OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 12 May 1987 *

Mr President,
Members of the Court,

1. The two questions submitted for a preliminary ruling by the Arrondissementsrechtbank (District Court), Zwolle, concern the problem whether a Member State has the power under Article 20 of Council Regulation (EEC) No 171/83 of 25 January 1983 laying down certain technical measures for the conservation of fishery resources [1] to adopt stricter provisions on minimum fish-sizes than is provided for in Article 11 (3) in conjunction with Annex 5 to that regulation.

2. Since 1972 a Netherlands regulation laying down minimum sizes for plaice, haddock and whiting had provided that plaice measuring less than 27 cm could not be landed in the Netherlands. By a judgment of 29 November 1984 the Gerechtshof (Regional Court of Appeal), Arnhem, declared that regulation to be contrary to Community law and, so it is stated in the order for reference, took away its legislative effect. That meant that from that time the EEC size of 25 cm laid down in Regulation No 171/83 applied in the Netherlands as the minimum size for plaice.

3. On 1 November 1984 the Netherlands State Secretary for Agriculture and Fisheries fixed by order, pursuant to Article 20 of Regulation No 171/83, the minimum size for plaice at 27 cm. This was pursuant to a request from the Netherlands fish-processing industry, which believed that a minimum size for plaice of 27 cm ensured better use of the national fishing quota.

4. For the Arrondissementsrechtbank the first question which arises is whether Article 20 of Regulation No 171/83 applies only to national provisions already in existence or also to new provisions. The French Government, the Netherlands Government and the Commission have proposed that the Court should choose the second alternative.

5. Disregarding the fact that under various legal provisions the minimum size for plaice in the Netherlands had been 27 cm since 1972, it must point out that only the Dutch version of Article 20 (1) of the regulation in question could possibly give rise to the doubt expressed by the Arrondissementsrechtbank, but not the other language versions. But even in the Dutch version, it is clear from the fourth recital, and especially when all three paragraphs of Article 20 are read together, that it must also cover future national measures, otherwise the Member States' permanent obligation to provide information would be pointless.

* Translated from the German.

1 — Official Journal 1983, L 24, p. 14.

6. By its second question the Arrondissementsrechtbank seeks to establish whether a measure whereby in at least one Member State different minimum sizes for some fish species apply than those applying in other Member States is in conformity with Community law and the common fisheries policy.

7. The governments which have submitted observations and the Commission suggest that the Court should answer that question in the affirmative.

8. It must be observed first of all that at least in the Skagerrak and Kattegat areas Community law also imposes a minimum size of 27 cm for plaice, whereas in the other areas covered by Regulation No 171/83 Community law stipulates a minimum size of only 25 cm for plaice.

9. A national measure whose purpose — and effect — is the better use of the total quantity of catches and less wastage during processing undoubtedly contributes to the protection of the biological resources of the sea and to a balanced exploitation of those resources. It is therefore in accordance with the common fisheries policy, even if it is also intended to pursue other aims at the same time.

10. Therefore, it only remains to examine, with reference to the second question submitted by the Arrondissementsrechtbank, whether the prohibition of discrimination laid down in Article 7 of the EEC Treaty has been infringed.

11. Although the Community has in the meantime introduced a common fisheries policy, it is still not possible, following the judgment of the Court of 3 July 1979 in Joined Cases 185 to 204/78,[2] even in the present legal situation, to accept that an infringement of the prohibition of discrimination has taken place.

12. As appears from the preamble and the wording of Regulation No 171/83, its provisions on technical measures for conserving fishery resources are to be regarded as minimum requirements which do not prevent the Member States from adopting more far-reaching measures. The technical measures for conserving fishery resources therefore constitute only a partial harmonization. The application of a national provision whose compatibility with Community law is not in fact disputed, may not therefore be regarded as a breach of the principle of non-discrimination for the sole reason that other Member States have adopted different provisions. This is simply the result of the fact that the Member States have the right to adopt different rules on this matter. At the hearing the Commission referred in this regard to the consequences of a 'decentralized administration'.

13. In conclusion, I propose that the Court should answer the questions submitted to it by the Arrondissementsrechtbank, Zwolle, as follows:

2 — Judgment of 3 July 1979 in Joined Cases 185 to 204/78 *Firma J. van Dam en Zonen and Others* [1979] ECR 2345.

'(1) Article 20 (1) of Regulation (EEC) No 171/83 empowers a Member State to adopt, *even after the entry into force* of that regulation, technical measures for its fishing industry going beyond the minimum requirements of that regulation.

(2) In the present state of Community law on fishing matters, a national measure which imposes stricter rules on the minimum sizes of certain species of fish on national fishermen in order to ensure better management and use of the fishing quotas is compatible with Community law. Such a measure accords with the common fisheries policy and does not constitute unlawful discrimination against the fishermen of the Member State concerned.'