OPINION OF ADVOCATE GENERAL TESAURO

delivered on 10 May 1995 *

1. The questions referred to the Court for a preliminary ruling in these proceedings concern the compatibility with Community law of the Sea Fish Licensing (Time at Sea) (Principles) Order 1993 (hereinafter 'the Order'), [1] which regulates the number of days a year that United Kingdom fishing vessels over 10 metres in length can spend at sea. As is apparent from the order for reference, for the period from 1 January 1993 to 31 December 1996, the number of days a year that those vessels are authorized in accordance with the Order to spend at sea is limited to the number of days they spent at sea in 1991.

The applicants in the main proceedings, who represent almost all United Kingdom operators in the sea-fishing sector (hereinafter 'the applicants'), challenged the Order in the High Court of Justice, claiming that it was incompatible with certain provisions of Community law. In particular, the applicants asserted that the Order infringed Commission Decision 92/593/EEC of 21 December 1992 [2] (hereinafter 'the decision'), the regulations establishing the common fisheries policy, [3] Articles 6, 34, 39 and 40(3) of the EC Treaty and some of the general principles of Community law. [4]

Framework of Community and national law

2. It is appropriate to give a brief summary of the provisions of both national and Community law which form the background to the questions, and also the specific objectives pursued by the ample body of Community legislation in the fisheries sector.

The chief objective of Community policy with regard to fisheries is the protection and development of the many economic activities connected therewith. That object must, however, constantly be modified by the equally imperative need for proper protection of the

* Original language: Italian.

1 — Laid before Parliament on 5 May 1993.

2 — Commission Decision 92/593/EEC of 21 December 1992 on a multiannual guidance programme for the fishing fleet of the United Kingdom for the period 1993 to 1996 pursuant to Council Regulation (EEC) No 4028/86 (OJ 1992 L 401, p. 33).

3 — Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products (OJ 1992 L 388, p. 1), and Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1).

4 — In particular, the right to property, the freedom to pursue a trade or professional activity, the right to equal treatment and the principle of proportionality.

marine environment and thus for rational management of fish stocks. That is why, ever since a separate Community policy was created for fisheries as distinct from agriculture, [5] the relevant Community legislation has been developed in the knowledge that there is an imbalance between fishing capacity and available resources. While on the one hand the common organization of the market in fish products was established, with the narrower aim of ensuring the free movement and marketing of products in that sector, on the other a body of laws intended to preserve all available resources was gradually introduced and developed. [6] The object was not only to protect the environment but also to ensure the survival of fishing as a productive economic sector. That is still, therefore, the point of view from which the relevant Community provisions should be interpreted, especially those governing the present case.

3. First and foremost there is Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector. [7] It is in fact the framework regulation, in force when the national measure at issue was adopted, establishing a system of Community financial aid to Member States to facilitate structural change in the fisheries sector. In accordance with that regulation, the States wishing to receive the aid are required to forward to the Commission a 'multiannual guidance programme' (hereinafter 'MAGP'), indicating the specific measures which they propose to adopt.

Article 1 of the regulation states that the aid is intended for action taken in certain fields including, in Article 1(1)(d), 'the adjustment of fishing capacity by the temporary or permanent withdrawal of certain vessels from fishing activities'. Article 2(1) defines a MAGP as 'a set of objectives, together with a statement of the means necessary for attaining them, as a guide for the development of the fisheries sector in the overall long-term context.' Article 2(2) of the regulation lays down a series of requirements and data which must be taken into account in the MAGP. For the purposes of the aid, the MAGP must, moreover, be communicated to the Commission (in accordance with the rules in Article 3) which, as provided for in Article 4, is to decide whether or not it fulfils

5 — Solemn declaration of the European Council in The Hague of 3 November 1976; Annex VI provides for the Community to have exclusive jurisdiction and consequently prohibits the adoption of unilateral measures in that field by Member States.

6 — Those laws are essentially directed towards the adoption of selective protection measures (prohibiting and limiting fishing activity, regulating types of vessels and nets, etc.), the establishment of the quota system (allocating total allowable catches among the States) and the licensing scheme (chiefly for monitoring purposes).

7 — OJ 1986 L 376, p. 7.

the conditions laid down in the regulation and may, therefore, constitute a framework for Community (and national) financial assistance to the sector in question. Aid is then granted in accordance with Articles 40 to 48 of the regulation. The decision constitutes the measure whereby the Commission approved the United Kingdom's third MAGP for the period 1993-1996.

4. The aforesaid regulation was in part amended, with effect from 31 December 1992, by Council Regulation No 3946/92. [8] That regulation introduced the concept of 'fishing effort' in order to provide the Member States with another means of attaining a balance between fishing and available resources: whereas the earlier version of the regulation called for reductions in the 'fishing capacity' of a given fleet, the amended version refers to reductions in the 'fishing effort', meaning reductions in the fleet's capacity together with a reduction of its activity.

Article 1(1)(d) of the regulation, as amended, provides therefore that Community financial aid may be granted *inter alia* in respect of measures for 'the adjustment of fishing effort by the temporary or permanent withdrawal of certain vessels from fishing activities'. Consistently with that approach, Article 1a provides that 'The Member States shall adopt measures by which to restrict fishing effort to bring it in line with a balanced exploitation of fishery resources', specifying that the measures referred to are to combine a reduction in the capacity of the fleets and an adjustment of their activity.

5. Council Regulation (EEC) No 3760/92, cited above, [9] covers certain aspects of the subject which are relevant to this case. As provided for in Article 11 of that regulation, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, is 'on a multiannual basis and for the first time not later than 1 January 1994 ... [to] set the objectives and detailed rules for restructuring the Community fisheries sector with a view to achieving a balance on a sustainable basis between resources and their exploitation. Such restructuring shall also take account on a case-by-case basis of the possible economic and social consequences and of the specificities of the fisheries regions'.

6. Finally, for the sake of completeness, mention must be made of Council Regulation No 3699/93 [10] which came into force on 1 January 1994 and is therefore not applicable to the facts of the case. That regulation, which made considerable changes to the rules previously in force, expressly requires

8 — Council Regulation (EEC) No 3946/92 of 19 December 1992 amending for the third time Regulation (EEC) No 4028/86 (OJ 1992 L 401, p. 1).

9 — See above, footnote 3.

10 — Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (OJ 1993 L 346, p. 1).

the Member States to 'take measures to adjust fishing effort to achieve at least the objectives of the multiannual guidance programmes referred to in Article 5', by taking, where necessary, 'measures to stop vessels' fishing activities permanently or restrict them' (Article 8(1)). Moreover, as provided for in Article 8(3), such measures 'may include restrictions on fishing days or days at sea authorized for a specific period (...)'.

Consequently, under the new rules laid down in Regulation No 3699/93, the objectives fixed by the States in their MAGPs seem to have become compulsory. Evidence of their binding nature is provided, moreover, by Council Decision 94/15/EC, [11] which is also not applicable to the facts of the case since it was adopted after the Order at issue. That decision, the legal basis of which is Article 11 of Regulation No 3760/92, expressly requires the Member States to decrease the fishing effort of their fleets in accordance with the objectives fixed in the relevant MAGPs and entrusts the Commission with the task of ensuring the implementation of those objectives (Articles 1 and 2).

7. To date the United Kingdom has submitted three MAGPs; the first was in essence intended to reduce fleet capacity and the second, for the period 1987 to 1991, was based on more restrictive application of a system of fishing licences and on the unfettered operation of market forces. Although the Commission approved the objectives fixed in the UK's second MAGP by Decision 88/141/EEC, [12] it subsequently suspended payment of the aid already granted because it found that, in practice, not only had the objectives of the second MAGP not been achieved, but on the contrary the United Kingdom fleet had increased in size and therefore in capacity.

The main objective of the third MAGP for the period 1 January 1993 to 31 December 1996 [13] is the reduction of fishing effort; it was approved by the Commission by means of the decision cited above.

8. The ninth recital in the preamble to the decision, the annex to which contains a list detailing the objectives of the third MAGP, stresses the fundamental need for 'significant reductions' in fishing effort 'in particular segments of that fleet where an imbalance

11 — Council Decision 94/15/EC of 20 December 1993 relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1 January 1994 to 31 December 1996 with a view to achieving a lasting balance between the resources and their exploitation (OJ 1994 L 10, p. 20).

12 — OJ 1988 L 67, p. 22.

13 — Initially the third MAGP covered the year 1992 as well, but because the information required for approval was not supplied, the Commission fixed a transitional programme contained in Decision 92/363/EEC (OJ 1992 L 193, p. 25).

(between effort and resources) is most apparent (...)'. Article 2 then imposes overall reductions in fishing effort for the various groups of fish species in the following percentages:

— 20% for segments practising bottom trawling in teams or using an otter trawl and fishing for demersal stocks,

— 15% for dredgers and beam trawlers for benthic stocks,

— 0%, i. e. zero growth in other segments.

Article 3 of the decision lays down that the reduction in fishing effort may result from the combined effect of reductions in capacity and reductions in activity, but that at least 55% of the overall objective of the programme must be achieved by means of reductions in capacity (Article 3(2)). Article 3(3) provides that 'The remainder may be achieved by means of measures to reduce activity, *such as restrictions in time at sea,* provided that they are based on permanent laws and administrative provisions accepted by the Commission and techniques approved by the Commission'. [14]

9. The Order in dispute was adopted in pursuance of the overall objective set by the third MAGP and approved by the Commission. As I have mentioned, the Order provides that the grant or renewal of fishing licences for United Kingdom fishing vessels is to be subject to the condition that the holder of the licence should, in each of the years 1993 to 1996, spend the same number of days at sea as in 1991 (in exceptional cases, as in 1988). The Order provides that the number of days allocated may be increased on account of exceptional circumstances (fishing of species not subject to quotas, non-fishing activity, investments made in good faith and others).

10. Finally, for the sake of completeness, it should be noted that two other national measures were enacted almost at the same time as the Order, namely the 'Sea Fishing (Conservation) Act 1992' and the 'Fishing Vessel (Decommissioning) Scheme 1993'. According to the United Kingdom, those measures, together with the Order, should ensure compliance with the objectives laid down in the MAGP, including those concerning the reduction in capacity of the fishing fleet.

14 — Emphasis added.

The questions

11. Taking the view that a correct interpretation of the provisions cited above is essential for resolving the dispute, the High Court has stayed proceedings and referred to the Court of Justice the following questions for a preliminary ruling:

(1) (a) whether the decision enables and/or authorizes the United Kingdom to adopt measures such as that contained in the Order; and

(b) whether the decision excludes the possibility of using technical conservation measures in order to achieve the same objective;

(2) whether the answer to Question 1 is affected by the fact that the United Kingdom did not reduce the capacity of its fishing fleet in accordance with the provisions of its second MAGP;

(3) whether, in any event, measures of the kind adopted in the Order are contrary to the abovementioned provisions and principles of Community law;

(4) whether the answers to the above questions are affected by

(a) the nature of the stock fished for by United Kingdom fishing vessels, in particular whether or not the stock is subject to total allowable catches,

(b) the extent to which the Order will affect the whole fisheries sector and

(c) any derogations made in future by the competent minister for particular sectors.

During the proceedings, the United Kingdom unilaterally decided to suspend the implementation of the disputed measure pending a ruling from the Court.

Question 1

12. The answer to the first part of the first question seems to me to be only too clear. As I have already pointed out, the decision approving the third MAGP expressly allows the United Kingdom to attain the objectives of the MAGP by means of measures to reduce the fleet's activity and gives as a specific example 'restrictions in time at sea' (Article 3(3), cited above).

Such measures are, therefore, undoubtedly authorized, 'provided that they are based on permanent laws and administrative provisions accepted by the Commission' (Article 3(3)), and provided that at least 55% of the overall objective of the programme is achieved by means of reductions in capacity (Article 3(2)). According to the information contained in the documents before the Court, and in the absence of any contention to the contrary, both those conditions are satisfied in the present case.

13. In the second part of the first question, the national court asks whether the decision excludes the possibility of using technical measures (that is to say, essentially changes in the licensing system, incentives to lay up fishing vessels and other specific conservation measures) instead of restrictions in time at sea.

Although it does not expressly refer to technical measures, the decision leaves the States free to choose the most suitable measures to reduce activity in order to achieve 45% of the overall objective, provided that they are accepted by the Commission. In this connection, the applicants maintain that adopting specified technical measures would make it possible to achieve the desired result at a financial cost far lower than that imposed upon them as a result of applying the Order.

14. It seems to me that the answer to the question is in any case irrelevant for the purposes of assessing whether the Order is compatible with the decision. Even on the assumption — which is plausible — that the decision permits the United Kingdom to adopt measures to reduce fishing activity other than restrictions in time at sea, the latter are none the less authorized (and, what is more, expressly so).

Furthermore, it is not apparent from any official document that the Commission has approved the technical measures, as required by the decision. On the contrary, the correspondence between the United Kingdom and

the Commission during 1994 (annexed to the pleadings at the applicants' request) would seem rather to reflect the misgivings of the Commissioner responsible for fisheries policy as to the ability of those measures at the time to bring about an actual reduction in the fishing effort of the United Kingdom fleet. [15]

The applicants' argument is based on the assumption, challenged by the United Kingdom and by the Commission, that the second MAGP contained legally binding obligations, in view of the fact that the objectives provided for therein had been approved and formally set out in Commission Decision 88/141/EEC, cited above.

Question 2

16. I am not inclined to endorse that argument, which in my view is incompatible with a correct interpretation of the rules establishing MAGPs and their development.

15. In its second question, the national court asks the Court to determine whether, and if so, to what extent, the answer to the first question is affected by the fact that the United Kingdom did not comply with the objectives laid down in the second MAGP for the period between 1987 and 1991. The applicants claim that the United Kingdom's failure to fulfil its obligations under the second MAGP to reduce the capacity of its fleet had unjustified and unlawful repercussions on the objectives of the third MAGP; if those obligations had instead been complied with, the financial cost and the consequences of the third MAGP would have been less onerous for the fishing sector than those it seems likely to involve in practice.

At least until Regulation No 3699/93 was adopted, the legislation merely gave each Member State the *option* of drawing up a MAGP and submitting it to the Commission. The latter's approval was necessary solely and exclusively for the purposes of obtaining financial aid. If the programme set out in the MAGP was approved, the Commission would make a formal decision fixing the terms and detailed conditions of that aid. Accordingly, such a decision would have contained obligations which were legally binding only for the purposes of the aid, in the sense that if the MAGP was not complied with, the Commission was authorized to suspend payment of the aid. That is exactly what happened to the United Kingdom in respect of its second MAGP.

15 — See the letter of 15 July 1994 from Y. Paleokrassas to M. Jack, Minister of State for Agriculture, Fisheries and Food.

17. It was not until after the material events occurred that the rules were amended, in particular by Regulation No 3699/93, according to which each Member State is henceforth absolutely bound by law to provide for structural action in the fisheries sector and thus to draw up a MAGP consistent with Community requirements, and to comply with the objectives specified therein. Council Decision 94/15/EC is an example of the implementation of those obligations in respect of the period 1993 to 1996.

All that goes to show, should there be any need to do so, that the United Kingdom's breach of its undertakings in the second MAGP, which was governed by the previous system of rules, could not give rise to any consequence other than suspension of the financial assistance previously granted by the Commission.

In short, the fact that the United Kingdom failed to comply with the objectives set in its second MAGP is absolutely irrelevant in determining whether the third MAGP is compatible with the decision.

Question 3

18. In its third question, the High Court is asking the Court to give a ruling on the interpretation of certain provisions and principles of Community law, in order to assess whether they preclude the application of national measures such as the one at issue.

19. A point to note in passing is that if the applicants' allegations were well founded, and the Order in question were incompatible with Community law, doubts might arise concerning the validity of the decision itself since, as we have seen, it expressly authorized the United Kingdom to adopt the disputed measure.

Let me say at once, however, that in my view the United Kingdom Order is compatible with all the Community provisions and principles relied on by the applicants.

20. The applicants claim, first of all, that because the Order at issue applies to United Kingdom fishermen only, it is in breach of the general prohibition of discrimination on grounds of nationality laid down in Article

6 of the EC Treaty and also of the right to equal conditions of access to and use of Community fishing grounds provided for in Article 2 of Council Regulation No 101/76. [16]

In that connection, to begin with, Article 10 of Regulation No 3760/92 expressly authorizes the Member States to take measures for the conservation and management of fish stocks which are more stringent than those provided for under the Community rules, provided that such measures apply solely to fishermen from the Member State concerned and are compatible with the objectives pursued under the system.

Furthermore, the Court has already expressly held, precisely with reference to fishing policy, that Article 7 of the EEC Treaty (now Article 6 of the EC Treaty) 'does not apply to any disparities in treatment or distortions which may result for persons and undertakings subject to the jurisdiction of the Community from the application by a Member State of measures that are stricter than those applied in the same sphere by other Member States'. [17]

21. Article 2(1) of Regulation No 101/76 has, moreover, been correctly interpreted by the Court in the light of the national quota system as not precluding a Member State from applying, to vessels flying the flag of that State, national control measures stricter than those imposed by Community legislation, provided that such measures are intended to monitor fishing activity and prevent fraud and are not disproportionate to the objective pursued. [18]

22. Still on the subject of equal treatment, the applicants claim, in addition, that the Order is contrary to Article 40(3) of the Treaty, which prohibits discrimination between producers and consumers within the Community in the fishing sector; in their view, the Order applies to all fishing vessels over 10 metres in length and does not make special provision for those fishing for species not subject to catch quotas, nor does it distinguish between the various fishing methods used by each vessel.

On this point, I can endorse the arguments of the Commission, which, when pointing out that the decision requires a minimum

16 — Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (OJ 1976 L 20, p. 19).

17 — Judgment in Joined Cases C-251/90 and C-252/90 *Wood and Cowie* [1992] ECR I-2873, paragraph 19; but see the earlier judgment in Joined Cases 185/78 to 204/78 *Van Dam* [1979] ECR 2345, paragraph 10.

18 — Judgment in *Wood and Cowie*, cited above, paragraphs 16 to 18.

percentage reduction for certain segments of the fishing capacity, together with zero growth for all other segments, notes that the effect of the Order will be to freeze the activity of United Kingdom fishing vessels at the 1991 level. Measures have not, therefore, been imposed that bear more heavily on one segment than another; rather a single rate of zero growth has been ensured for each segment, with respect to the factual situation that prevailed in 1991. Zero growth in comparison with 1991 is in fact the minimum objective common to all segments to which the decision gives priority.

23. According to the applicants, the Order also constitutes a measure having equivalent effect to a quantitative restriction on exports, which is prohibited by Article 34 of the EC Treaty.

That assertion seems to me to be devoid of substance, since it is settled case-law that Article 34 of the Treaty applies only to national measures which have as their specific object or effect the restriction of exports in such a way as to provide an advantage for national production or the domestic market. [19] That is certainly not the case as regards the disputed measure which, on the contrary, applies to all fishing vessels alike without distinguishing those which sell their products on the domestic market from those which export theirs instead.

24. The applicants' next claim is that the Order is contrary both to the fundamental objectives of the common fisheries policy as laid down in Article 39 of the EC Treaty and in Council Regulation No 3760/92, and to the principles of the common organization of the market in fishery products set out in Council Regulation No 3759/92.

In support of their argument, the applicants refer to a number of affidavits in which representatives of the sector have stated that implementation of the Order will lead to a series of deleterious consequences for fishing activity in the United Kingdom and in the entire Community market. The effects will be particularly marked on the financial stability of the fish market as a whole and the industry connected with it, on the prices of fish products, on the particular needs of those operating in the sector and of the regions most dependent on fishing, on the rational organization of fishing activity, on the development of fishing in areas furthest from ports, on the development of juvenile fish stocks, on the correct use of the fishing quotas allocated to the United Kingdom, on the ability of the producers' organizations to manage the quota scheme, on security of supplies and generally on the proper working of the Community system.

19 — Judgment in Case 15/79 *Groenveld* v *Produktschap voor Vee en Vlees* [1979] ECR 3409, paragraph 7; but as regards fisheries see also the judgment in Case C-9/89 *Spain* v *Council* [1990] ECR I-1383, paragraph 21.

25. Even leaving aside any comment on the significance for legal purposes of evidence given outside the procedure prescribed by Article 47 et seq. of the Rules of Procedure, albeit under oath, and hence on the assumption that the contested Order is liable in the short term to cause damage to all operators in the Community fishing industry, it none the less seems to me that absolute priority has to be given to the need to safeguard the balance between exploitation and available resources. The fishing industry will be able to survive in the long term, and retain (or rather regain) its profitability, only if it progressively seeks to achieve such a balance, which is at present already seriously impaired. [20]

26. Moreover, this reasoning constitutes the basis of the relevant Community case-law. First, the Court has stressed the wide powers of assessment conferred on the Community institutions in achieving, coordinating and harmonizing the objectives of the common agricultural policy (and therefore of fisheries as well), making it clear that it is lawful to allow one, rather than another, of those objectives the temporary priority required by economic conditions. [21]

Secondly, in ruling on the validity of a regulation fixing the total allowable catches for 1985 for certain fish species, the Court held that it was compatible with Article 39 of the Treaty for the following reasons: 'By restricting in the short term the quantities of fish which may be caught, the fixing of fishing quotas enables certain species of fish to be conserved and thus contributes to the stabilization of the markets in the long term. Such a system also serves to ensure optimum utilization of the factors of production, which is another objective mentioned in Article 39 of the Treaty, since without any such system, certain resources of the sea would rapidly become exhausted and the optimum utilization of the factors of production would thus become impossible to achieve in the long term'. [22]

27. As regards the alleged infringement of the right to property and of the right to pursue a trade or profession, which form part of the fundamental rights the observance of which is ensured by the Court, [23] it is sufficient here to note that the applicants themselves have acknowledged that it is settled case-law that those rights are not absolute, but may be restricted in conformity with objectives of general interest pursued by the Community, provided that such restrictions do not constitute 'a disproportionate and intolerable' interference which infringes upon the very substance of the rights guaranteed. [24] In my view, it is clear that the

20 — See the 1991 Commission Report to the Council and the European Parliament on the common fisheries policy (SEC(91)2288, of 18 December 1991). Particularly noteworthy are the data on fish stock mortality and the fishing industry's excess capacity compared with available resources, as well as the observations on and proposals for revision of the system for a more rational use of resources.

21 — Judgment in Case 5/73 *Balkan-Import-Export* v *Hauptzollamt Berlin-Packhof* [1973] ECR 1091, paragraphs 24 and 27.

22 — Judgment in Case 46/86 *Romkes* v *Officier van Justitie* [1987] ECR 2671, paragraph 22.

23 — Judgment in Case 44/79 *Hauer* v *Land Rheinland-Pfalz* [1979] ECR 3727.

24 — Judgment in Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237.

Order at issue does not provide for disproportionate or intolerable interference, taking into consideration the importance of the aim pursued by it.

28. Finally, I come to the alleged incompatibility of the Order with the general principle of proportionality. This complaint, the terms of which are not specified in the order for reference, may be viewed from two different angles.

First, the complaint may be construed as being directed against the Commission, on the assumption that, by authorizing measures such as that in dispute, it infringed the obligation, when there is a choice between several possible measures, to have recourse to the least restrictive one. [25]

On this point, however, it will suffice to bear in mind that, as the Court has consistently held, in matters concerning the common fisheries policy the Community legislature has a discretionary power which corresponds to the responsibilities entrusted to it by Articles 39 and 40 of the Treaty, and the legality of a measure can be affected only if the measure is 'manifestly inappropriate' having regard to its objective. [26]

29. If, on the other hand, the complaint were construed as being directed against the United Kingdom on the ground that the latter adopted the disputed measure instead of other measures which might have been permissible, the complaint must in any event be held to be unfounded without there being any need even for the usual proportionality *test*.

In my view, it is clear that with regard to a national measure, the adoption of which has been expressly authorized in advance by the Commission exercising the specific powers it holds in the area of fishing policy, and the compatibility of which with other provisions of Community law has been fully demonstrated, any discussion of proportionality would be superfluous.

30. Ultimately, the conclusion must be drawn that all the arguments put forward by the applicants would appear to be based on the *inappropriateness* of the Order in the light of the possibility that other, less onerous measures could have been adopted, rather than on the actual incompatibility of the Order with the relevant provisions of Community law. However, any verification of that premise, like any consideration of the economic consequences of a national measure which is not incompatible with Community law, is plainly outside the jurisdiction of the Court and falls, where necessary, exclusively within the political responsibility of the national legislature.

25 — See, for example, the judgment in Case C-331/88 *R* v *Minister for Agriculture, Fisheries and Food, ex parte Fedesa* [1990] ECR I-4023, paragraph 13.

26 — Most recently, the judgment in Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 42.

The fourth question

31. In its fourth question, the national court asks whether the answers to the preceding questions are affected by (a) the nature of the stock fished for by each fishing vessel, in particular whether the stock is subject to total allowable catches, (b) the extent to which the restrictions will affect the fish market in general and (c) any derogations that may be made by the competent minister.

I consider that the answers to the first and second parts of the fourth question are sufficiently clear from the remarks made in connection with the third question. It is obvious therefore that the facts mentioned in (a) and (b) are irrelevant to the question of the Order's compatibility with the decision and with Community law.

32. On the other hand, as far as Question 4(c) is concerned, it seems to me to be unarguable, and moreover not disputed by the parties, that the right of the competent minister to grant individual derogations from the general rule has not the slightest bearing on the assessment of the Order's compatibility or otherwise with Community law.

33. In the light of the foregoing considerations, therefore, I suggest that the Court answer the questions submitted by the High Court of Justice as follows:

(1) Commission Decision 92/593/EEC of 21 December 1992 on a multiannual guidance programme for the fishing fleet of the United Kingdom for the period 1993 to 1996 pursuant to Council Regulation (EEC) No 4028/86 must be interpreted as meaning that, without excluding the possibility of adopting other measures, it authorizes the United Kingdom to introduce measures the effect of which is to limit the number of days a year that United Kingdom fishing vessels spend at sea to the number of days they spent at sea in 1991, regardless of the fact that the United Kingdom might not have fulfilled its obligations under the multiannual guidance programme for the period 1987 to 1991.

(2) Articles 6, 34, 39 and 40(3) of the EC Treaty, Article 2 of Council Regulation (EEC) No 101/76, Council Regulations (EEC) No 3760/92 and No 3759/92, the right to property, the right to pursue a trade or profession and the principle of proportionality must be interpreted as not precluding the application of a measure adopted by a Member State the effect of which is to limit the number of days a year which the vessels of that State's fishing fleet spend at sea to the number of days they spent at sea in 1991.

(3) (a) The nature of the stock fished for by each fishing vessel,

(b) the extent to which such operations will affect the fishing industry and

(c) any individual derogations from the system that may be made by the competent minister, are irrelevant for the purposes of the answers given to the previous questions.