areas affected.

5 Paragraph 4 of the annex sets out the fishing gears concerned, in particular:

'(a) demersal trawls, seines or similar towed gears of mesh size equal to or greater than 100 mm except beam trawls [hereinafter "type 4a gear"];

(b) beam trawls of mesh size equal to or greater than 80 mm [hereinafter "type 4b gear"];

...

(e) demersal trawls, seines or similar towed gears of mesh size between 70 mm and 99 mm except beam trawls [hereinafter "type 4e gear"]'.

6 Type 4a gear is used principally for catching cod, type 4b gear for catching flatfish and type 4e gear for catching nephrops (Norway lobster).

7 Paragraph 6(a) of Annex XVII sets out, in tabular form, the number of days in each calendar month on which a vessel may be absent from port while carrying on board any of the fishing gears defined in paragraph 4. Given the principal use of those gears, the relevant information in the table may be summarised as follows:

— 9 days for type 4a gear (principally used for catching cod);

— 15 days for type 4b gear (principally used for catching flatfish);

— 25 days for type 4e gear (principally used for catching nephrops).

8 Paragraph 6(b) of the annex provides that additional days may be allocated to the Member States by the Commission of the European Communities to compensate for steaming time between home ports and fishing grounds and to compensate for adjustment to the newly installed fishing effort scheme.

9 Paragraph 6(c) of the annex provides that additional days may also be provisionally allocated to Member States by the Commission in respect of vessels carrying type 4a gear in order to take account of decommissioning programmes in 2002 and 2003 for vessels concerned by the provisions of the annex.

Decision 2003/185

10 Decision 2003/185 was adopted by the Commission pursuant to Regulation No 2341/2002.

11 Article 1 of that decision, founded on paragraph 6(b) of Annex XVII to the regulation, provides that a maximum of two additional days per calendar month on which vessels are absent from port may be allocated by Member States to vessels equipped with type 4a gear specialising in cod, to compensate for returning to port in order to change fishing gears.

12 Under Article 2 of the decision, the number of additional days that is provided for in paragraph 6(c) of Annex XVII to the regulation is set at four for the United Kingdom.

13 Article 3 of the decision states that the additional days allocated under Articles 1 and 2 may be cumulated.

Annex XVII as amended

14 Paragraphs 4(b) and 6(a) of Annex XVII as amended are drafted in identical terms to paragraphs 4(b) and 6(a) of Annex XVII to Regulation No 2341/2002.

15 Under paragraph 6(c) of Annex XVII as amended, additional days granted pursuant to that provision are applicable to all vessels equipped with gears defined in paragraph 4 of that annex and no longer solely to vessels equipped with type 4a gear specialising in cod.

National rules

16 The Department for Environment, Food and Rural Affairs adopted two orders, the Sea Fishing (Restriction on Days at Sea) Order 2003 (SI 2003 No 229), which entered into force on 8 February 2003, and the Sea Fishing (Restriction on Days at Sea) No 2 Order 2003 (SI 2003 No 1535), which entered into force on 7 July 2003.

17 By those two orders, the United Kingdom Government made a person in charge of a fishing boat registered in the United Kingdom guilty of an offence if the boat was absent from port in excess of the number of days provided for in Annex XVII to Regulation No 2341/2002 and Annex XVII as amended.

The main proceedings and the question referred for a preliminary ruling

18 The claimants in the main proceedings are, first, Unitymark, a company registered in Scotland which fishes for flatfish, namely plaice and sole, using vessels equipped with beam trawls falling within the category of type 4b gear, and second, NSFO, an organisation representing fishermen operating mainly in the North Sea with the same type of vessels as those used by Unitymark and for the same purposes. The claimants have brought proceedings against the Department for Environment, Food and Rural Affairs before the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), for judicial review of the legality of the abovementioned orders, contending that they are based on Community legislation that is invalid.

19 Their challenge relates in particular to the number of days at sea allocated to vessels equipped with beam trawls without a distinction being drawn between the two categories of gear covered by that type of trawl.

20 According to the national court, 'open gear' beam trawls should be distinguished from 'chain mat' beam trawls. Open gear beam trawls are used to catch flatfish in areas where the seabed is smooth and sandy as opposed to rocky and it is not necessary to touch the seabed. Chain mat beam trawls, which account for 20% of the European fleet of vessels equipped with beam trawls and which are also designed to catch flatfish, operate, on the other hand, by scraping along a rocky seabed, so disturbing fish which fall into the net.

21 Unitymark and the fishermen represented by NSFO use only vessels equipped with open gear beam trawls.

22 According to the national court, the parties to the main proceedings agree on a number of facts.

23 First, vessels equipped with open gear beam trawls have the smallest by-catch of cod of any of the methods used to fish in the North Sea by vessels longer than 10 metres. The by-catch is substantially less than that of vessels equipped with gear enabling them to fish principally for nephrops and that of vessels equipped with chain mat beam trawls, specialising in flatfish.

24 Second, the cod by-catch rate of English and Welsh vessels equipped with beam trawls is only 0.6%, whereas it amounts to approximately 9% for all vessels equipped with beam trawls in the relevant area. That difference may be explained in particular by the greater cod catch of Netherlands vessels which use chain mat beam trawls to a greater extent. In addition, the cod catch of vessels fishing principally for nephrops accounts for approximately 20% of their total catch.

25 Finally, the limitations on fishing effort prescribed by the Community legislation seriously undermine the economic viability of open gear beam trawl fishing. They prevent the affected vessels from catching their quota of sole and plaice. Unitymark is close to being forced out of business and other fishing companies run the same risk.

26 The national court adds that, according to Unitymark and NSFO, fishermen using open gear beam trawls are among those whose number of days at sea has been reduced most, even though that class of fisherman has the least impact on cod stocks, compared with the other classes.

27 It was in those circumstances that the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Are

... paragraph 4(b), and the part of paragraph 6(a) which refers to paragraph 4(b), of Annex XVII [to] ... Regulation [(EC) No] 2341/2002 ...; and/or

... paragraph 4(b), and the part of paragraph 6(a) which refers to paragraph 4(b), of Annex XVII [to] ... Regulation [No] 2341/2002 ... as amended by Regulation [(EC) No] 671/2003 ...; and/or

... Article 1 of ... Decision 2003/185 ... in so far as the Commission refuses to extend, under paragraph 6(b) of Annex XVII [to] Regulation [No] 2341/2002, the number of days available to vessels carrying the gear in the class referred to in paragraph 4(b) of that annex, by two days,

unlawful in their application to open gear beam trawlers because they are:

(a) contrary to Articles 33 (ex 39) and 34 (ex 40) EC,

(b) contrary to Articles 28 (ex 30) and 29 (ex 34) EC,

(c) disproportionate,

(d) discriminatory, and/or

(e) contrary to the fundamental freedom to pursue a trade or business?'

Consideration of the question referred

Preliminary remarks

28 The national court requests the Court of Justice to examine the validity of the contested measures in the light of the articles of the EC Treaty relating to the common agricultural policy and to the free movement of goods, of the principles of proportionality and of non-discrimination, and of the right freely to pursue a trade or business.

29 The observations submitted to the Court relate, however, mainly to whether the contested measures are compatible with the principles of proportionality and of non-discrimination.

Observations submitted to the Court

30 Unitymark and NSFO point out that they do not dispute in the slightest that the Council of the European Union was entitled to adopt measures in order to respond to the very large decrease in cod stocks, including by restricting the number of days spent at sea by the vessels concerned.

31 They also acknowledge that the Council has a wide discretion in the matter. They submit, however, that this discretion none the less does not enable the Council to adopt any regulation in disregard of the principles of proportionality and non-discrimination. These two principles are, as regards vessels equipped with open gear beam trawls, compromised so seriously as to render the contested measures invalid.

32 With regard to proportionality, Unitymark and NSFO submit that, given the small quantity of cod caught by vessels equipped with beam trawls, in particular vessels using open gear trawls, it was unnecessary to restrict their days at sea or, at any rate, so drastically. The contested measures are therefore disproportionate to the objective pursued.

33 Those measures are also disproportionate, first, in light of the situation of vessels equipped with other fishing gears, in particular type 4a gear specialising in cod. Taking account of the additional days granted by Decision 2003/185, those vessels were allocated 15 days at sea, that is to say the same number of days as that allocated to vessels equipped with beam trawls including open gear beam trawls which, however, catch a lot less cod.

34 Second, those measures are disproportionate in light of the situation of vessels equipped with type 4e gear specialising in nephrops. According to Unitymark and NSFO, although these vessels catch a lot more cod than vessels equipped with beam trawls, they were allocated 10 days more at sea than the latter, that is to say 25 days.

35 Finally, a distinction should have been drawn between vessels equipped with open gear beam trawls and those equipped with chain mat beam trawls. Only the latter catch a significant quantity of cod. At the hearing, Unitymark and NSFO referred to the tables submitted by the Council as an annex to its written observations. It is apparent from the tables that vessels equipped with open gear beam trawls caught only 1.06% of the total cod catch landed in 2002 whereas vessels equipped with chain mat beam trawls caught 10.6% of the total.

36 Unitymark and NSFO state that the tables clearly indicate the difference between those two types of gear because they mention beam trawls having a mesh size of 80 to 99 mm and those having a mesh size above 100 mm. The narrowest meshes correspond to chain mat beam trawls while the wider meshes are characteristic of open gear beam trawls.

37 It follows that vessels equipped with open gear beam trawls have suffered flagrant discrimination vis-à-vis both vessels specialising in cod and those specialising in nephrops or using chain mat beam trawls.

38 Unitymark and NSFO add that the alleged need also to preserve flatfish stocks is not relevant because flatfish fishermen were already unable to reach the quotas allocated to them even before the contested measures were adopted.

39 In their submission, the Council should have adopted measures that compromised the principles of proportionality and non-discrimination to a lesser extent. They assert that it would have sufficed to reduce by one day the number of days allocated to vessels specialising in nephrops or to restrict the number of days spent at sea by vessels under 10 metres in length.

40 The United Kingdom Government, the Council and the Commission note that the Community legislature enjoys a very broad discretion in the field in question and that the Court can only verify that the legislation adopted in order to attain the objective sought is not manifestly inappropriate.

41 They submit that, having regard to the seriousness of the problem with which the Community was faced, namely the risk that cod stocks would be exhausted, it was necessary as a matter of urgency to take measures for preserving those stocks and building them up again. The contested measures were adopted on the basis of scientific reports and comply fully with the principles of proportionality and non-discrimination.

42 With regard to proportionality, the United Kingdom Government, the Council and the Commission explain that the contested measures do not obey a purely mathematical logic. Should the latter have had to prevail, fishermen specialising in cod, who are responsible for the majority of the cod catch, would have borne the bulk, or even the whole, of the restrictions. The Community legislature considered it, however, to be important, for both social and economic reasons, not to place the entire burden of the cod-protection measures solely on fishermen specialising in cod by imposing a moratorium on that activity. Since cod catches were not attributable solely to vessels specialising in cod and other fishermen, in particular flatfish fishermen, also caught that species in significant proportions, the legislature considered that it was preferable to share the reduction in fishing effort among all those operators by restricting their number of days at sea.

43 The largest reduction in fishing effort was imposed on fishermen specialising in cod, whose number of days at sea decreased by 60%. There was a 40% decrease for vessels equipped with beam trawls, which catch 11.3% of the cod landed.

44 According to the United Kingdom Government, the Council and the Commission, Unitymark and NSFO are wrong in their view that cod fishermen were allocated as many days at sea as flatfish fishermen, that is to say 15 days. While United Kingdom fishermen specialising in cod were authorised to spend 15 days at sea, that was pursuant to paragraph 6(b) and (c) of Annex XVII to Regulation No 2341/2002, which responds to specific circumstances. In order to compensate for the obligation to return to port to change fishing gears, cod fishermen were granted two additional days which do not correspond to fishing days. Also, four further additional days were allocated to them in order to take account of programmes for the scrapping of vessels specialising in cod. Regulation No 2341/2002 thus allowed the reduction in the total number of vessels fishing for cod to result in the grant of additional days at sea for the remaining vessels. The comparison made by Unitymark and NSFO is thus founded on an incorrect basis.

45 The United Kingdom Government and the two institutions submit with regard to vessels specialising in nephrops that the scientific reports had not revealed a significant link between nephrops catches and the decrease in the cod stock, whereas such a link had been brought to light in the case of flatfish. Nor had a risk of a decrease in nephrops stocks been revealed, whereas such a risk appeared in respect of flatfish. Finally, the contested measures take account of the fact that it was easier for cod fishermen to switch to catching nephrops than to catching flatfish.

46 So far as concerns the comparison with vessels equipped with chain mat beam trawls, the United Kingdom Government, the Council and the Commission stated at the hearing that the information produced by Unitymark and NSFO on the correlation, mentioned in paragraph 36 of this judgment, between the mesh size of beam trawls and the two existing categories of this type of trawl had never previously been put forward.

47 Finally, the United Kingdom Government, the Council and the Commission assert that the alleged alternative measure consisting in reducing the number of days spent at sea by vessels under 10 metres in length was not realistic, given the very large quantity of those vessels and the difficulty, or even impossibility, of monitoring its implementation.

48 Consequently, the contested measures are not invalid.

The Court's answer

Restriction on the free movement of goods and on the free pursuit of a trade or business

49 It should be stated first of all that the matters raised by the national court relating to the free movement of goods and to the free pursuit of a trade or business do not require separate examination in this case.

50 As regards the free movement of goods, the parties do not dispute the need for legislation temporarily limiting catches of cod, by various categories of fishermen, in order to prevent cod stocks from being exhausted in the long term. The Court has already held with regard to measures reducing in the short term the quantities of fish that can be traded between the Member States, but designed in the long term to ensure an optimum yield from fishing and therefore to increase such trade, that measures of that kind do not fall within the scope of Article 29 EC relating to the free movement of goods (see Case 46/86 *Romkes* [1987] ECR 2671, paragraph 24).

51 Since the national court does not put forward specific reasons why the contested measures prejudice trade beyond those flowing from the temporary restriction on fishing effort, there is accordingly no need to examine those measures in the light of Article 29 EC.

52 The freedom to pursue a trade or business has been recognised by the Court (see, in particular, Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 55) but, as pointed out by the Commission in its written observations, the national court has not stated that this freedom would be infringed separately from any infringement of the principles of proportionality and non-discrimination, which is examined below. It must therefore be held that this aspect of the question likewise does not require separate examination.

Infringement of the principles of non-discrimination and proportionality

53 The principle of non-discrimination and the principle of proportionality which, in this instance, is closely linked to it are general principles of Community law and, in

the field of agriculture, including fisheries, are embodied in the second subparagraph of Article 34(2) EC.

54 That provision entrusts the Community legislature with the task of implementing the common agricultural policy formulated in Article 33 EC, in order to ensure, in particular, a fair standard of living for the agricultural community and the availability of supplies, while excluding any discrimination between producers within the Community.

55 In accordance with settled case-law, the Community legislature has a wide discretion in this field, corresponding to the political responsibilities given to it by Articles 34 EC to 37 EC. Consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion (Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80, and Case C-304/01 *Spain* v *Commission* [2004] ECR I-7655, paragraph 23).

56 With regard to this discretion, the Court has held that the principle of proportionality requires that measures implemented through Community provisions should be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, inter alia, Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 59; Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 47; Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 68; and Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 79).

57 So far as concerns judicial review of compliance with this principle, bearing in mind the wide discretion enjoyed by the Community legislature in matters concerning the common agricultural policy, the legality of a measure adopted in that field can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 14; Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 42; *Jippes*, paragraph 82; and *IATA and ELFAA*, paragraph 80).

58 The Court therefore has the task of verifying that the contested measures were not manifestly inappropriate.

59 In light of the information produced to the Court and set out in particular in paragraphs 23 to 26 and 35 of the present judgment, it appears that vessels equipped with open gear beam trawls bore a markedly greater part of the burden of the measures limiting fishing effort than vessels equipped with other gears, proportionally to the quantity of cod which they caught.

60 In assessing whether or not those measures were appropriate, it must be stated that the Council preferred to divide the reduction in fishing effort among all the operators concerned rather than impose a moratorium on the activity of fishermen catching principally cod. In so doing, it strove to meet one of the objectives of the common agricultural policy, namely maintenance of a fair standard of living for the fishermen concerned as a whole. This choice made by the legislature is not in itself open to criticism, provided it does not have the effect that, by adoption of the contested measures, another group of fishermen is penalised disproportionately and without objective justification.

61 According to Unitymark and NSFO, those measures do not allow flatfish fishermen using open gear beam trawls to catch the flatfish quotas which have been allocated to them and consequently undermine the viability of their operations. The Community legislature could, in their submission, have avoided such an effect by drawing a distinction between the two categories of beam trawls, namely chain mat beam trawls and open gear beam trawls.

62 This line of argument, according to which there was no reason to reduce the number of days spent at sea by flatfish fishermen in order to preserve flatfish stocks because, even before Regulation No 2341/2002 was introduced, United Kingdom fishermen could not reach the quotas which were allocated to them, cannot be upheld. Those circumstances are not decisive with regard to the preservation of cod stocks. Nor has it been alleged in the present instance that the flatfish fishermen as a whole concerned by the contested measures could not reach the quotas which were allocated to them.

63 Furthermore, the fact that one particular group is affected to a greater extent than another by a legislative measure does not necessarily mean that the measure is disproportionate or discriminatory inasmuch as it seeks a comprehensive solution to a problem of general public importance.

64 In light of the not inconsiderable quantities of cod caught by vessels equipped with beam trawls as a whole, accounting for approximately 11% of the total volume of cod landed, the significant restriction on the number of days at sea imposed on those vessels does not appear, in itself, manifestly inappropriate.

65 It is necessary next to verify that the contested measures are not discriminatory in relation to fishermen using various types of fishing gear and, in order to do this, to compare first of all the situation of fishermen using vessels equipped with open gear beam trawls with that of fishermen using vessels equipped with chain mat beam trawls.

66 It does not appear that the scientific reports available at the time when the contested measures were adopted drew a distinction between those two types of gear. On the contrary, the documents produced to the Court show that beam trawls were presented as a whole. Also, the figures for 2002 set out in an annex to the Council's observations and upon which Unitymark and NSFO relied at the hearing before the Court, were not yet available when Annex XVII to Regulation No 2341/2002 was adopted.

67 In those circumstances, and in light of the considerations set out in paragraph 64 of the present judgment, the contested measures do not discriminate against fishermen using open gear beam trawls compared with those using chain mat beam trawls.

68 It remains to be verified that the contested measures are not discriminatory having regard to the number of days allocated to fishermen who catch principally cod, to those catching principally nephrops and to those using vessels under 10 metres in length.

69 The grievance regarding the first of those categories of vessels relates not so much to the grant to them of nine basic days as to the six additional days which United Kingdom vessels engaging in this type of fishing obtained.

70 It must be stated that the additional days granted to fishermen whose vessels are equipped with type 4a gear by Decision 2003/185 pursuant to paragraph 6(b) and (c) of Annex XVII to Regulation No 2341/2002 were allocated on the basis of the specific circumstances referred to in those two provisions. It does not appear that the United Kingdom Government or flatfish fishermen indicated to the Commission that the two additional days provided for in paragraph 6(b) of the annex to compensate in particular for steaming time between home ports and fishing grounds could be needed not only by vessels specialising in cod but also by those fishing for flatfish. The grant, pursuant to paragraph 6(c) of the annex, of additional days to fishermen using vessels specialising in cod is explained by the programmes for the scrapping of those vessels, corresponding to an overall reduction in this fishing activity.

71 It follows that the number of days at sea allocated to fishermen whose vessels are equipped with type 4b gear specialising in flatfish does not appear manifestly disproportionate in relation to the number of days at sea allocated to fishermen whose vessels are equipped with type 4a gear specialising in cod, including after application of the additional days granted in accordance with paragraph 6(b) and (c) of Annex XVII to Regulation No 2341/2002.

72 So far as concerns the comparison with nephrops fishermen, it must be stated that the information produced to the Court on this subject is divergent, whether it

concerns the extent of the cod catches of those fishermen, the existence of a risk to nephrops stocks or the ability of cod fishermen to switch to catching nephrops rather than to catching flatfish.

73 The documents produced to the Court do not, however, show that the remarks of Unitymark and NSFO relating to a difference in the treatment of flatfish fishermen and nephrops fishermen were presented to the Community legislature before the contested measures were adopted.

74 Consequently, even though the difference between the number of days allocated to nephrops fishermen and the number granted to flatfish fishermen may seem high, it does not appear manifestly inappropriate, in the light, in particular, of the information which could have been available to the Community legislature at the time when Regulation No 2341/2002 was adopted.

75 As regards, finally, fishermen using vessels under 10 metres in length, it must be stated that the particularly high number of those vessels was liable to make monitoring particularly difficult and was capable of justifying the choice made by the Community legislature to restrict the number of days spent at sea by fishermen using other types of vessel in order to help to preserve cod stocks.

76 It is apparent from the foregoing considerations that the contested measures were not manifestly inappropriate.

77 Accordingly, examination of the question asked has disclosed no factor of such a kind at to affect the validity of the contested measures.

Costs

78 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Examination of the question asked has disclosed no factor of such a kind at to affect the validity of:

— **paragraphs 4(b) and 6(a) of Annex XVII to Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required;**

— **paragraphs 4(b) and 6(a) of that annex as amended by Council Regulation (EC) No 671/2003 of 10 April 2003;**

— **Article 1 of Commission Decision 2003/185/EC of 14 March 2003 on the allocation of additional days absent from port to Member States in accordance with Annex XVII to Regulation No 2341/2002.**

[Signatures]