OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 16 May 1989 *

Mr President,
Members of the Court,

1. In these proceedings the Kingdom of Spain and the French Republic challenge Commission Regulation No 3151/87. [1]

The contested regulation was adopted pursuant to Article 10 of Council Regulation No 2241/87. [2] The latter regulation, which codifies the earlier Council regulation, No 2057/82, [3] and the various amendments thereto, introduces a number of measures for the control of fishing activities. In addition to inspection measures (Title I, Articles 1 to 4), the regulation establishes (Title II, Articles 5 to 9) a system of measures to ensure the proper monitoring of catches. In particular, the skippers of Community fishing vessels are required (Article 5) to keep a log-book indicating for each species subject to a TAC (total allowable catch) the date and location of each catch, by reference to the smallest zone for which a TAC has been fixed and administered. Furthermore, at the time of landing catches at a Community port, a declaration must be presented to the local authorities stating the quantities landed and the location of catches by reference to the smallest zone for which a TAC has been fixed (Article 6). Substantially the same information must be supplied to the Member State whose flag the vessel is flying in the event of any transhipment to another vessel or landing of catches outside the Community (Article 7). The Member States are required to record landings and forward all the information received to the Commission each month (Article 9); more detailed or more frequent information must be supplied where the catches are likely to reach TAC or quota levels.

Pursuant to Article 10 of Regulation No 2241/87:

'In accordance with the procedure laid down in Article 14 [the management-committee procedure], additional stocks or groups of stocks may be made subject to Articles 5 to 9'.

On the basis of that provision, the Commission adopted the contested regulation which brought within the scope of Articles 5 to 9 of Regulation No 2241/87 the fishing activities of Community fishermen in the waters of a number of developing countries with which the Community had entered into agreements.

2. Before making any analysis, it is appropriate to bear in mind that those agreements fall within the category of 'compensation agreements'.

* Original language: Italian.
1 — OJ 1987, L 300, p. 15.
2 — OJ 1987, L 207, p. 1.
3 — OJ 1982, L 220, p. 1.

By contrast with the 'reciprocal agreements' (concluded between the EEC and Sweden, Norway, Finland and the Faeroe Islands),[4] which allow Community vessels access to those countries' waters for specified periods in specified zones, subject to predetermined catch levels (based on annual quotas) in exchange for similar concessions in respect of the Community fishing zone ('fishing-for-fishing' agreements), compensation agreements[5] are based on the principle that the Community gives financial (and other) compensation in exchange for fishing rights granted to Community vessels in the waters of the contracting countries.

The predominant feature of the latter agreements is the fact that they define the nature and extent of what is due from the EEC. The provisions concerning conservation of resources and inspection measures are of less importance. Any limitation of fishing possibilities, where provided for, is based in the main on geographical restrictions or limitation of licences (for specific numbers of vessels or the tonnage thereof) and not on the volume of catches. In any event, they are specifically bilateral provisions.

3. That having been said — and the Report for the Hearing should be consulted for further details — it should be noted that in the present proceedings the applicant States' main contention is that the Commission was not competent to adopt Regulation No 3151/87. The arguments advanced in support of that submission do not really seem very clear or consistent, and the same applies to the Commission's counter-arguments. The nub of the applicants' reasoning seems to be as follows. In their opinion, Article 10 is not an appropriate legal basis in this case. That provision does not, they maintain, confer on the Commission the power to impose controls (which result in obligations to which private persons and Member States are subject) in relation to fishing carried on in the waters of countries where no Community rules for the conservation and management of resources are in force.

In that connection the applicants also contest the lawfulness of the reference in the preamble to Regulation No 3151/87 to Article 14 of Regulation No 2241/87. However, let it be said straight away, that observation appears irrelevant. It is in fact Article 10 of Regulation No 2241/87 which provides that the extension of control measures must be in accordance with Article 14 (which refers to the management-committee procedure). One of the alternatives must prevail: either the extension of the controls in question falls within the scope of Article 10 so that it is necessarily incumbent on the Commission to adopt the appropriate measures in accordance with the management- committee procedure, or else such an extension is not provided for by Article 10 and therefore the Commission lacked powers to the extent to which it exceeded the limits laid down in that article. This means, however, that the Commission's power to adopt the contested regulation must in any case be appraised with reference

4 — See D Charles-Le Bihan: 'La politique commune de la pêche: la troisième génération de normes', *Revue trimestrielle de droit européen*, 1988, No 3, p 481, and A Sacchettini 'La politica della pesca nella CEE', *Foro italiano*, 1988, IV, p. 452.

5 — See J. M Sobrino Heredia: 'Acuerdos de pesca y desarrollo: referencia a la práctica convencional pesquera de la Comunidad Europea', *La Ley*, 1987, suppl. No 28, p. 1.

only to Article 10 (which defines its powers) and not to Article 14 as well (which merely refers to the detailed rules for the exercise of those powers).

4. In the first place the Commission makes the general observation that the Community rules for the conservation and management of fishery resources and, consequently, the measures for the monitoring thereof apply to fishing activities wherever carried out.

That, it contends, applies in particular to the control measures provided for in Regulation No 2241/87, as evidenced by the fact that Articles 6 and 7 thereof provide that the skippers of fishing vessels are to provide separate information regarding catches taken in waters under the jurisdiction or sovereignty of non-member countries. It follows that the application of the control measures is not limited, *ratione loci*, only to Community waters.

In that context, the Commission observes, Article 10 provides that specified control measures (those envisaged in Articles 5 to 9) may be applied to 'additional stocks or groups of stocks'. As is apparent from the 11th recital in the preamble to the regulation, 'other stocks' must be taken to mean 'stocks not subject to total allowable catches or quotas'. No territorial limitation is imposed in this case either.

In the Commission's view, it follows that Article 10 definitely allows the control measures in question to be extended to stocks which, as in this case, are not subject to TACs or quotas, in so far as they are located in waters which are not subject to rules imposing a quantitative limitation on fishing capacities.

5. I should point out in the first place that in 1983 when the new guidelines for the fishing policy were laid down — the 'Blue Europe' — the Community rules for conservation and management were conceived as a set of measures intended essentially to operate in Community waters, subject to any specific provisions regarding fishing rights in particular bilateral or multilateral agreements.

Thus, Regulation No 171/83[6] which, pursuant to the provisions of the basic regulation, No 170/83,[7] introduces technical measures for the conservation of fishery resources, provides in Article 1(1), under the heading 'Definition of areas':

'This regulation applies to the taking and landing of biological resources occurring in all maritime waters *under the sovereignty or jurisdiction of the Member States* and situated in one of the following regions . . . '.[8]

That provision is without prejudice to specific provisions on fishing operations in the Skagerrak and the Kattegat agreed between the delegations of the Community and Norway and Sweden.

6 — OJ 1983, L 24, p. 14.

7 — OJ 1983, L 24, p. 1.

8 — Article 1 of the later regulation, No 3094/86 (OJ 1986, L 228, p. 1) uses similar terms.

Similarly, Article 2 of Regulation No 172/83[9] which, again pursuant to the provisions of the basic regulation, No 170/83, fixes the TAC for 1982, the shares thereof available to the Community and the allocation of that share among the Member States, provides:

'The total allowable catches (TACs) for stocks or groups of stocks to which Community rules apply occurring in waters falling *under the sovereignty or jurisdiction of the Member States* and the share of these catches available to the Community are fixed for 1982 in Annex I.'

Annex I contains a table which indicates, for each species and each fishing zone, the TAC (in tonnes) and the share available to the Community.

Pursuant to Article 3:

'The allocation among the Member States for 1982 of the share available to the Community of total allowable catches of stocks or groups of stocks occurring in the *Community's fishing zone* is shown in Annex II.'

It may be inferred from those provisions that when the rules imposing a quantitative limitation on stocks were introduced — their cornerstone in fact being the TACs and the subdivision thereof into national quotas — they applied to the Community fishing zone, the extension of which to the Atlantic and the North Sea came about in particular when the 200-mile principle was applied (see the first recital in the preamble to Regulation No 170/83).

It is true that in Regulation No 3977/87,[10] which fixes the TACs for 1988, Article 2 imposes no territorial limitation.[11] But that does not mean that there was any departure from the original idea. Account was merely being taken of the results of particular bilateral or multilateral consultations (agreements between the Kingdom of Norway and the Kingdom of Sweden and with the International Baltic Sea Fishery Commission) which made it possible to determine the TACs for certain species in the non-Community fishing zones in question. They related in particular to TACs for fishing in the Skagerrak and the Kattegat (see the 11th recital in the preamble to Regulation No 3977/87) and TACs and quotas for stocks of herring, sprat and cod in the Baltic (see the 14th recital to Regulation No 3977/87). Those provisions are thus special and are intended to supplement, on a reciprocal basis, rules for conservation operating essentially within Community waters for the protection of the resources occurring there.

6. As far as the control measures laid down by Regulation No 2241/87 are concerned, there is nothing in the wording of that regulation to support the conclusion that those controls relate to fishing outside

9 — OJ 1983, L 24, p. 30

10 — OJ 1987, L 375, p. 1

11 — Article 2 provides as follows.
'TACs for stocks or groups of stocks to which Community rules apply and the shares of these catches available to the Community are hereby fixed for 1988 as set out in the annex.'

Community waters or, in any event, to zones where the Community rules limiting catches do not apply.

The obligation laid down in Articles 6 and 7, whereby skippers must provide information concerning the catches taken in waters under the control of non-member countries, does not appear to be significant in this connection. In fact, within that obligation it is permissible to treat separately, and therefore to deduct from the quantities of a particular species landed or transhipped, any quantities caught in areas for which no TAC has been fixed. That information therefore, compared with the information in the logbook (Article 5), makes it possible to obtain a clearer general idea of the quantities (caught and landed) which must be attributed to the TACs and are counted as part of the relevant quotas and of those which, on the other hand, having been caught in areas where there are no rules imposing a limitation, are not taken into account for that calculation. That is in conformity with the provisions of the basic regulation, No 170/83, Article 3 of which provides that the TAC available to the Community 'shall be increased by the total of Community catches outside the waters under the jurisdiction or sovereignty of the Member States'. Articles 6 and 7, moreover, impose an additional obligation, the purpose of which is to enhance monitoring of the accuracy of the information supplied by skippers concerning catches *in the zones subject to TACs*. On the other hand, there is no intention to establish separate control over fishing activities outside such zones. That is consistent with the aim pursued by the regulation, which it to ensure observance of the quantitative limits under the TAC system and of quotas (see the second recital in the preamble and Article 11 of that regulation).

7. The Commission also stated that in a number of regulations imposing quotas for fishing in non-Community waters provision is made for the application of the controls with which Regulation No 2241/87 is concerned. They are Regulation No 3978/87 [12] for Norway, Regulation No 3983/87 [13] for Greenland, Regulation No 3984/87 [14] for the Regulatory Area of the North-West Atlantic Fisheries Organization (NAFO), and Regulation No 3981/87 [15] for the Faeroe Islands. However, it should be made clear that in all those cases it was the Council which, by means of its regulation, explicitly provided (and in the case of Regulation No 3984/87 laid down detailed rules) for the application of the controls in question to fishing in those zones.

In view of that practice, it is reasonable to conclude that the application of Regulation No 2241/87 outside Community waters does not automatically derive from the regulation itself. In all cases the adoption of a Council measure containing a specific provision has always been considered necessary.

But in any case, what is clearly apparent is the fact that the control measures affect only fishing carried on in zones subject to rules imposing a quantitative limitation based on TACs and quotas for specific stocks. Moreover, that objective limitation of the controls is, as has been shown, in conformity with the rationale of the

12 — OJ 1987, L 375, p. 35.
13 — OJ 1987, L 375, p. 61.
14 — OJ 1987, L 375, p. 63.
15 — OJ 1987, L 375, p. 51.

measures which are intended to give effect to the Community rules on the conservation of resources.

In the case of Regulation No 3151/87, the measures in question are extended to fishing carried on in waters within the exclusive economic zones of particular developing countries. In those waters the Community rules limiting fishing possibilities are not applicable, nor are there any reciprocal or other agreements based on the observance of TACs and quotas. Indeed, there is often no machinery to ensure conservation at all. Where machinery of that kind is in place, it is based on different criteria such as, for example, limitation of the number of fishing licences according to the number of vessels or the tonnage thereof.

The situation is therefore objectively different from the first one described and above all is one in which the control measures envisaged in Regulation No 2241/87 clearly cannot pursue the aims appropriate to them.

That is clear — despite certain statements to the contrary made by the Commission — from the preamble to the contested regulation.

After it is stated (in the first recital) that

'the Community applies fisheries agreements with certain developing countries based on the principle of financial compensation for the fishing rights obtained',

the second recital goes on to say:

'whereas it is essential to the proper management of such fisheries agreements, which require the Community to grant substantial financial compensation in return for fishing rights and to provide the non-member countries concerned with certain information on the catches taken, that the Commission be informed of the outcome of the activities of vessels flying the flag of a Member State in the waters falling within the jurisdiction of a partner country; ... therefore, rules should be laid down for the recording and notification of catch data'.

It is therefore clear that in the present case the controls were introduced in response to a financial objective and not for the conservation of fisheries resources, the aim being to obtain more detailed information facilitating better appraisal of the ratio between the costs and benefits deriving from the Community's participation in the fisheries agreements with developing countries. [16]

8. I would point out that prima facie considerable doubt already appears to surround the lawfulness of the Commission's extension (under Article 10 of Regulation No 2241/87) of the complex control procedures in question to a situation and for purposes which are objectively different from those which that regulation purports to pursue.

16 — The onerous nature of the agreements in question is in fact well known and is partly inherent in their nature in so far as they are administered not solely in accordance with economic criteria but also in pursuit of development-cooperation objectives See Sobrino Heredia, op cit., and Charles-Le Bihan, op cit., p 490

I have just indicated that, in those cases where it was necessary to extend the control measures to fishing in non-Community zones in which, nevertheless, there existed — particularly under reciprocal agreements — TACs and quotas, compliance with which had to be monitored, the extension was effected not pursuant to Article 10 but rather by means of a specific provision contained in a Council regulation.

That observation does not, however, settle the matter. It is still necessary to consider whether the powers vested in the Commission by Article 10 authorize it to decide on the extension at issue in these proceedings.

It is therefore necessary to educe the correct interpretation of Article 10.

As mentioned earlier, that provision allows the application, under the management-committee procedure, of Articles 5 to 9 to 'additional stocks or groups of stocks' ('poblaciones o grupos de poblaciones suplementarios', 'stocks ou groupes de stocks supplémentaires', 'altre riserve o altri gruppi di riserve ittiche').

The concept of 'other stocks' is apparent from the 11th recital, according to which

'it is appropriate to permit the provisions concerning the log-book, the declaration of landings and information about transhipments and registration of catches to be extended to stocks not subject to total allowable catches or quotas'.

'Other stocks' are therefore stocks for which a quantitative limit has not been imposed. The word stocks, which in Italian is translated as 'riserve' or 'popolazioni' (see for example Regulation No 172/83), is therefore to be interpreted, as is normal in the industry, not in the more general sense of a collection of items but rather in the more specific biological sense of a collection of animals of the same origin (see *Petit Robert* and *The Shorter Oxford English Dictionary*)

We can thus exclude the interpretation — proposed at the hearing by the French Government — whereby Article 10 enables the Commission, once the quota for a particular fish stock has been used up, to grant additional quantities of fish. Article 10 merely allows extension of controls to fish stocks for which the regulations for the time being in force do not envisage any limitation.

That having been said, two interpretations are still nevertheless possible. According to the first, advocated by the Commission, Article 10 grants it the power to impose the controls in question on catches of fish species which are not subject to TACs for the simple reason — and perhaps for the sole reason — that they are in waters where no TAC rules are in force. It should be noted that in the present case the extension decided on by the Commission concerns stocks which, although not subject to TACs in the waters of developing countries (because, as stated, no TACs exist in such

waters), are indeed subject to TACs in Community waters. That applies for example to hake *(Merluccius)*, to mackerel *(Trachurus)*, common sole *(Solea)*, to anglerfish *(Lophius)* and to shrimps *(Penaeus)*, as is apparent from a comparison of the second annex to Regulation No 3151/87 and the annex to Regulation No 3977/87, which indicates the TACs for 1988 by stock and zone and their allocation among the Member States.

It goes without saying, therefore, that, by virtue of that interpretation, the Commission claims the power to extend the control measures laid down by Regulation No 2241/87 to all the zones to which the Community conservation rules do not apply.

According to a different interpretation, on the other hand, Article 10 authorizes the Commission to extend controls over fishing for stocks not subject to TACs, but *only in those areas where rules apply to limit fishing possibilities* and where the control measures envisaged by Regulation No 2241/87 are already applied to the stocks subject to TACs.

9. Let me say immediately that this second interpretation seems to me to be more consistent with the wording of Article 10 and the recital associated with it. The provision in question in fact merely provides for the possibility of extending the control measures to 'additional stocks'. If 'additional stocks', as stated, are those which are not subject to TACs, it follows that that provision presupposes that the control measures *are already being applied* to stocks which, by contrast, are subject to TACs. In other words, extension is possible only in a situation where there are stocks which are, at the same time, subject to TACs and to the related control measures.

It should also be noted that Article 10 gives no textual support for the Commission's view. That provision, although referring to the application of controls to 'additional stocks' and therefore, essentially, to other fish species (not subject to TACs), makes absolutely no mention of any possibility of extending those controls to other zones where there is no limitation of fishing possibilities and where, consequently, Regulation No 2241/87 does not apply. But I shall have occasion to revert to this specific question later.

10. This interpretation, moreover, does not detract from the useful effect of the provision and, at the same time, defines its meaning in the light of its legislative context and of the whole rationale of Regulation No 2241/87.

The introduction of a TAC for particular stocks is of course based on an appraisal of scientific data relating in general to the extent of the stocks and the degree to which they are exploited. It may therefore prove appropriate in particular circumstances — which it is the Commission's task to assess — to apply the control measures to fishing for species not yet subject to quotas in order to obtain information concerning the extent to which that species is being exploited and therefore the desirability of limiting the volume of catches at a later stage.

I would emphasize that the hypothesis which I have just outlined is one which can frequently materialize in the context of management of the fisheries policy. It will be remembered for example that in Regulation No 172/83 (fifth recital) reference is made to a number of fish stocks for which the fisheries are still developing and for which few, if any, scientific data are available and for which, therefore, quota allocations were not made at that time. Furthermore, the application of controls to stocks not subject to TACs may also prove desirable in order to determine the intensity of exploitation of species which, if not themselves requiring quantitative limitations, might nevertheless influence the stocks of other species which are subject to TACs.

The power at issue is therefore one which makes it possible, where necessary, to *extend* the scope of the control measures referred to in Articles 5 to 9 of Regulation No 2241/87 by introducing an obligation additional to those to which fishermen and the Member States are subject as a result of the direct application of those articles.

It should also be remembered that that additional obligation does not represent a significant burden for those on whom it is imposed. They are obliged merely to give further details in the declarations, information, records and notices which they have to provide anyway by virtue of Articles 5 to 9 of Regulation No 2241/87.

The extension of the control measures therefore, according to the interpretation just described, remains within the scope of Regulation No 2241/87 itself. The additional controls in fact relate to the same fishing activity which, for the stocks subject to Community TACs, is already subject to the application of Regulation No 2241/87. That interpretation therefore confines the exercise of the power conferred on the Commission by Article 10 within the same material limits as those laid down in the regulation which confers that power. It is an interpretation which endows Article 10 with a scope which, although supplementary, is nevertheless consistent with its legislative context — and therefore is not innovative.

But above all, in the circumstances of this case, the Commission's decision to extend the control measures under Article 10 responds to essentially the same objectives as those pursued by those control measures and, more generally, by all the measures provided for in Regulation No 2241/87. The monitoring of catches of stocks which are not (or not yet) subject to TACs was in fact decided upon in order to obtain more precise information on the extent of the exploitation of the resources concerned and thus to ensure balanced management thereof.

11. That having been said, it should be noted that the interpretation advocated by the Commission, besides not being supported by the wording of the legislation, is conducive, by contrast, to the creation of an executive power which entirely disregards the purpose and the scheme of the regulation containing the provision which confers the power. As stated, the Commission purports in this case to be empowered to impose the control measures provided for in Regulation No 2241/87 on fishing activity carried on in areas where the Community rules on the conservation of fishery resources do not apply. However,

the control measures, as has been seen, were extended for reasons relating exclusively to the financial management of the fisheries agreements with developing countries.

The only limitation which the Commission then encounters in the exercise of that power is the fact that it may not impose new controls but must in every case continue to rely on those provided for in Regulation No 2241/87. But apart from that limitation, which is of an extrinsic nature, the fact remains that in such circumstances the interpretation of Article 10 produces a result which is clearly creative. Not only is the scope of the regulation supplemented but its material, rather than territorial, field of application is extended. The rules for control are no longer used to 'ensure that the limits fixed elsewhere for permissible levels of fishing are observed' (second recital to Regulation No 2241/87) but are imposed for other purposes (of a financial nature in the present case) in relation to fishing activity which is not subject to the conservation rules.

12. Is such a result justified in the light of the principles which govern the exercise of the Commission's executive powers?

In my view the answer can only be 'no'.

It is true that the term 'exercise of executive powers' must be given a wide interpretation.[17] But it is also true that provisions conferring executive authority must be interpreted in the light of the scheme and objectives of the provisions in question and of the measure of which they form part.[18] That is an essential principle governing the delegation of executive powers. Although implementing regulations may not go further than is necessary in order to give effect to the law to which they refer, they may nevertheless contain rules supplementing those laid down by the primary legislation, provided that they are in conformity with the objective of that primary legislation.[19]

I would also point out that, for the purpose of defining the meaning of a provision, it is important to examine its context and the Community precedents (see the judgment in *Rey Soda*, paragraph 33).

Having regard to the foregoing considerations, it seems to me to be clear that the Commission, in defining the scope of the powers conferred on it by Article 10, relied on an interpretation of that provision which completely disregards its legislative context and the scope and objectives of Regulation No 2241/87.

It is therefore an interpretation which conflicts with the principles which I have described and represents, in this case, a clear instance of excess of authority.

It is so clear as to give rise to the impression that in the present case the Commission,

17 — See judgment of 30 October 1975 in Case 23/75 *Rey Soda* v *Cassa Conguaglio Zucchero* [1975] ECR 1279, paragraph 10.

18 — See judgment of 17 December 1970 in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* v *Köster, Berodt & Co.* [1970] ECR 1161, paragraph 16.

19 — See judgment No 53 of the Italian Corte Suprema di Cassazione of 14 January 1971.

rather than interpreting Article 10 in accordance with the customary principles, in fact resorted to extrapolation, uprooting Article 10 from its context, taking advantage of the room for manoeuvre which the letter of that article appeared to allow it, and ultimately making use of it for radically different situations and purposes.

I also consider it reasonable to conclude that if the Council had wanted, by means of Article 10, to vest the Commission with the power to apply Regulation No 2241/87 to such diverse relationships and purposes, it would not only not have accorded to Article 10 the marginal position which it in fact occupies within the scheme of the measure but indeed would not have failed to say so expressly and, in particular, to state its reasons for doing so.

For all the foregoing reasons, I consider that the Commission was not competent to adopt Regulation No 3151/87 on the basis of Article 10 of Regulation No 2241/87.

Regulation No 3151/87 should therefore be declared void.

13. I do not therefore consider that it is necessary to analyse in details the other two grounds of annulment relied on by the applicants, namely the lack of an adequate statement of reasons and the existence of a manifest error of appraisal.

With respect to the first ground I shall merely observe that the preamble to the contested regulation clearly indicates the purposes for which it was adopted. It is apparent from it that the extension of the control measures is intended to provide the Commission with information which will enable it better to manage and negotiate the financial side of the agreements with developing countries. The statement of reasons thus seems to me to be sufficient, having regard to the well-known previous decisions of the Court (see most recently judgment of 7 July 1988 in Case 55/87 *Moksel* [1988] ECR 3845).

As regards the manifest error of appraisal, I think it is clear from the documents before the Court that the extension of the controls provided for by Regulation No 2241/87 to fishing in the waters of developing countries is not without difficulties.

Thus, for example, it is clear that the measure envisaged in Article 6 of Regulation No 2241/87, concerning the submission of landing declarations to the authorities of the Member State whose landing places are used, could never be applied to those cases in which (see for example the agreement with Senegal) Community fishermen are obliged to land their catches in ports of the developing country in whose waters they have been fishing.

Difficulties of this kind clearly derive from the fact that in this case the Commission took monitoring machinery designed for use in the management of the Community system of TACs and transposed it to fishing activity which is carried on under different conditions and is not subject to the quantitative limitations laid down in the Community rules.

If it were necessary to introduce conservation rules, and the accompanying controls, for fishing in the exclusive economic zones of developing countries, this would be done by means of bilateral agreements and the measures adopted would be of the appropriate kind and meet the appropriate requirements.

It does not seem to me, however, that the difficulties arising from the transposition of the controls at issue are such that in themselves they are indicative of a manifest error of appraisal on the part of the Commission. It is not impossible that such controls might be of some use for the specific purpose of obtaining information concerning the financial management of the agreement.

Those difficulties therefore, although indicative of an act *ultra vires* on the part of the Commission in this case, are not such as to render the contested regulation unlawful.

14. In conclusion, I consider that Commission Regulation No 3151/87 is void by virtue of the Commission's lack of authority to adopt it.

I therefore propose that the Court:

(i) uphold the application;

(ii) order the Commission to pay the costs.