OPINION OF ADVOCATE GENERAL TRSTENJAK delivered on 7 September 2010[1]

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1 — Original language: Slovenian.

I — Introduction

1. The present case concerns the common fisheries policy to which the European Union attaches great importance and about which opinions differ very greatly. It is the first request for a preliminary ruling to have come from Malta and raises many issues concerning the validity and interpretation of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and in the Mediterranean Sea [2] ('Regulation No 530/2008' or 'the contested regulation'). More specifically, by the contested regulation, the Commission prohibited fishing for bluefin tuna (*Thunnus thynnus, thon rouge, bluefin tuna, Rote Thun*) by purse seiners flying the flags of Greece, France, Italy, Cyprus and Malta, and also Spain, and, at the same time, also prohibited the landing, placing in cages for fattening or farming, and the transhipment of bluefin tuna. The Maltese company AJD Tuna Ltd is engaged in the fattening and farming of bluefin tuna and, having been prohibited from pursuing its activity, it brought an action before a Maltese court in the context of which a number of questions for a preliminary ruling concerning the validity and interpretation of Regulation No 530/2008 have been referred to the Court of Justice on the basis of Article 234 EC. [3]

2 — OJ 2008 L 155, p. 9.

3 — Following the entry into force, on 1 December 2009, of the Lisbon Treaty, signed in Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community (OJ 2007 C 306, p. 1), the procedure relating to preliminary rulings has been governed by Article 267 of the Treaty on the Functioning of the European Union (TFEU).

2. AJD Tuna Ltd has also challenged Regulation No 530/2008 before the General Court; [4] however, those proceedings are currently stayed, pursuant to the third paragraph of Article 54 of the Statute of the Court of Justice, until judgment has been delivered in this case. Proceedings before the General Court have also been stayed in a similar case in which Italy is challenging the contested regulation. [5] Regulation No 530/2008 also formed the subject-matter of an action for annulment brought before the General Court by 17 Italian companies, but those actions were dismissed as inadmissible. [6]

II — Legislative context

A — *European Union legislation in relation to the common fisheries policy*

1. Regulation No 2847/93 and Regulation No 2371/2002

3. There are, above all, two items of European Union legislation in relation to the common fisheries policy that are material to this case, namely Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [7] ('Regulation No 2847/93') and Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [8] ('Regulation No 2371/2002').

4. The twenty-third recital in the preamble to Regulation No 2847/93 states that when the quota of a Member State is exhausted or the total allowable catch (TAC) is exhausted, fishing is to be prohibited by a Commission decision. The twenty-fourth recital in the preamble then further states that it is necessary to repair the prejudice suffered by a Member State which has not exhausted its quota, its allocation of part of a stock or group of stocks when the fishery has been closed following the exhaustion of a TAC, and that a system of compensation should be provided for that purpose.

5. Article 21(2) and (3) of Regulation No 2847/93 provide as follows:

'2. Each Member State shall determine the date from which the catches of a stock or group of stocks subject to quota made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that

4 — Case T-329/08 *AJD Tuna* v *Commission*.

5 — Case T-305/08 *Italy* v *Commission*.

6 — See the Order of the Court of First Instance (now the General Court) of 30 November 2009 in Joined Cases T-313/08 to T-318/08 and from T-320/08 to T-328/08 *Veromar di Tudisco Alfio & Salvatore and Others* v *Commission* (not published in ECR).

7 — OJ 1993 L 261, p. 1.

8 — OJ 2002 L 358, p. 59.

stock or group of stocks. As from that date, it shall provisionally prohibit fishing for that stock or group of stocks by such vessels, as well as the retention on board, the transhipment and the landing of fish taken after that date and shall decide on a date up to which transhipments and landings or final declarations of catches are permitted. The Commission shall be informed forthwith of this measure and shall then inform the other Member States.

3. Following notification under paragraph 2 or on its own initiative, the Commission shall fix, on the basis of the information available, the date on which, for a stock or group of stocks, the catches subject to a TAC, quota or other quantitative limitation made by fishing vessels flying the flag of, or registered in, any Member State are deemed to have exhausted the quota, allocation or share available to that Member State or, as the case may be, to the Community.

When an assessment of this situation as referred to in the first subparagraph is made, the Commission shall advise the Member States concerned of the prospects of fishing being halted as a result of a TAC being exhausted.

As from the date referred to in the first subparagraph, the flag Member State shall provisionally prohibit fishing for that stock or group of stocks by vessels flying its flag, as well as the retention on board, transhipment and landing of fish taken after that date and shall decide on a date up to which transhipments and landings or final declarations of catches are permitted. The Commission shall be informed forthwith of this measure and shall then inform the other Member States.'

6. Article 2 (Objectives) of Regulation No 2371/2002 provides that:

'1. The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions. For this purpose, the Commission shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.

2. The Common Fisheries Policy shall be inspired by the following principles of good governance:

(a) clear definition of responsibilities at the Community, national and local levels;

(b) a decision-making process based on sound scientific advice which delivers timely results;

(c) broad involvement of stakeholders at all stages of the policy from conception to implementation;

(d) consistence with other Community policies, in particular with environmental, social, regional, development, health and consumer protection policies.'

7. Article 5 (Recovery plans) of Regulation No 2371/2002 provides as follows:

'1. The Council shall adopt, as a priority, recovery plans for fisheries exploiting stocks which are outside safe biological limits.

2. The objective of recovery plans shall be to ensure the recovery of stocks to within safe biological limits.

....'

8. According to Article 7 (Commission emergency measures) of Regulation No 2371/2002:

'1. If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.

2. The Member State shall communicate the request simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils concerned. They may submit their written comments to the Commission within five working days of receipt of the request.

The Commission shall take a decision within 15 working days of receipt of the request referred to in paragraph 1.

(…).'

9. According to Article 20 (Allocation of fishing opportunities) of Regulation No 2371/2002:

'1. The Council, acting by a qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery.

2. When the Community establishes new fishing opportunities, the Council shall decide on the allocation of those opportunities, taking into account the interests of each Member State.

3. Each Member State shall decide, for vessels flying its flag, on the method of allocating the fishing opportunities assigned to that Member State in accordance with Community law. It shall inform the Commission of the allocation method.

4. The Council shall establish the fishing opportunities available to third countries in Community waters and allocate those opportunities to each third country.

5. Member States may, after notifying the Commission, exchange all or part of the fishing opportunities allocated to them.'

10. Article 26 (Responsibilities of the Commission) of Regulation No 2371/2002 provides as follows:

'1. Without prejudice to the responsibilities of the Commission under the Treaty, the Commission shall evaluate and control the application of the rules of the Common Fisheries Policy by the Member States, and facilitate coordination and cooperation between them.

2. If there is evidence that rules on conservation, control, inspection or enforcement under the Common Fisheries Policy are not being complied with and that this may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system necessitating urgent action, the Commission shall inform in writing the Member State concerned of its findings and set a deadline of no less than 15 working days to demonstrate compliance and to give its comments. The

Commission shall take account of Member States' comments in any action it may take under paragraph 3.

3. If there is evidence that fishing activities carried out in a given geographical area could lead to a serious threat to the conservation of living aquatic resources, the Commission may take preventive measures.

These measures shall be proportionate to the risk of a serious threat to the conservation of living aquatic resources.

They shall not exceed three weeks in duration. They may be prolonged up to a maximum of six months, as far as necessary for the conservation of living aquatic resources, by a decision taken in accordance with the procedure laid down in Article 30(2).

The measures shall be lifted immediately when the Commission finds that the risk no longer exists.

4. In the event of a Member State's quota, allocation or available share being deemed to be exhausted, the Commission may, on the basis of the information available, immediately stop fishing activities.

…'

B — *Provisions of international law for the protection of bluefin tuna*

11. An International Convention for the Conservation of Atlantic Tunas was signed on 14 May 1966 and entered into force on 21 March 1969 (the 'Convention for the Conservation of Tunas'). [9] The fundamental purpose of the Convention is to secure cooperation in maintaining the populations of the relevant species at levels which will permit the maximum sustainable catch for food and other purposes. The contracting parties set up the International Commission for the Conservation of Atlantic Tunas ('ICCAT') to put the Convention into effect, [10] and ICCAT is authorised, on the basis of scientific evidence, to make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch. [11]

12. The Community acceded to the Convention for the Conservation of Tunas on the basis of Council Decision 86/238/EEC of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the

9 — The text of the Convention for the Conservation of Tunas was published in OJ 1986 L 162, p. 34.

10 — Article III(1) of the Convention for the Conservation of Tunas.

11 — Article VIII(1)(a) of the Convention for the Conservation of Tunas.

Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984. [12]

C — *European Union legislation in relation to bluefin tuna fishing*

1. Regulation No 1559/2007

13. In order to protect tunas, the European Union adopted Council Regulation (EC) No 1559/2007 of 17 December 2007 establishing a multi-annual recovery programme for bluefin tuna in the Eastern Atlantic and Mediterranean and amending Regulation (EC) No 520/2007 [13] ('Regulation No 1559/2007').

14. Pursuant to Article 3 of Regulation No 1559/2007:

'The TACs, fixed by ICCAT for Contracting Parties, for the bluefin tuna stock in the Eastern Atlantic and Mediterranean shall be as follows:

— in 2008: 28 500 tonnes,

— in 2009: 27 500 tonnes,

— in 2010: 25 500 tonnes.

….'

15. Article 4 of Regulation No 1559/2007 provides as follows:

'1. Each Member State shall take the necessary measures to ensure that the fishing effort of its vessels and its traps are commensurate with the fishing opportunities on bluefin tuna available to that Member State in the Eastern Atlantic and Mediterranean Sea.

2. Each Member State shall draw up an annual fishing plan for the vessels and traps fishing bluefin tuna in the Eastern Atlantic and Mediterranean Sea. Member States whose quota of bluefin tuna is less than 5% of the Community quota may adopt a specific method to manage their quota in their fishing plan, in which case the provisions of paragraph 3 shall not apply.

….'

12 — OJ 1986 L 162, p. 33.
13 — OJ 2007 L 340, p. 8.

16. Article 5(2) of Regulation No 1559/2007 provides as follows:

'Purse seine fishing for bluefin tuna shall be prohibited in the Eastern Atlantic and Mediterranean during the period from 1 July to 31 December.'

2. Regulation No 40/2008

17. Pursuant to Council Regulation No 40/2008 of 16 January 2008 fixing for 2008 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 [14] ('Regulation No 40/2008'), the total allowable catches for certain fish species were fixed and subdivided among the Member States. Annex ID of that regulation set the European Union's quota for bluefin tuna catches for 2008 at 16 210,75 tonnes, allocated as follows among the Member States:

— Cyprus: 149.44 tonnes,

— Greece: 277.46 tonnes,

— Spain: 5 378,76 tonnes,

— France: 5 306,73 tonnes,

— Italy: 4 188,77 tonnes,

— Malta: 343.54 tonnes,

— Portugal: 506.06 tonnes,

— Other Member States: 60 tonnes.

18. The total allowable catch (TAC) for the Atlantic Ocean fishing zone, east of longitude 45°W, and the Mediterranean was set at 28,500 tonnes for 2008.

3. Regulation No 446/2008

19. The quotas for 2008, which had been fixed in accordance with Regulation No 40/2008, were subsequently amended by Commission Regulation (EC) No 446/2008 of 22 May 2008 adapting certain bluefin tuna quotas in 2008 pursuant to Article 21(4) of Council Regulation (EEC) No 2847/93 establishing a control system applicable to the Common Fisheries Policy [15] ('Regulation No 446/2008'). That

14 — OJ 2008 L 19, p. 1.

15 — OJ 2008 L 134, p. 11.

regulation was adopted because France and Italy had exceeded the bluefin tuna quotas in 2007. Their quotas were reduced for 2008 and the amounts deducted reallocated to Greece, Spain, Cyprus, Malta and Portugal.

20. The quotas allocated to the individual Member States for 2008 were set as follows:

— Cyprus: 303.54 tonnes,

— Greece: 477.46 tonnes,

— Spain: 5 428,46 tonnes,

— France: 4 894,19 tonnes,

— Italy: 4 162,71 tonnes,

— Malta: 365.44 tonnes,

— Portugal: 518.96 tonnes,

— Other Member States: 60 tonnes.

4. Regulation No 530/2008

21. Regulation No 530/2008 was adopted on the basis of Article 7(1) of Regulation No 2371/2002.

22. According to recitals (6), (7) and (8) in the preamble to Regulation No 530/2008:

'(6) The data in its possession, as well as the information obtained by the Commission inspectors during their missions in the Member States concerned, show that the fishing opportunities for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and the Mediterranean Sea allocated to purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta will be deemed to be exhausted on 16 June 2008 and that the fishing opportunities for the same stock allocated to purse seiners flying the flag of or registered in Spain will be deemed to be exhausted on 23 June 2008.

(7) Fleet overcapacity has been considered by the Scientific Committee of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as the main factor which could lead to the collapse of the stock of Eastern Atlantic and Mediterranean bluefin tuna. Fleet overcapacity carries with it a high risk of fishing above the permissible level. Furthermore the daily catch capacity of one single purse seiner is so high that the permissible catch level can be attained

or exceeded very quickly. In these circumstances, any overfishing by this fleet would pose a serious threat to the conservation of the bluefin tuna stock.

(8) The Commission has been monitoring very closely compliance with all requirements of relevant Community rules by Member States during the 2008 bluefin tuna fishing campaign. The information in its possession, as well as the information obtained by the Commission inspectors, shows that the Member States concerned have not ensured full compliance with the requirements established in Regulation (EC) No 1559/2007.'

23. Articles 1, 2 and 3 of Regulation No 530/2008 provide as follows:

'*Article 1*

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and the Mediterranean Sea by purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta shall be prohibited as from 16 June 2008.

It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.

Article 2

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and the Mediterranean Sea by purse seiners flying the flag of or registered in Spain shall be prohibited as from 23 June 2008.

It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.

Article 3

1. Subject to paragraph 2, as from 16 June 2008, Community operators shall not accept landings, placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45 W, and the Mediterranean Sea by purse seiners.

2. It shall be allowed to land, place in cages for fattening or farming and to tranship in Community waters or ports bluefin tuna caught in the Atlantic Ocean, east of longitude 45 W,

and the Mediterranean Sea allocated to purse seiners flying the flag of, or registered in Spain until 23 June 2008.'

24. Regulation No 530/2008 entered into force on 13 June 2008.

III — Facts, procedure in the main proceedings and the questions referred for a preliminary ruling

25. The applicant, AJD Tuna Ltd is established in Malta and operates in the sector of farming and fattening bluefin tuna. It owns two fish farms which are intended for the farming and fattening of bluefin tuna, with a capacity of 2 500 tonnes and 800 tonnes respectively. The applicant's main activity consists in the acquisition of bluefin tuna caught alive in the Mediterranean Sea, in the farming and fattening of the tuna and its sale to operators inside and outside the Community. The farming and fattening activities engaged in by the applicant have been approved by ICCAT, and it has been authorised to acquire an annual quota of 3 200 tonnes of bluefin tuna for the purposes of its farming and fattening operations.

26. During the 2008 fishing season, the European Commission adopted Regulation No 530/2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and the Mediterranean Sea. Under that regulation, fishing for bluefin tuna was prohibited, as of 16 June 2008, for purse seiners flying the flags of Greece, France, Italy, Cyprus and Malta and, as of 23 June 2008, for purse seiners flying the flag of Spain. Consequently, in Malta, the Director for Agriculture and Fisheries at the Ministry of Agriculture ('the Director for Agriculture and Fisheries') prohibited the applicant from acquiring and importing bluefin tuna to Malta for the purposes of its farming and fattening activities. The prohibition imposed by the Director for Agriculture and Fisheries covered not only tuna caught in Community waters but also bluefin tuna caught outside Community waters by purse seiners flying third country flags.

27. By 16 June 2008, the applicant had acquired only 465,500 kilogrammes of bluefin tuna and could have acquired a further 1 369 829 kilogrammes before reaching its allocated quota. As a result of the prohibition under Article 3 of Regulation No 530/2008, it was not even able to acquire its remaining quota of bluefin tuna by trading with bluefin tuna fishermen from outside the Community.

It therefore brought an action for damages against the Director for Agriculture and Fisheries before the national court.

28. In those circumstances, by order of 4 June 2009, the national court stayed proceedings and submitted the following questions to the Court for a preliminary ruling pursuant to Article 234 EC:

'(1) Is Commission Regulation No 530/2008 invalid because it infringes Article 253 of the Treaty insofar as it does not state sufficiently the reasons for the adoption of the emergency measures established in Articles 1, 2 and 3 of the said regulation, and insofar as it does not give a clear enough picture of the reasoning behind these measures?

(2) Is Commission Regulation No 530/2008 invalid because it infringes Article 7(1) of Council Regulation No 2371/2002 insofar as, in its recitals, it does not establish adequately (i) the existence of a serious threat to the conservation of living aquatic resources or to the marine eco-system caused by fishing activities and (ii) the need to take immediate action?

(3) Is Commission Regulation No 530/2008 invalid insofar as the adopted measures deprive Community operators, such as the applicant, from their legitimate expectations founded on Article 1 of Commission Regulation No 446/2008 of 22 May 2008 and on Article 2 of Council Regulation No 2371/2002 of 20 December 2002?

(4) Is Article 3 of Commission Regulation No 530/2008 invalid because it infringes the principle of proportionality insofar as it implies that (i) no Community operator can exercise an activity of landing or placing in cages tuna for fattening or farming, even for tuna caught previously and perfectly in conformity with Commission Regulation No 530/2008; and (ii) no Community operator can carry out these activities with regards to tuna caught by fishermen whose ships do not fly the flag of one of the Member States listed in Article 1 of Commission Regulation No 530/2008, even when this tuna was caught in conformity with the quotas laid down by the International Convention for the Conservation of Atlantic Tunas?

(5) Is Commission Regulation No 530/2008 invalid because it infringes the principle of proportionality insofar as the Commission failed to establish that the measure it was going to adopt was going to contribute towards the recovery of tuna stocks?

(6) Is Commission Regulation No 530/2008 invalid because the adopted measures are unreasonable and discriminatory on grounds of nationality, within the meaning of Article 12 of the Treaty establishing the European Community, insofar as the said regulation makes a distinction between purse seiners flying the Spanish flag and those flying the flag of Greece, Italy, France, Cyprus and Malta, and insofar as it makes a distinction between these six Member States and the other Member States?

(7) Is Commission Regulation No 530/2008 invalid because the principles of justice as protected under Article 47 of the Charter of Fundamental Rights of the European Union were not respected insofar as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the decision?

(8) Is Commission Regulation No 530/2008 invalid because the adversarial principle (audi alteram partem), as a general principle of Community law, was not respected insofar as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the decision?

(9) Is Article 7(2) of Council Regulation No 2371/2008 invalid because the adversarial principle (audi alteram partem), as a general principle of Community law, and/or the principles of justice as protected under Article 47 of the Charter of Fundamental Rights of the European Union were not respected, and consequently, is Commission Regulation No 530/2008 invalid because it was based on Council Regulation No 2371/2008?

(10) In the eventuality that the Court of Justice of the European Communities decides that Commission Regulation No 530/2008 is valid, should this regulation be interpreted as meaning that the measures adopted in Article 3 of the said regulation also preclude Community operators from accepting landings, the placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by purse seiners flying the flag of a third country?'

IV — Procedure before the Court

29. The order for reference reached the Court on 17 June 2009. During the written procedure, AJD Tuna, the Maltese, Greek and

Italian Governments and the Council and Commission submitted observations. The representatives of AJD Tuna, the Greek and Italian Governments and of the Council and the Commission presented oral argument and answered the Court's questions at the hearing held on 20 May 2010.

V — Arguments of the parties

A — *First and second questions*

30. The first and second questions for a preliminary ruling concern whether Regulation No 530/2008 contains a sufficient statement of reasons.

31. *AJD Tuna* and the *Maltese, Greek and Italian Governments* consider that Regulation No 530/2008 does not contain a sufficient statement of reasons. According to them, the recitals of the regulation refer to information in the Commission's possession but that information is not detailed or specified. In the absence of detailed information, the parties chiefly affected had no opportunity to assess the facts on which the adoption of the contested regulation was based. The obligation to state the reasons should have been all the greater, since Regulation No 530/2008 contains emergency measures which may be taken in exceptional circumstances only. The Commission should have established with precision the existence of a serious threat to the conservation of bluefin tuna and the need for immediate measures. Those parties submit that mere invocation of the exhaustion of quotas does not justify the emergency measures.

32. The *Commission* considers that Regulation No 530/2008 does contain a sufficient statement of the reasons pursuant to the Court's settled case-law.[16] According to the Commission, the recitals in the preamble to the regulation indisputably set out clearly the reasons for its early suspension of fishing for bluefin tuna with seine nets. The recitals in the preamble to the regulation itself stated the legal basis, namely the risk of exceeding fishing quotas and the failure of Member States to comply with the obligation contained in Regulation No 1559/2007. The obligation to state the reasons should not be construed as requiring a detailed description of all of the scientific and technical data taken into consideration by the Commission. Moreover, the obligation to state the reasons should not jeopardise the scope of the procedure under Article 7(1) of Regulation No 2371/2002.

16 — The Commission is referring here to Case C-120/99 *Italy* v *Council* [2001] ECR I-7997, paragraphs 28 and 29).

33. The Commission emphasises that the ban on landing bluefin tuna pursuant to Article 3 of Regulation No 530/2008 became necessary in order to tighten up the ban on fishing with seine nets. It acknowledges, however, that it could have adopted the measure prohibiting fishing on the basis of either Article 7(1) of Regulation No 2371/2002 or on the basis of Article 26 of the regulation. It points out that it began by initiating the procedure for the adoption of measures under Article 26(2) of Regulation No 2371/2002, but then decided to adopt the emergency measures on the basis of Article 7(1) of the regulation.

34. As regards the evidence of a serious threat, the Commission argues that, in this case, it has to act in accordance with the precautionary principle, referred to in Article 2 of Regulation No 2371/2002, that is to say, to act on the basis of the existence of a threat or risk which, by definition, cannot be a certainty.

B — *Third question*

35. By its third question, the national court asks whether the contested regulation is in breach of the legitimate expectation of operators which were allocated quotas for 2008.

36. *AJD Tuna* emphasises the fact that the quotas allocated to the Member States formed the basis for the contracts it entered into with the fishermen. In its view, by unexpectedly suspending fishing for bluefin tuna, although the quotas had yet to be reached, the Commission infringed its legitimate expectation. It also considers that the Commission does not have the power to prohibit the activity of undertakings in relation to a period subsequent to the time when the catches were made.

37. *The Italian Government* takes the view that, if the conditions for the application of Article 7(1) of Regulation No 2371/2002 were met, legitimate expectation could not stand in the way of the validity of the contested regulation.

38. *The Commission* stresses that AJD Tuna was never given any assurance that the fishermen with which it entered into the contracts had necessarily caught the quantity of tuna which they had been allocated. In addition, it was always possible to suspend fishing for bluefin tuna if the quotas were exhausted or there was a serious threat to the conservation of aquatic resources. The Commission lists a number of regulations containing such measures.

C — *Fourth question*

39. By its fourth question, the national court asks whether the contested regulation infringes the principle of proportionality both because it prohibits the activities of landing tuna or placing it in cages for fattening or farming, even in the case of tuna caught before 16 June 2008 and because it also prohibits such activity in relation to tuna not covered by Article 1 of Regulation No 530/2008, and even though the catches at issue were made in compliance with the quotas laid down by the International Convention for the Conservation of Atlantic Tunas.

40. *AJD Tuna* considers that the contested regulation is incompatible with the principle of proportionality because it fails to strike a balance between the need to protect the environment and the need to avoid excessive prejudice to the interest of economic operators. By the contested regulation, the Commission has looked solely to the interests of environmental protection, without taking account of the interest of the economic operators.

41. The *Greek and Italian Governments* consider that the prohibition is disproportionate in terms of the objective of conserving the stock of bluefin tuna. It is also incompatible with the principle of proportionality because Spanish fishermen are able to make catches for a further seven days.

42. The *Commission* emphasises that the text of Article 3 of Regulation No 530/2008 is not altogether precise, and that the contested regulation refers only to catches *made* after 16 June 2008 or after 23 June 2008. That interpretation is reasonable in the light of the content of the regulation's other provisions. The Commission further points out that the prohibition under Article 3 of Regulation No 530/2008 also concerns vessels flying the flag of States other than those mentioned in Articles 1 and 2 of the regulation. In its view, the prohibition at issue is compatible with the principle of proportionality because the Commission itself was in possession of information according to which vessels of other States had also exhausted their fishing quotas and they too had failed to observe ICCAT recommendations.

D — *Fifth question*

43. By its fifth question, the national court asks whether Regulation No 530/2008 infringes the principle of proportionality in so far as the Commission failed to establish that the measures it was going to adopt were going to contribute to the recovery of tuna stocks.

44. *AJD Tuna* considers the ban on landing and placing in cages bluefin tuna that had already been caught or been caught by tuna vessels flying the flag of States other than those

listed in Article 1 of the contested regulation to be immaterial for the purposes of protecting bluefin tuna stocks. In its view, the Commission failed to demonstrate that, without the prohibition contained in the contested regulation, there would have been a serious threat to bluefin tuna stocks.

45. The *Maltese Government* contends that the prohibition had no effect on the conservation of bluefin tuna stocks, as it had no impact on the activity of fishermen operating outside the Community.

46. *The Commission* draws attention to the fact that the recovery of bluefin tuna stocks is guaranteed as a result of the system of TACs and the quotas set by ICCAT. In order to ensure that the quotas were not exceeded in 2008, it had to adopt a measure that had the effect of conserving stocks.

E — *Sixth question*

47. By its sixth question the national court asks, in essence, whether the contested regulation is in breach of the prohibition of discrimination on grounds of nationality because it provides for the ban on fishing to commence on different dates for Spanish tuna vessels and the tuna vessels of other Member States.

48. *AJD Tuna* and the *Greek Government* consider that there is no reason for the distinction made between Spanish vessels and those of other Member States. That distinction is still less justified in the light of the emergency nature of the Commission's measures. If the measure were urgent and necessary to protect bluefin tuna stocks, there would be no justification for allowing Spanish vessels to continue to catch and land bluefin tuna for an additional week.

49. The *Commission* stresses that the situation of the Spanish vessels differed from that of the tuna vessels of other Member States in terms of the number of vessels compared with the quota allocated to Spain. In the case of the Spanish tuna vessels, there was no risk of the quota becoming exhausted before 23 June 2008.

F — *Seventh and eighth questions*

50. By its seventh and eighth questions, the national court asks whether there has been a violation of Article 47 of the Charter of Fundamental Rights of the European Union and of the adversarial principle (*audi alteram*

partem) because neither the parties concerned nor the Member States had an opportunity to submit written comments before the decision was adopted.

51. *AJD Tuna* considers that it ought to have been heard before the contested decision was adopted and that the Commission, consequently, infringed the adversarial principle and Article 47 of the Charter of Fundamental Rights of the European Union.

52. The *Italian Government* considers that the Commission should have adopted the measures on the basis of Article 26 of Regulation No 2371/2002, which incorporates a system for providing information to the Member States. By applying the procedure under Article 7(1) of that regulation, the Commission infringed Article 47 of the Charter of Fundamental Rights and the adversarial principle.

53. The *Commission* and *Council* point out that Article 7(1) of Regulation No 2371/2002 does not provide for the interested parties to be consulted. They maintain that Article 27 of the Charter governs the right to a fair trial, which does not apply in this case. Article 41 of the Charter, however, governs the situation of individuals exclusively.

G — *Ninth question*

54. By this question, the national court asks whether Article 7 of Council Regulation No 2371/2002 is invalid because it is possible to adopt emergency measures without giving the parties concerned and the Member States the opportunity to submit written comments before the decision is adopted, resulting in an infringement of the adversarial principle and the fundamental rights deriving from the Charter.

55. *AJD Tuna* considers that it should have been heard before Regulation No 530/2008 was adopted, and that since Article 7 of Council Regulation No 2371/2002 makes no provision for consultation, there has been an infringement of the adversarial principle, and of Articles 41 and 47 of the Charter.

56. The *Commission* takes the same view in relation to this question as in relation to the seventh and eighth questions.

57. The *Council* contends that Article 7(2) of Regulation No 2371/2002 is not invalid. It takes the view that, although the adversarial principle undoubtedly constitutes a fundamental principle of Community law, which is applicable in all administrative procedures, the need to take account of the adversarial principle cannot be transposed to a legislative

procedure involving the adoption of acts of general application.

H — *Tenth question*

58. By its tenth question, the national court asks whether Article 3 of Regulation No 530/2008 must be interpreted as meaning that it prohibits Community citizens from landing, placing in cages for the purposes of fattening or farming or transhipping bluefin tuna caught by purse seiners flying the flag of third countries.

59. *AJD Tuna* and the *Commission* consider that Regulation No 530/2008 must be interpreted as also banning the landing of catches of bluefin tuna made by vessels flying the flag of a third country.

60. The *Italian Government*, however, takes the view that the prohibition contained in Regulation No 530/2008 refers solely to catches made by the fleets of the Member States listed in the actual regulation.

VI — Analysis of the Advocate General

A — *Introduction*

61. The backdrop to this case is the struggle to conserve bluefin tuna which is a living species at ever-increasing threat. [17] On the scale of threat, bluefin tuna falls into the category of living species at serious risk [18] and its stocks have now declined by about 85 %. [19] At international level, many efforts are, therefore under way, to conserve this species which enjoys special protection in the context of ICCAT. To secure the recovery of bluefin tuna stocks, ICCAT has provided for a progressive reduction in the total allowable catch (TAC), restrictions on fishing within certain areas and

17 — As regards the threat to bluefin tuna, see, for example, the publication produced, in 1995, by the Food and Agriculture Organisation, 'World Review of Highly Migratory Species and Straddling Stocks', FAO Fisheries Technical Paper No 337, 1995, p. 36.

18 — See, for example, the publication Biodiversity: My Hotel in Action: A Guide to Sustainable Use of Biological Resources, International Union for Conservation of Nature, Gland, 2008, p. 64; Deere, C., Net Gains: Linking Fisheries Management, International Trade and Sustainable Development, IUCN, Washington, 2000, p. 37. See also, Barnosky, A. D., Heatstroke: Nature in an Age of Global Warming, Island Press, Washington, 2009, p. 50; Lévêque, C., La biodiversité au quotidien: Le développement durable à l'épreuve des faits, Éditions Quae, Versailles, 2008, p. 173.

19 — Academic writers have also drawn attention to the fact that bluefin tuna is clearly over-fished and that its mortality rate needs to be reduced by at least 25 %. See Markus, T., European fisheries law: from promotion to management, Europa Law Publishing, Groningen, 2009, p. 13.

time periods, a new minimum size for bluefin tuna, measures concerning sport and recreational fishing activities, control measures and the implementation of the ICCAT scheme of joint international inspection to ensure the effectiveness of the recovery plan. [20] Moreover, in March this year, a complete ban on international trade in bluefin tuna was proposed within the United Nations Organisation, but was not adopted.

62. In the light of the high level of threat to bluefin tuna, the European Union too is seeking to secure its conservation on the basis of the adoption, by way of Regulation No 1559/2007, of a multi-annual recovery programme for bluefin tuna in the Eastern Atlantic and Mediterranean. The regulation provides for an annual reduction in total allowable catches [21] and authorisation to fish for bluefin tuna from 1 January to 30 June only, [22] and also contains, for example, provisions concerning the minimum size of bluefin tuna that may be caught, [23] as well as supervisory measures, including a compulsory declaration of catch. [24] The bluefin tuna quotas for the individual Member States were set, within the European Union, by Regulation No 40/2008 and annexed to Regulation No 446/2008.

63. In this case, a number of legal issues have been raised concerning the validity of Regulation No 530/2008 and its interpretation, and also the validity of Article 7 of Regulation No 2371/2002. More specifically, pursuant to Regulation No 530/2008, the Commission prohibited fishing for bluefin tuna, as of 16 June 2008, by purse seiners from Greece, France, Italy, Cyprus and Malta and, as of 23 June 2008, by purse seiners from Spain. It also prohibited the landing, placing in cages for the purposes of fattening or farming and the transhipment of bluefin tuna caught both by vessels of the aforementioned States and by third States' vessels.

B — *First and second questions*

64. The first and second questions submitted by the national court are linked and must, therefore, be analysed together; they raise

20 — See recital (3) in the preamble to Regulation No 1559/2007.

21 — Article 3 of Regulation No 1559/2007.

22 — Article 5(1) and (2) of Regulation No 1559/2007 prohibits bluefin tuna fishing in the Eastern Atlantic and Mediterranean by large-scale pelagic longline vessels over 24 metres during the period from 1 July to 31 December, as well as by purse seiners.

23 — See Article 7 of Regulation No 1559/2007.

24 — See Article 17 of Regulation No 1559/2007.

two legal issues: firstly, whether Article 7(1) of Regulation No 2371/2002 is the appropriate legal basis for the adoption of Regulation No 530/2008 and, secondly, whether Regulation No 530/2008 contains a sufficient statement of reasons. [25]

1. Is Article 7(1) of Regulation No 2371/2002 the appropriate legal basis for the contested regulation?

66. Pursuant to Article 7(1) of Regulation No 2371/2002, the Commission may, at the substantiated request of a Member State or on its own initiative, decide on emergency measures if two conditions are met: firstly, if there is evidence of a serious threat to the conservation of living aquatic resources and, secondly, if that threat requires immediate action. As the Maltese Government correctly points out, the second condition for the application of provision at issue depends on the first: the need for immediate action is contingent on a serious threat to the conservation of living aquatic resources and, conversely, if no such serious threat exists, there is no need for immediate action.

65. It is therefore necessary to begin by assessing whether Article 7(1) of Regulation No 2371/2002 constitutes the appropriate legal basis for the adoption of Regulation No 530/2008 and, thereafter, whether that regulation contains a sufficient statement of reasons. In other words: it is necessary first to ascertain whether the Commission did indeed establish the existence of a serious threat to the conservation of bluefin tuna stocks, making it necessary to prohibit fishing for that species under Article 7(1) of Regulation No 2371/2002. And then – if the threat actually existed and the abovementioned article was the appropriate legal basis – whether the Commission provided a sufficient statement of the reasons for the contested regulation. [26]

67. The abovementioned conditions governing the application of Article 7(1) of Regulation No 2371/2002 require that the measures adopted on the basis thereof must be exceptional and urgent and lawfully adopted in circumstances that require a total suspension of fishing activities, that is to say circumstances in which such activities may result in irreparable consequences for certain aquatic resources or the marine eco-system. The exceptional and urgent nature of such measures is also demonstrated by regulations previously adopted by the Commission on the basis of that provision. In 2003, for example, the Commission adopted Regulation

25 — I should add that the second question concerns whether Regulation No 530/2008 contained a sufficient statement of reasons concerning the legal basis (Article 7(1) of Regulation No 2371/2002). However, before assessing whether the statement of reasons for the regulation is sufficient, it is necessary to consider whether Article 7(1) of Regulation No 2371/2002 provides the appropriate legal basis for the adoption of Regulation No 530/2008.

26 — I should add here that it is clear from case-law that the requirement to state the reasons under Article 253 EC must be considered as distinct from whether the reasons given are correct, which goes to the substance of the contested measure. See, to that effect, Case C-113/00 *Spain* v *Commission* [2002] ECR I-7601, paragraph 47, and Case C-479/07 *France* v *Council* [2009] ECR I-24, paragraph 50.

(EC) No 677/2003 establishing emergency measures for the recovery of the cod stock in the Baltic Sea,[27] which prohibited fishing for that species for a specific period, as the stock was at risk as a result of fishing with trawls for cod below the minimum authorised size. Similarly, in 2005, the Commission adopted, on the basis of Article 7(1) of Regulation No 2371/2002, emergency measures totally prohibiting fishing for anchovy in a specific zone because scientific information indicated the need for emergency measures for the protection and recovery of the anchovy stock in that zone.[28]

68. In analysing whether Article 7(1) of Regulation No 2371/2002 is the appropriate legal basis for Regulation No 530/2008, it is necessary to begin by determining whether, on the basis of general findings and statistical data, the Commission had real evidence of a serious threat to the bluefin tuna stock, necessitating the adoption of emergency measures. In making that assessment, it must be borne in mind that the implementation, by the Commission, of the common agricultural policy (including fisheries policy) requires an evaluation of a complex economic and social situation. Consequently, the discretion which the Commission must be accorded in making its evaluation does not relate exclusively to the nature and scope of the measures to be adopted, but also, to some extent, to the establishment of the facts; in that context, the Commission may, if necessary, rely on general findings and statistical data.[29]

69. As regards the scope of the Commission's discretion in evaluating the matter, it is also necessary to emphasise that, according to settled case-law, where the Community legislator enjoys a wide discretionary power – as in the agriculture sector, including fisheries – judicial review must be limited to verifying

27 — OJ 2003 L 97, p. 31.

28 — Commission Regulation (EC) No 1037/2005 of 1 July 2005 establishing emergency measures for the protection and recovery of the anchovy stock in ICES Sub-area VIII (OJ 2005 L 171, p. 24). I wish to add that, in the past, the Commission has not confined itself to adopting measures prohibiting fishing for a specific species but has also adopted measures for the conservation of marine eco-systems, including coral reefs. See, in that connection, for example, Commission Regulation (EC) No 1475/2003 of 20 August 2003 on the protection of deep-water coral reefs from the effects of trawling in an area north-west of Scotland (OJ 2003 L 211, p. 14) and Commission Regulation (EC) No 263/2004 extending for six months the application of Regulation (EC) No 1475/2003 of 20 August 2003 on the protection of deep-water coral reefs from the effects of trawling in an area north-west of Scotland (OJ 2004 L 46, p. 11).

29 — See, to that effect, Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 18; Case C-4/96 *NIFPO and Northern Ireland Fishermen's Federation* [1998] ECR I-681, paragraphs 41 and 42; Case C-179/95 *Spain* v *Council* [1999] ECR I-6475, paragraph 29; Case C-120/999 *Italy* v *Council* [2001] ECR I-7997, paragraph 44; and Case C-343/07 *Bavaria NV and Bavaria Italia* [2009] ECR I-05491, paragraph 84. See also my Opinion in Case C-34/08 *Azienda Agricola Disarò Antonio and Others* [2009] ECR I-4023, point 47.

that the measure in question is not vitiated by any manifest error or misuse of power and that the authority concerned has not manifestly exceeded the limits of its power of assessment. [30] However, even where it enjoys a discretionary power, the Community legislature is required to base its choice on objective criteria appropriate to the aim pursued by the legislation in question, taking account of the facts and all the scientific and technical data available at the time of the adoption of the act in question. [31] In exercising its discretion, the Community legislator must fully take into account the interests involved and, in examining the burdens associated with various possible measures, it must verify whether, in the light of the objectives pursued, the selected measure is capable of justifying even substantial negative economic consequences for certain operators. [32]

70. According to publicly available data, submitted to the Court by AJD Tuna, [33] the Community fleet exhausted only 63.23 % of the quota allocated to the Community for 2008. Similarly, according to that data, the States of the Mediterranean area which are not Member States of the European Union, [34] had not exceeded their quotas, or had exceeded them by a only a small margin. [35]

71. However, it must be borne in mind – as the Commission rightly pointed out at the hearing – that these are provisional data only. The Commission stated at the hearing that, as regards the final data, the Community exhausted 92.3 % of its quota for 2008. It also emerges from the ICCAT report [36] that the majority of catches were estimated on the basis of the catches reported to the ICCAT authorities. For example, the ICCAT report mentions that the total allowable catch (TAC) for 2008 for the Eastern Atlantic and Mediterranean Sea amounted to 28 500 tonnes. [37] The reported catch for 2008 amounted to 23 868 tonnes and the best catch estimate to 25 760 tonnes. [38] The reported catch and best

30 — See, for example, Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80; Case C-304/01 *Spain* v *Commission* [2004] ECR I-7655, paragraph 23; and Case C-535/03 *Unitymark and North Sea Fishermen's Organisation* [2006] ECR I-2689, paragraph 55.

31 — See, for example, Case C-127/07 *Société Arcelor Atlantique et Lorraine and Others* [2008] ECR I-9895, paragraph 58, and the case-law cited therein.

32 — See, to that effect, for example, Case C-58/08 *Vodafone and Others* [2010] ECR I-4999, paragraph 53, and *Société Arcelor Atlantique et Lorraine and Others*, cited in footnote 31.

33 — Annex 5 to the written observations of AJD Tuna: ICCAT Circular 1995/08.

34 — For instance, according to the catches *reported* to the ICCAT, Croatia had attained 98.91 % of its quota but Morocco 87.32 %. See Annex 5 of the written observations of AJD Tuna: ICCAT Circular 1995/08.

35 — Tunisia is said to have caught 107.20 % of its quota but Libya 105.58 %.

36 — See Report for biennial period, 2008-09, Part II (2009) – Vol. 2, accessible on the Internet at www.iccat.int/Documents/BienRep/REP_EN_08-09_II_2.pdf.

37 — *Ibid.*, p. 119.

38 — *Ibid.*, p. 120.

catch estimate are, therefore, lower than the TAC, but those figures do not include illegal catches, or unreported and irregular catches; in addition the potential catch for 2008 was far higher than the TAC (34 120 tonnes). [39]

72. I consider that, in the light of the abovementioned data, the Commission could adopt Regulation No 530/2008 on the basis of Article 7(1) of Regulation No 2371/2002, even though it may be that, at the time when the contested regulation was adopted, it did not possess entirely reliable scientific data. That legal basis is appropriate both because the Commission enjoys a degree of discretion, including in relation to verifying the data, [40] and because, when it adopted the emergency measure, it relied on the precautionary approach. It must in fact be borne in mind that when the Community adopts measures to protect and conserve living aquatic resources, to provide for their sustainable exploitation and minimise the impact of fishing activities on marine eco-systems, it must take a precautionary approach. [41] The precautionary approach to fisheries management means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment. [42]

73. I therefore consider that Article 7(1) of Regulation No 2371/2002 provides the appropriate legal basis for Regulation No 530/2008.

2. Does the contested regulation contain a sufficient statement of reasons?

74. I shall examine below whether Regulation No 530/2008 contains a sufficient statement of reasons and it will be necessary, in that connection, to determine whether the regulation is invalid because it does not contain

39 — *Ibid.*, p. 119. It should be added that potential catches are determined on the basis of the capacity of the fishing vessels; academic writers emphasise that because of the overcapacity of the fishing vessels (compared with the quotas allocated), overfishing is the main problem for the common fisheries policy, see, to that effect, Berg, A., Implementing and Enforcing European Fisheries Law: The Implementation and the Enforcement of the Common Fisheries Policy in the Netherlands and in the United Kingdom, Kluwer, Haag, 1999, p. 38; Markus, T., *op. cit.* (footnote 19, p. 13). See also the Green Paper 'Reform of the Common Fisheries Policy', (COM(2009)163 fin.), p. 5, according to which European fish stocks have been overfished for decades and the fishing fleets remain too large for the available resources.

40 — See point 68 of this Opinion.

41 — See Article 2 of Regulation No 2371/2002.

42 — See Article 3(i) of Regulation No 2371/2002.

a sufficient statement of reasons. It will be necessary to start by clarifying, in that regard, what the Commission needs to do by way of setting out the reasons for a regulation by which it is adopting emergency measures for the conservation of living aquatic resources.

75. According to settled case-law in relation to Article 253 EC, [43] the statement of reasons must be appropriate to the nature of the measure in question, and must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the relevant court to exercise its powers of review. [44] The requirement to state the reasons must be evaluated according to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. [45] The statement of reasons meeting the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all legal rules governing the matter in question. [46]

76. Furthermore, it is also clear from settled case-law that the scope of the obligation to state reasons depends on the nature of the measure in question and, in the case of measures of general application, the statement of reasons may be confined to indicating the general situations which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other. In that connection, the Court has, more particularly, made clear that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of the reasons for the various technical choices made. [47]

77. Case-law therefore clearly indicates that the Commission was not required to set out, in the statement of reasons for the contested regulation, specific data concerning the exhaustion of the bluefin tuna stock.

78. That approach is also confirmed by other regulations adopted by the Commission on the basis of Article 7(1) of Regulation

43 — Following the entry into force of the Lisbon Treaty, Article 296(2) TFEU.

44 — See, to that effect, Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237, paragraph 82 and Joined Cases C-15/98 and C-105/99 *Italian Republic and Sardegna Lines* v *Commission* [2000] ECR I-8855, paragraph 65. As far as legal writers are concerned, see Schwarze, J. (ed.), EU-Kommentar, 2nd edition, Nomos, Baden-Baden, 2009, p. 1919, paragraph 5 et seq.

45 — See, for example, Case C-120/99 *Italy* v *Council* [2001] ECR I-7997, paragraph 29.

46 — See, to that effect, in particular Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 86; Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 48; Case C-5/01 *Belgium* v *Commission* [2002] ECR I-11991, paragraph 68; and Case C-479/07 *France* v *Council* [2009] ECR I-24, paragraph 49.

47 — See, for example, Case C-168/98 *Luxembourg* v *Parliament and Council* [2000] ECR I-9131, paragraph 62; Case C-361/01 P *Kik* [2003] ECR I-8283, paragraph 102); and *Spain* v *Commission*, cited in footnote 30, paragraph 51.

No 2371/2002, for instance Regulation (EC) No 677/2003 establishing emergency measures for the recovery of the cod stock in the Baltic Sea, [48] Commission Regulation (EC) No 1037/2005 establishing emergency measures for the protection and recovery of the anchovy stock in ICES Sub-area VIII, [49] Commission Regulation (EC) No 1539/2005 extending the emergency measures for the protection and recovery of the anchovy stock in ICES Sub-area VIII, [50] and Commission Regulation (EC) No 1475/2003 of 20 August 2003 on the protection of deep-water coral from the effects of trawling in an area north-west of Scotland. [51]

79. In none of those regulations did the Commission provide specific data concerning a serious threat to the conservation of living aquatic resources, although it is apparent from all of the regulations that the Commission relied on such data. It is not, therefore, possible to agree with the applicant in the main proceedings that the Commission ought to have set out, in the contested regulation, specific information concerning a serious threat to the conservation of the tuna stock.

80. Moreover – as I have already stated at point 72 of this Opinion – even if, at the time it adopted Regulation No 530/2008, the Commission was not in possession of data indicating that if emergency measures were not enacted, there was a serious threat of exhausting the stock at issue, the Commission could, in any case, have adopted the regulation based on the precautionary approach.

81. I therefore consider that the Commission provided a sufficient statement of reasons for Regulation No 530/2008.

C — *Third question*

82. By its third question, the national court asks, in essence, whether Regulation No 530/2008 is invalid because it deprives individuals such as the applicant of their legitimate expectations.

83. According to settled case-law, any trader in regard to whom an institution has given rise to justified hopes may rely on the principle of legitimate expectations. [52] Precise, complete and consistent information that comes from authorised and reliable sources constitutes an

48 — Cited in footnote 27.
49 — OJ 2005 L 171, p. 24.
50 — OJ 2005 L 247, p. 9.
51 — OJ 2003 L 211, p. 14.

52 — See, to that effect for example, Case 265/85 *Van den Bergh en Jurgens* v *Commission* [1987] ECR 1155, paragraph 44; Joined Cases C-37/02 and C-38/02 *Di Lenardo and Dilexport* [2004] ECR I-6911, paragraph 70; Case C-342/03 *Spain* v *Council* [2005] ECR I-1975, paragraph 47; and Case C-167/06 P *Komninou and Others* [2007] ECR I-141, paragraph 63.

example of such assurances. [53] Consequently, no-one can allege a violation of that principle in the absence of specific assurances from the administration. [54] If a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted. [55]

84. As the Commission is right to point out, it did not give AJD Tuna any assurance that fishing for bluefin tuna by purse seiners would be permitted until 30 June 2008. If – without the Commission having given any clear assurance – AJD Tuna were permitted to rely on legitimate expectation in that context, it would in fact be impossible for the Commission to take any measure designed temporarily to suspend fishing. As well as being prevented from adopting emergency measures based on Article 7 of Regulation No 2371/2002 and Article 26 of Regulation No 2371/2002, the Commission could also be prevented from adopting measures to regulate and temporarily suspend fishing activities under Article 21 of Regulation No 2847/93.

85. I therefore consider that the answer to the third question must be that Regulation No 530/2008 does not deprive individuals such as the applicant of their legitimate expectations.

D — *Fourth and fifth questions*

86. By its fourth and fifth questions, the national court asks, in essence, whether Regulation No 530/2008 is compatible with the principle of proportionality, for the following two reasons:

— firstly, because no Community operator was permitted to land tuna or place it in cages for fattening or farming, including tuna caught before the date when fishing was suspended by Regulation No 530/2008, and

— secondly, because no Community operator can engage in such activity in relation to tuna caught by fishermen whose

53 — See, to that effect for example, *Komninou and Others*, cited in footnote 52, paragraph 63.

54 — See, to that effect for example, Case C-506/03 *Germany* v *Commission* (not published in ECR), paragraph 58, and Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, paragraph 147, as well as *Komninou and Others*, cited in footnote 52, paragraph 63.

55 — See, to that effect for example, *Van den Bergh en Jurgens* v *Commission*, cited in footnote 52, paragraph 44; Case C-22/94 *Irish Farmers Association and Others* v *Minister for Agriculture, Food and Forestry, Ireland and Attorney General* [1997] ECR I-1809, paragraph 25, and *Belgium and Forum 187* v *Commission*, cited in footnote 54, paragraph 147.

vessels do not fly the flag of one of the Member States listed in Article 1 of Regulation No 530/2008.

87. I shall consider both questions pertaining to the infringement of the principle of proportionality below.

1. Is the prohibition on landing tuna caught before the ban on fishing was introduced compatible with the principle of proportionality?

88. It is first necessary to assess the proportionality of a measure whereby no Community operator was permitted to land tuna or place it in cages for fattening or farming, including tuna caught before the date when fishing was suspended under Regulation No 530/2008, that is to say before 16 June 2008, as regards purse seiners flying the flag of Greece, France, Italy, Cyprus or Malta.

89. It must be emphasised in relation to the measure at issue that Article 3 of Regulation No 530/2008 does indeed provide that, as from 16 June 2008, or 23 June 2008 (for tuna caught by Spanish purse seiners), Community operators were not to accept landings, placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught by purse seiners in the Atlantic Ocean, east of longitude 45 W, and the Mediterranean Sea. A literal interpretation of that article would support the conclusion that that prohibition also concerns tuna fished before 16 or 23 June 2008.

90. However, once again in its written observations, the Commission maintained that, based on a teleological interpretation of Article 3, the conclusion must be that Community operators were not to accept landings, placing in cages for fattening or farming, or transhipments of bluefin tuna *carried out* after either 16 or 23 June 2008. Article 3 of Regulation No 530/2008 must be read in conjunction with Articles 1 and 2 of the regulation which ban fishing for bluefin tuna as from 16 or 23 June 2008.

91. Since I concur with the teleological interpretation of Article 3 of Regulation No 530/2008 put forward by the Commission, I consider that, as regards the ban on the activity of landing catches of tuna made before 16 or 23 June 2008, the question whether the measure at issue is compatible with the principle of proportionality does not arise.

2. Is the ban on landing tuna caught by vessels flying the flag of third States compatible with the principle of proportionality?

92. It is, however, more important to establish whether the measure contained in Article 3 of Regulation No 530/2008 is disproportionate, given that no Community operator is permitted to land or place in cages for fattening or farming or tranship ('measure banning the landing of tuna') tuna caught by fishermen whose vessels do not fly the flag of one of the Member States listed in Article 1 of Regulation No 530/2008.

a) Assessment criteria

93. It is necessary to emphasise the fact that the principle of proportionality is one of the general principles of Community law and requires that the acts adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question and, where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. [56]

94. In reviewing proportionality, it is therefore necessary to start from a three-stage scheme of analysis in order to determine, first, the appropriateness of the measure, secondly, the need for it and, thirdly, whether it is proportionate in the strict sense. [57]

95. The Court has, however, held that where the Community legislator enjoys a wide discretionary power – as in the agriculture sector, including fisheries – judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of power and that the authority concerned has not manifestly exceeded the

56 — See, to that effect, Case C-33/08 *Agrana Zucker* [2009] ECR I-5035, paragraph 31; Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 97; *Jippes and Others*, cited in footnote 30, paragraph 81; as well as Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 41, and Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 13.

57 — As regards the threefold criterion for assessing the principle of proportionality, see, for example, my Opinion in Case C-365/08 *Agrana Zucker* [2010] ECR I-4341, point 60. As regards the three-stage scheme in relation to the principle of proportionality, see, by way of academic writers, for example, Simon, D., Le contrôle de proportionnalité exercé par la Cour de Justice des Communautés Européennes, Petites affiches, No. 46/2009, p. 17, paragraph 20 et seq; de Búrca, G., The Principle of Proportionality and its Application in EC Law, Yearbook of European Law, Vol. 13 (1993), p. 113; Van Gerven, W., The Effect of Proportionality on the Actions of Member States of the European Community: National Viewpoints from Continental Europe; Ellis, E., The Principle of Proportionality in the Laws of Europe, Oxford and Portland, 1999, p. 37.

limits of its power of assessment. [58] Given the wide discretion which the Community legislator enjoys in relation to the common agricultural policy, it is the Court's view that the legality of a measure adopted in this sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue. [59]

96. As I have already emphasised in my Opinions in *Azienda Agricola* [60] and *Agrana Zucker,* [61] and as amplified upon by Advocate General Sharpston in *Zuckerfabrik Jülich*, [62] that kind of restrictive assessment of the proportionality of a measure, which merely considers its appropriateness, is not convincing. [63]

97. The conditions of appropriateness, necessity and proportionality in the strict sense are not different shades of the same concept, and the subject pursued by the Community legislature through the measure can be 'compared' with the rights of individuals in the area affected, only if necessity and proportionality in the strict sense are reviewed. [64] If only the appropriateness of a measure is examined, there is no review of proportionality but only an objective review of the exercise of discretion by the Community legislature. [65]

98. In my view, it is, therefore, necessary, even in relation to the common agricultural policy, including fisheries, to apply the three-stage scheme for reviewing proportionality; in view, however, of the wide discretion enjoyed by the Community legislator, that review must be limited to whether the measure is manifestly inappropriate, manifestly unnecessary or manifestly disproportionate in the strict sense. [66] This ensures that the discretion of the Community legislature in relation to complex political, economic and social decisions is respected and that the Court

58 — See, for example *Jippes and Others*, cited in footnote 30, paragraph 80; *Spain* v *Commission* (paragraph 23); and *Unitymark and North Sea Fishermen's Organisation* (paragraph 55).

59 — See, for example, *Fedesa and Others*, cited in footnote 56, paragraph 14 and *Crispoltoni and Others* (paragraph 42), as well as Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 80).

60 — See my Opinion in *Azienda Agricola Disarò Antonio and Others*, cited in footnote 29, point 61.

61 — See my Opinion in *Agrana Zucker*, cited in footnote 57, point 64.

62 — Opinion of Advocate General Sharpston in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich* [2007] ECR I-3231, point 65.

63 — It must be added that, in its judgment in *Vodafone and Others*, cited in footnote 32, paragraphs 51 and 71, when reviewing the validity of a Community regulation, and notwithstanding the wide discretion enjoyed by the Community legislature, the Court too adopted the approach of reviewing proportionality in terms of three aspects, analysing the appropriateness of the measure (paragraphs 55 to 60), the need for the measure (paragraphs 61 to 68) and its proportionality in the strict sense (paragraph 69).

64 — See my Opinions in *Azienda Agricola Disarò Antonio and Others*, cited in footnote 29, point 63, and *Agrana Zucker*, cited in footnote 57, point 66.

65 — See my Opinions in *Azienda Agricola Disarò Antonio and Others*, cited in footnote 29, point 63, and *Agrana Zucker*, cited in footnote 57, point 66.

66 — See my Opinions in *Azienda Agricola Disarò Antonio and Others*, cited in footnote 29, point 64, and *Agrana Zucker*, cited in footnote 57, point 70.

does not substitute its own assessment for those decisions.

b) Assessment of infringement of the principle of proportionality

99. It is necessary to begin by defining the objective of the contested measure prohibiting the landing of tuna. As is clear from recital (10) in the preamble to Regulation No 530/2008, the aim of the measure is to reinforce the effectiveness of the measures designed to forestall a serious threat to the conservation of the bluefin tuna stock.

100. It is then necessary to examine whether this measure is manifestly inappropriate, manifestly unnecessary or manifestly disproportionate in the strict sense in relation to the abovementioned aim.

i) Is the measure manifestly inappropriate?

101. In accordance with settled case-law, a measure is appropriate to guarantee the attainment of the objective pursued only if it genuinely reflects a concern to bring it about in a consistent and systematic manner. [67] The measure is, therefore, manifestly inappropriate if, on the face of it, it does not secure the attainment of the intended objective or if, on the face of it, it fails to secure the attainment of that objective in a consistent and systematic manner.

102. I consider that the measure banning the landing of tuna under Article 3(1) of Regulation No 530/2008 is not, in itself, manifestly inappropriate to attain the objective of reinforcing the effectiveness of the measures designed to forestall a serious threat to the conservation of the bluefin tuna stock.

103. That Community measure would have been manifestly inappropriate per se, had there been absolutely no possibility of it having an impact on fishing by third States. It must be stressed in that connection that the Community legislature enjoys wide discretion in the agricultural sector, including fisheries, in keeping with the political responsibility conferred on it in relation to the organisation of

67 — See, to that effect, Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraphs 53 and 58; Case C-500/06 *Corporación Dermoestética* [2008] ECR I-5785, paragraphs 39 and 40; and Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 55 actually concerning an assessment of the proportionality of national provisions but also applicable, by analogy, to an assessment of the proportionality of Community measures. See also, for example, the Opinion of Advocate General Kokott in Case C-499/08 *Andersen*, pending before the Court, point 57 and the case-law cited therein.

the common agricultural policy. [68] Within the margins of its power of discretion, the Commission clearly considered that the measure banning the landing of tuna would (or could) also have an impact on fishing by tuna vessels of third States, as it was possible that – without that ban – purse seiners of States not listed in Regulation No 530/2008 could have begun catching greater quantities of tuna and then sell the tuna on to Community operators. I therefore consider that the measure is not of itself manifestly inappropriate in terms of the objective pursued of conserving the bluefin tuna stock.

104. There is, however, to my mind, a problem concerning the compatibility of the measure banning the landing of tuna under Article 3(1) of Regulation No 530/2008 in relation to the measures banning its landing under Article 3(2). It must be borne in mind that, in addition to the ban on landing tuna on the basis of Article 3(1), Article 3(2) contains a similar ban on the landing of catches made by purse seiners flying the Spanish flag. Since the Spanish purse seiners were permitted to catch tuna for a further seven days, the ban on landing tuna also commenced for them seven days later. Therefore, in my view, it is totally inconsistent and unsystematic that Community wholesale fishermen were not permitted to obtain tuna from purses seiners of third States during the period from 16 to 23 June 2008 but were permitted to obtain it from Spanish purse seiners without restriction. It is in fact possible that, since the Spanish vessels were allowed to fish, the concern mentioned in the previous point of this Opinion could actually have become a reality, namely that the Spanish vessels would have had the opportunity to catch greater quantities of tuna and then sell it on to wholesale fishermen from other Member States. As a result of that inconsistency, the measure banning the landing of tuna where third State vessels are involved actually becomes devoid of purpose and, therefore, manifestly inappropriate to attain the objective pursued.

105. It follows that the measure banning the landing of tuna under Regulation No 530/2008 is manifestly inappropriate to reinforce the effectiveness of the measures designed to forestall a serious threat to the conservation of the bluefin tuna stock.

68 — See my Opinion in *Azienda Agricola Disarò Antonio and Others*, cited in footnote 29, point 37.

ii) Is the measure manifestly unnecessary?

106. Should the Court find that the measure banning the landing of tuna is not manifestly inappropriate to reinforce the effectiveness of the measures designed to forestall a serious threat to the conservation of the bluefin tuna stock, it will be necessary to consider whether the ban at issue was manifestly unnecessary. In sectors in which the legislature enjoys a power of discretion, the review of necessity must, in fact, be confined to establishing if, among a number of measures appropriate in relation to the objective pursued, there is *manifestly* in existence another measure that constitutes a lesser burden in terms of the interests at issue or a right protected under the legislation.

107. In my view, there is no evidence to suggest that there is *manifestly* in existence another measure that constitutes a lesser burden in terms of the interest or legitimately protected right at issue. It could, of course, be claimed that the measure banning the landing of tuna caught by purse seiners from third States was not necessary to attain the objective, since it would have been sufficient, in order to attain that objective, for the ban on landing tuna to enter into force in relation to third States only on 23 June 2008, as applied to the Spanish tuna vessels. However, that in turn would have introduced a measure incompatible with the ban on landing tuna.

108. I therefore consider that it is not possible to find that the measure banning the landing of tuna under Article 3(1) of Regulation No 530/2008 is manifestly unnecessary to attain the objective of conserving the bluefin tuna stock.

iii) Is the measure manifestly disproportionate?

109. In the alternative, should the Court declare that the measure banning the landing of tuna is not manifestly inappropriate and should it find that it is not manifestly unnecessary, it will be necessary to review proportionality in the strict sense, and that implies weighing up the affected interests of the operators against the interest in protecting bluefin tuna. In my view, there is no evidence capable of raising doubts as to the proportionality of the measure in the strict sense. Even though operators are bound to suffer economic prejudice as a result of the measure banning the landing of tuna, the benefits in terms of the protection of bluefin tuna resulting from the ban clearly take priority. Consequently, should the Court find that

the measure banning the landing of tuna is not manifestly inappropriate and that it is not manifestly unnecessary, the measure is not, in my view, manifestly disproportionate.

c) Consequences of the infringement of the principle of proportionality

111. Finally, it is necessary to examine the consequences that flow from the infringement of the principle of proportionality for the validity of Regulation No 530/2008. We must begin by determining whether, as a result of the infringement of the principle of proportionality, the whole regulation is rendered invalid or merely Article 3 thereof.

iv) Conclusion

112. According to settled case-law, the partial annulment of an act is possible only if the elements whose annulment is sought may be severed from the rest of the act. [69] Moreover, the requirement that those elements must be severable is not sufficient if, as a result of its partial annulment, the substance of the act is altered. [70]

110. It is therefore necessary to conclude that Article 3 of Regulation No 530/2008 does not stipulate that Community operators may not land, place in cages for fattening or farming or tranship tuna caught before the date on which fishing was suspended under Regulation No 530/2008, and that the issue of proportionality does not, consequently, arise in relation to that measure. However, the measure contained in Article 3 of the regulation, according to which Community operators may not land, place in cages for fattening or farming or tranship bluefin tuna caught by purse seiners not flying the flag of one of the Member States listed in Regulation No 530/2008 is incompatible with the principle of proportionality.

113. In this case, it is necessary to find that the position of Article 3 within Regulation No 530/2008 is such that it may be severed without difficulty from the remaining articles of the regulation. Even if that article, which

69 — Although the case-law in question relates to an action for annulment, it is possible to transpose it, by analogy, to the analysis of a question for a preliminary ruling concerning the validity of a Community act; see, for example, Case C-29/99 *Commission* v *Council* [2002] ECR I-11221, paragraphs 45 and 46; Case C-378/00 *Commission* v *Parliament and Council* [2003] ECR I-937, paragraph 30); and Case C-239/01 *Germany* v *Commission* [2003] ECR I-10333, paragraph 33).

70 — See, for example, Joined Cases C-68/94 and C-30/95 *France* v *Commission* [1998] ECR I-1375, paragraph 257), as well as *Commission* v *Council* (paragraph 46) and *Germany* v *Commission* (paragraph 34), cited in footnote 69.

contains the ban on landing tuna, were annulled, the ban on fishing under Articles 1 and 2 of the regulation itself would remain in force unaltered.

114. It follows that, in my view, Article 3 of Regulation No 530/2008 is invalid because it infringes the principle of proportionality.

E — *Sixth question*

115. By its sixth question, the national court asks, in essence, whether Regulation No 530/2008 is invalid because it infringes the principle of the prohibition of discrimination on grounds of nationality within the meaning of Article 12 EC, by making a distinction between vessels flying the Spanish flag and tuna vessels flying the flags of Greece, Italy, France, Cyprus and Malta, as well as between the vessels of those countries and those of the other Member States. [71]

1. The distinction made between Spanish vessels and those flying the flags of Greece, Italy, France, Cyprus and Malta

a) Is the distinction made between the Spanish vessels and those of the other Member States justified?

116. It is necessary to begin by considering whether there is any justification for the distinction between Spanish purse seiners, on the one hand, and purse seiners flying the flags of Greece, Italy, France, Cyprus and Malta, on, the other.

117. Settled case-law tells us that respect for the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified. [72]

118. In its statement of defence, the Commission maintains in this regard, first that, in the case of vessels flying the Spanish flag, there

71 — Of the other Member States, Portugal above all comes to mind, having been allocated, on the basis of the annex to Regulation No 446/2008, a quota of 518.96 tonnes; the remaining Member States mentioned in Regulation No 530/2008 were allocated a quota of 60 tonnes overall.

72 — See, for example, Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 46); Joined Cases C-87/03 and C-100/03 *Spain* v *Council* [2006] ECR I-2915, paragraph 48; Case C-134/04 *Spain* v *Council* [2007] ECR I-54, paragraph 28); and Case C-141/05 *Spain* v *Council* [2007] ECR I-9485, paragraph 40.

was no discrimination because, based on the assessment of the actual catch size, there was no risk that the Spanish vessels would exceed the quota allocated to Spain. The Commission further contends that the objective situation of the Spanish fleet (the number of vessels compared with the quota allocated to Spain) was unlike that of the other fleets. The Commission, finally, stated at the hearing that the objective situation of the Spanish fleet differed because the fishing season began a week later in Spain. To be more specific, most Spanish purse seiners catch bluefin tuna in the area of the Balearic Islands where the sea reaches the right temperature for bluefin tuna fishing a week later than elsewhere. [73]

119. The Commission accordingly sets out three arguments concerning the distinction between the Spanish purse seiners and the other purse seiners to which Regulation No 530/2008 applies: firstly, the lack of any real danger of Spanish purse seiners exhausting the quota; secondly, the objectively different situation of the Spanish purse seiners which meant that there was, in any case, no possibility of those vessels exhausting their quota; and, thirdly, the fact that the situation of the Spanish purse seiners was objectively different because they fished in waters which did not reach the right temperature for catching tuna until a week later.

120. I do not consider that the arguments set out by the Commission justify treating the Spanish fleet differently from the other fleets in this case.

121. In the first place, in neither its written observations nor during the oral procedure did the Commission provide any information clearly establishing that the Spanish fleet's quota was unlikely to be exhausted before 23 June 2008, rather than by 16 June 2008. The Commission has not submitted any information which proves that, during the period when the contested regulation was adopted, the catch size of the Spanish fleet was, up to that point, smaller than that of the other Member States. On the contrary, according to the Commission's written observations, the catches of Spanish purse seiners during the period 27 May 2008 to 23 June 2008 were greater than the catches of French purse seiners. [74] It is, admittedly, mentioned in that regard that the data on the size of the French fleet's catch *may* not have been correct, since the satellite surveillance systems were not in operation for a certain period. Despite that

73 — The Commission explained during the oral procedure that the presence of bluefin tuna requires a specific sea temperature of between 17 °C and 24 °C.

74 — See paragraph 35 and annex 6 of the Commission's written observations.

possible inconsistency, however, there is no indication of the actual assessment of the size of the French fleet's catch compared with that of the Spanish fleet.

122. Furthermore, as regards the actual catches of the Spanish fleet in 2008 (covering all types of fishing and not just fishing by purse seiners), the ICCAT report indicates that catches of bluefin tuna by the Spanish fleet in the Eastern Atlantic were estimated at 2 938 tonnes and, in the Mediterranean Sea, at 2 465 tonnes, totalling 5 403 tonnes. [75] That represents 99.3 % of the quota allocated to Spain for 2008, which amounted to 5 428,46 tonnes. According to ICCAT data, in terms of catch estimates, Spain was far closer to reaching its quota limit than France and Italy. [76]

123. In the absence of specific data to demonstrate that there was no risk that the Spanish purse seiners would reach or exceed the quota allocated to Spain, I consider that the difference in treatment accorded to purse seiners flying the Spanish flag and purse seiners flying the flags of Greece, Italy, France, Cyprus and Malta is not objectively justified.

124. It is then necessary to ascertain whether it may be argued that it was, in theory, not possible for the Spanish purse seiners to reach or exceed the quota allocated to Spain before 23 June 2008. I do not consider that this argument can be accepted either.

125. On the one hand, it is clear from the Commission's observations that each Member State's quota is divided by the number of vessels available to it. In its written observations, the Commission states that, in 2008, there were 131 purse seiners in total in the Community, one Cypriot, four Maltese, six Spanish, 16 Greek, 36 French and 68 Italian. [77] In that connection, the Commission states, for instance, that, in 2008, the 32 French vessels more than 24 metres long were set an individual vessel quota of between 110 and 120 tonnes. The individual quota for each of the 68 Italian vessels was set at 52 tonnes. The individual quota for each of the six Spanish vessels was set at between 251 and 352 tonnes. It is clear from that data that the relationship between the number of vessels and the quota allocated to Spain cannot justify treating the Spanish vessels and

75 — See Report for biennial period, 2008-09, Part II (2009) – Vol. 2, accessible on the Internet at: www.iccat.int/Documents/BienRep/REP_EN_08-09_II_2.pdf, pp. 125 and 126 (BFT-Table 1. Estimated catches (t) of northern bluefin tuna (*Thunnus thynnus*) by major area, gear and flag).

76 — The estimated catch for France, for 2008, was 253 tonnes in the Atlantic zone, but 2 670 tonnes in the Mediterranean Sea, thus totalling 2 923 tonnes (*ibid.*), accounting for 59.72 % of the French quota for 2008 which, according to the annex to Regulation No 446/2008, amounted to 4 894,19 tonnes. Italy's estimated catch (in the Mediterranean) was 2 234 tonnes (*ibid.*), accounting for 53.67 % of Italy's quota for 2008 which, according to the annex to Regulation No 446/2008, amounted to 4 162,71 tonnes.

77 — See paragraph 32 of the Commission's written observations.

the vessels of the other Member States differently, since the quota that has been set is proportionately divided by the number of vessels of each individual State. Moreover, the Commission itself stated in recital(7) in the preamble to Regulation No 530/2008 that 'the daily catch capacity of one single purse seiner is so high that the permissible catch level can be attained or exceeded very quickly'.[78] If, therefore, the quota may be exceeded by a single purse seiner, it is not, in my view, possible to accept the contention that the Spanish purse seiners could not have reached the allocated quota.

126. It also emerges from the Commission's written observations that during the period 27 May to 23 June 2008 (that is to say within the space of four weeks), the Spanish vessels caught 1 404,427 tonnes of bluefin tuna.[79] The average catch therefore amounted to more than 351 tonnes of bluefin tuna. Spain's tuna fishing quota for 2008 was set at 5 428,46 tonnes.[80] According to the information provided by the Commission, approximately 70 % of all bluefin tuna fishing is carried out using seine nets;[81] this implies that it was envisaged that the Spanish purse seiners would catch approximately 3 800 tonnes of bluefin tuna during 2008 (that is 70 % of the total Spanish quota). Had the Spanish vessels made daily catches of a size similar to the period from 27 May 2008 to 23 June 2008, the catch size would have reached 3 800 tonnes within 10 or 11 weeks. Bearing in mind that the fishing season in Spain lasted for 25 weeks,[82] I do not consider that it can be argued that it was, in theory, not possible for the Spanish purse seiners to reach the quota for 2008.

127. Thirdly, the Commission stated, during the oral procedure, that the objective situation of the Spanish purse seiners is different because the waters in which they catch bluefin tuna do not reach the right temperature for fishing until a week later. I do not consider that this is an argument that can be accepted. If that contention on the part of the Commission carried conviction, then the fishing season for bluefin tuna, as governed by Regulation No 1559/2007, ought also to have lasted a week longer in Spain than in the other Member States.[83] Had that factor genuinely have been as important for the fishery as the Commission states, it would

78 — Emphasis added.

79 — See annex 6 to the Commission's written observations.

80 — See the annex to Regulation No 446/2008.

81 — See paragraph 31 of the Commission's written observations.

82 — As is apparent from annex 6 to the Commission's written observations.

83 — Article 5(1) and (2) of Regulation No 1559/2007 prohibits fishing for bluefin tuna during the period from 1 June to 31 December in the Eastern Atlantic and the Mediterranean by large-scale pelagic longline vessels over 24 metres, as well as by purse seiners.

already have been decided under Regulation No 1559/2007 that Spain could catch bluefin tuna for a week longer than all the other Member States.

128. I must, finally, stress that it is unconvincing to claim that there is a serious threat to the conservation of the bluefin tuna stock while, at the same time, allowing Spain to fish for a week longer during the peak fishing season. The Commission exercised its discretion to assess that there a serious threat to the conservation of the bluefin tuna stock genuinely exists. Consequently, it ought to have treated all of the Member States which Regulation No 530/2008 lists equally. If the stock of a specific fish species is genuinely at risk, then it is at risk throughout the whole of the fishing zone, regardless of the fact that certain Member States appear to have yet to exhaust their quotas. [84]

129. I therefore consider that because it treats differently purse seiners flying the Spanish flag and purse seiners flying the flags of Greece, Italy, France, Cyprus and Malta, Regulation No 530/2008 infringes the principle of the non-discrimination.

b) Consequences of the breach of the principle of non-discrimination

130. It is then necessary to ascertain the consequences for the validity of Regulation No 530/2008 of the finding that the regulation infringes the principle of the prohibition of discrimination. More specifically, it is necessary to determine whether the infringement of that principle renders the whole regulation invalid, or just some of its articles.

131. According to settled case-law, the partial annulment of an act is possible only if the elements whose annulment is sought may be severed from the rest of the act. [85] Moreover, the requirement that those elements must be severable is not sufficient if, as a result of its partial annulment, the substance of the act is altered. [86] As far as the Court is concerned, if an act is to be partially annulled, two conditions must be met: it must be possible to

84 — This is also demonstrated by other measures that have been adopted in the past on the basis of Article 7(1) of Regulation No 3271/2002. See the measures listed in point 67 of this Opinion.

85 — Although this settled case-law relates to an action for annulment, it is possible to transpose it, by analogy, to the analysis of a question for a preliminary ruling concerning the validity of a Community act; see, for example, *Commission* v *Council* (paragraphs 45 and 46), *Commission* v *Parliament and Council* (paragraph 30), and *Germany* v *Commission* (paragraph 33), cited in footnote 69.

86 — See, for example, *France and Others* v *Commission* (paragraph 257), as well as *Commission* v *Council* (paragraph 46) and *Germany* v *Commission* (paragraph 34), cited in footnote 69.

sever the elements that have to be annulled from the rest of the act and the legislative substance of the act must remain unaltered.

132. In my view, in this case, the infringement of the prohibition on discrimination results, first of all, in the invalidity of Articles 1 and 2 of Regulation No 530/2008, which have the effect of according Spanish purse seiners more favourable treatment than the other tuna vessels listed in the regulation. Taken together, Articles 1 and 2 of the regulation infringe the prohibition on discrimination, and it is, therefore, necessary to annul them.

133. Should the Court decide, in the context of its assessment of compatibility with the principle of proportionality, (fourth and fifth questions) not to annul Article 3, then it will, in my opinion, be necessary to annul that article as a consequence of annulling Articles 1 and 2 of Regulation No 530/2008. The measure banning the landing of tuna is in fact rendered meaningless if its legal basis, namely the ban on actually fishing for tuna, ceases to exist. [87] Since I consider that Article 3 of Regulation No 530/2008 is already invalid because it infringes the principle of proportionality, it will be necessary to annul only Articles 1 and 2 of the regulation.

87 — See points 111 to 114 of this Opinion.

134. I therefore consider that Articles 1 and 2 of Regulation No 530/2008 are invalid as a result of the breach of the principle of non-discrimination on grounds of nationality within the meaning of Article 12 EC.

2. The distinction made between the vessels listed in Regulation No 530/2008 and other vessels

135. It is also necessary to consider whether the distinction made between the purse seiners listed in Regulation No 530/2008 (that is to say the purse seiners flying the flags of Greece, Italy, France, Cyprus and Malta, as well as of Spain) and all of the other purse seiners is justified. [88]

136. The Commission stated, in the oral procedure, that Portugal and other Member States do not catch bluefin tuna with seine nets but in other ways, and confirmed that all of the Member States that catch bluefin tuna using purse seiners are included in Regulation No 530/2008.

88 — According to the annex to Regulation No 446/2008, Portugal was allocated a quota of 518.96 tonnes, whereas all of the remaining Member States (apart from those listed in Regulation No 530/2008) were allocated an overall quota of 60 tonnes.

137. It is therefore necessary to find that the Member States which are not listed in Regulation No 530/2008 were in an objectively different situation from the Member States which the regulation actually lists. It follows that, in that respect, Regulation No 530/2008 does not infringe the principle of non-discrimination.

F — *Seventh, eighth and ninth questions*

138. By its seventh, eighth and ninth questions, which must be analysed together, as they cover similar issues, the national court asks in essence:

— firstly, whether Regulation No 530/2008 is invalid because at the time of its adoption, on the one hand, the principle of an effective remedy before a tribunal, as guaranteed on the basis of Article 47 of the Charter of Fundamental Rights, was not taken into account and, on the other, the adversarial principle, as a general principle of Community law, was not respected, as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the contested regulation;

— secondly, whether Regulation No 530/2008 is invalid because it was adopted on the basis of Article 7 of Regulation No 2371/2002, which infringes the principle of an effective remedy before a tribunal, as guaranteed on the basis of Article 47 of the Charter of Fundamental Rights, and the adversarial principle as a general principle of Community law.

139. As regards the ninth question in particular, I wish to emphasise that – as the Council pointed out at the hearing – that question actually refers only to the validity of Article 7(2) of Regulation No 2371/2002, which is not material to this case. It is, however, necessary to interpret the question from the national court as seeking to establish whether Article 7 of Regulation No 2371/2002 is incompatible with the principles of an effective remedy before a tribunal and the adversarial principle because it accords other Member States the right to be heard only when the procedure is initiated at the substantiated request of a Member State, but not when this occurs on the Commission's initiative.

140. It is therefore necessary to begin by establishing whether Regulation No 530/2008 infringes the aforementioned principles and, thereafter, whether those principles are infringed by Article 7 of Regulation No 2371/2002 – assuming, in both cases, that Article 7(1) of Regulation No 2371/2002 is the relevant legal basis for the adoption of Regulation No 530/2008.

1. Does Regulation No 530/2008 infringe the principle of an effective judicial remedy and the adversarial principle?

a) Alleged infringement of the principle of an effective judicial remedy

141. It is important, by way of introduction, to draw attention to the fact that, according to settled case-law, the principle of an effective remedy before a tribunal is a general principle of Community law that underlies the constitutional traditions common to the Member States and is laid down in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, [89] as well as Article 47 of the Charter of Fundamental Rights of the European Union, proclaimed at Nice on 7 December 2000. [90] Thus, Article 47, first subparagraph, of the Charter provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down by that article.

142. I do not see how the fact that interested parties and the Member States did not have an opportunity to submit their written comments prior to the adoption of the contested regulation could violate the principle of an effective remedy before a tribunal. That principle actually refers to a remedy before a tribunal once the act has been adopted. A remedy of that nature is guaranteed to both the Member States and the interested parties (both legal and natural persons) since they are able, under the conditions of Article 230, third and fourth subparagraphs, EC, [91] to challenge an act of that kind by bringing an action for annulment, and, similarly, a national court has the opportunity, in proceedings pending before it, to submit to the Court a question for a preliminary ruling concerning the validity of a Community act. I therefore consider that the absence of any opportunity to submit written comments in the course of the procedure for the adoption of Regulation No 530/2008 did not violate the principle of an effective judicial remedy.

b) Alleged breach of the adversarial principle

143. Turning to the alleged violation of the adversarial principle, it is necessary to

89 — Case C-222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19; Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 14; Case C-424/99 *Commission* v *Austria* [2001] ECR I-9285, paragraph 45; Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 39; Case 467/01 *Eribrand* [2003] ECR I-6471, paragraph 61; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37; and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 335.

90 — OJ 2010 C 83, p. 389.

91 — Following the entry into force of the Lisbon Treaty, Article 263(2) and (4) TFEU.

ascertain whether Regulation No 530/2008 violates that principle in relation, on the one hand, to the Member States and, on the other, to the interested parties to which Article 3 of the regulation refers.

i) Respect for the adversarial principle in relation to the Member States

144. As far as respect for the adversarial principle in relation to the Member States is concerned, it is clear from the Court's case-law that it applies not only in relation to citizens, but also in regard to the Member States; as regards the latter, that principle has been recognised in the context of proceedings brought by a Community institution against Member States. [92] It follows that the adversarial principle applies only where a Community institution brings proceedings against a Member State: proceedings under Article 228 EC, [93] for example, or proceedings in relation to State aid. [94] A Commission regulation is, however, in principle a legislative act of general application and, in the procedure for its adoption, the Commission, from which the act emanates, is under no general obligation to permit the interested parties or the Member States to submit their comments on the regulation itself. Pursuant to Article 249, second subparagraph, EC, [95] a regulation is of general application. It is binding in its entirety and directly applicable in all Member States.

145. It is also necessary to bear in mind that the legal basis for the adoption of Regulation No 530/2008 – namely Article 7(1) of Regulation No 2371/2002 – provides for emergency measures to be taken on the Commission's initiative. [96] Where emergency measures are

92 — See, for example, Case 3/00 *Denmark* v *Commission* [2003] ECR I-2643, paragraph 46, and Joined Cases C-439/05 P and C-454/05 P *Land Oberösterreich and Austria* v *Commission* [2007] ECR I-7141, paragraph 36.

93 — Following the entry into force of the Lisbon Treaty, Article 258 TFEU.

94 — In her Opinion in Joined Cases C-439/05 P and C-454/05 P *Land Oberösterreich and Austria* v *Commission* [2007] ECR I-7141, point 79, for example, Advocate General Sharpston states that this principle applies, inter alia, to 'cases where a person's rights or interests may be affected by a procedure initiated against him by an authority, in which he must be allowed to respond to the elements which the authority proposes to take into account' and that '[s]uch cases include inquisitorial criminal proceedings and many administrative proceedings – in the Community sphere, for example, investigations by the Commission in the field of competition or dumping, or Treaty infringement proceedings under Article 226 EC'.

95 — Following the entry into force of the Lisbon Treaty, Article 288, second paragraph, TFEU.

96 — The procedure is different if the measure is adopted at the substantiated request of a Member State. Where that happens, pursuant to Article 7(2) of Regulation No 2371/2002, the Member State must communicate the request simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils concerned which may submit their written comments to the Commission within five working days of receipt of the request.

involved, giving Member States the opportunity to submit comments could disproportionately prolong the process of adopting the emergency measures and the measures themselves would be devalued. The characteristic of such measures is, in fact, that they are adopted swiftly and without unnecessary delay, and this is what guarantees their effectiveness. [97]

146. I therefore consider that Regulation No 530/2008 does not infringe the adversarial principle in relation to the Member States.

ii) Respect for the adversarial principle in relation to the other interested parties

147. As regards respect for the adversarial principle in relation to the other interested parties to which Regulation No 530/2008 refers, it must be emphasised that, according to the Court's settled case-law, the principle of the right to a hearing applies to any procedure which may result in a decision by a Community institution perceptibly affecting a person's interests. [98] As set out in point 144 of this Opinion, in that regard also, emphasis must be placed on the fact that a Commission regulation is, in principle, a legislative act of general application. Depending on its content, it may in fact also constitute an act addressed to an individual, if it proves actually to contain a decision or series of decisions affecting individuals directly and individually. [99] In my view, the criterion that the individual must be affected is not met in this case, since Regulation No 530/2008 refers generally to all Community operators that might undertake the landing, placing in cages for fattening or farming or the transhipment of bluefin tuna. [100] Consequently, I cannot regard Regulation No 530/2008 as being equivalent to a decision, but as an act of general application in relation to which the Commission is not

97 — On the question whether the adversarial principle is violated by Article 7 of Regulation No 2371/2002, see point 153 et seq of this Opinion.

98 — See, for example, Case C-315/99 *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281, paragraph 28; Case C-89/08 P *Commission* v *Ireland and Others* [2009] ECR II-11245, paragraph 50; and Case C-197/09 *M* v *European Medicines Agency* [2009] ECR I-12033, paragraph 41.

99 — See Case 25/62 *Plaumann* [1963] ECR 95, in which the Court held that '[p]ersons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed.'

100 — This was also confirmed in relation to the Italian owners of purse seiners by the Court of First Instance (now the General Court) in its Order of 30 November 2009 in Joined Cases T-313/08 to T-318/08 and T-320/08 to T-328/08 *Veromar di Tudisco Alfio & Salvatore and Others* v *Commission* (not published in ECR), by which the action for the annulment of Regulation No 530/2008, brought by the owners in question, was declared to be inadmissible, since they were not individually affected by the regulation. In its reasoning (paragraph 45), the Court of First Instance emphasised that Regulation No 530/2008 was an act of general application.

required to guarantee the right to a hearing to the interested parties under Article 3 of the regulation.

148. According to the case-law, however, even if the regulation is of direct and individual concern to the interested parties which are able to challenge it under Article 230, fourth subparagraph, EC, [101] the right of individuals to be heard prior to the adoption of such an act cannot automatically be deduced from that provision. [102]

149. It is must further be emphasised – as stated in point 145 of this Opinion – that the process of adopting emergency measures under Article 7(1) of Regulation No 2371/2002 would also be disproportionately prolonged by giving all of the interested parties a hearing, as such measures must be adopted swiftly and without unnecessary delay to guarantee their effectiveness.

150. I therefore consider that Regulation No 530/2008 does not infringe the adversarial principle in relation to the other interested parties to which Article 3 of the regulation refers.

2. Does Article 7 of Regulation No 2371/2002 infringe the principle of an effective judicial remedy and the adversarial principle?

151. In my view, neither does Article 7 of Regulation No 2371/2002 infringe the principle of an effective judicial remedy and the adversarial principle.

a) Alleged infringement of the principle of an effective judicial remedy

152. As far as the question of the violation of the principle of an effective remedy before a tribunal is concerned, I would refer to the reasoning set out in points 141 and 142 of

101 — Following the entry into force of the Lisbon Treaty, Article 263, fourth paragraph, TFEU. I would further point out that Article 263, fourth paragraph, TFEU has partially amended the requirements governing active legal capacity, and that natural or legal persons may institute proceedings not only against an act addressed to that person or which is of direct and individual concern to them, but also against a regulatory measure which is of direct concern to them and does not entail implementing measures. As regards the active legal capacity of individuals in the context of the common fisheries policy (before the entry into force of the Lisbon treaty), see, for example, Markus, T., *op. cit.* (footnote 19), pp. 251 et seq.

102 — See, for example, Case C-104/97 P *Atlanta* [1999] ECR I-6983, paragraph 35.

this Opinion. For the same reasons as stated therein, Article 7 of Regulation No 2371/2002 does not, in my view, infringe the principle of an effective judicial remedy.

b) Alleged infringement of the adversarial principle

153. I also consider that Article 7 of Regulation No 2371/2002 does not infringe the adversarial principle or the right of the interested parties and the Member States to a hearing.

154. As regards the right of the interested parties (natural and legal persons) to a hearing, I would refer to points 145 and 149 of this Opinion. If all of the other interested parties (natural and legal persons) had the right to a hearing in relation to the procedure for the adoption of emergency measures, the effect would be disproportionately to prolong the procedure for the adoption of emergency measures for the conservation of aquatic resources and significantly diminish the effectiveness of such measures.

155. On the basis of Article 7(1) of Regulation No 2371/2002, the Commission may adopt emergency measures for the conservation of living aquatic resources at the substantiated request of a Member State or on its own initiative. Under Article 7(2) of Regulation No 2371/2002, the Member State is to communicate the request simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils concerned which may submit their written comments to the Commission within five working days of receipt of the request.

156. Therefore, when the request for the adoption of emergency measures is made by one of the Member States, the other Member States may submit written comments under Article 7(2) of Regulation No 2371/2002. However, if the Commission adopts emergency measures on its own initiative, the Member States may not submit written comments. A provision of that nature may, on the

face of it, in fact appear inconsistent, but, in my view, the fact that the Member States cannot submit written comments if the Commission adopts emergency measures on its own initiative does not infringe their right to a hearing.

157. It must be borne in mind that if a Member State proposes the adoption of emergency measures, the Commission will clearly not have realised that they are needed and, therefore, the views of the other Member States may be of help in reaching an objective position and, at the same time, prevent the possibility of one of the Member States abusing the possibility of proposing the adoption of emergency measures. The position is different where the emergency measures are adopted by the Commission on its own initiative. In that circumstance, the need for such measures is so apparent that the Commission has already become aware of it and has the power to adopt the emergency measures on the basis of the information in its possession.

158. I therefore consider that Article 7 of Regulation No 2371/2002 does not in any way infringe the adversarial principle.

G — *Tenth question*

159. The tenth question is raised only in the alternative; consequently, the Court does not need to answer it, if Regulation No 530/2008 is annulled; nonetheless, I shall consider the issue below in case the Court decides not to annul the regulation.

160. By its tenth question, the national court asks whether, if the Court decides that Commission Regulation No 530/2008 is valid, this should be interpreted as meaning that the measures adopted in Article 3(1) of the regulation also preclude Community operators from accepting landings, the placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by purse seiners flying the flag of a third country.

161. I consider that this question should be answered in the affirmative.

162. First, that interpretation accords with the text of Article 3(1) of Regulation No 530/2008, which refers generally to 'purse seiners', and not specifically to purse seiners flying the flags of Greece, France, Italy, Cyprus and Malta. Consequently, that provision was deliberately worded differently from Article 1(1) of the regulation, which specifically lists the Member States to which the regulation itself refers. Article 3(1) of Regulation No 530/2008 thereby clearly demonstrates that it is referring to *all* purse seiners and not just the purse seiners of the Member States listed.

163. Secondly, the same conclusion is reached if the provision at issue is given a systematic interpretation. Unlike Article 3(1) of Regulation No 530/2008, which is worded in general terms, Article 3(2) refers to just one Member State, Spain. Taking a systematic approach, it may therefore be concluded that – had it intended Article 3(1) to refer to certain Member States only – the Commission would have specified that in the text.

164. Moreover, the Commission has confirmed that Article 3(1) of Regulation No 530/2008 must be interpreted as referring to the prohibition on the landing of tuna caught by purse seiners from any country except Spain.

165. In my view, the answer to the tenth question for a preliminary ruling must be that Article 3(1) of Regulation No 530/2008 must be interpreted as prohibiting Community operators from accepting landings, the placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by purse seiners flying the flag of third countries.

VII — Conclusion

166. On the basis of all of the foregoing considerations, I propose that the Court should give the following answers to the questions submitted by the Prim'Awla tal-Qorti Ċivili (Republic of Malta):

'1) Analysis of the legal basis and statement of reasons for Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and in the Mediterranean Sea has revealed no factor capable of affecting the validity of that regulation.

2) Regulation No 530/2008 does not infringe the legitimate expectations of operators such as the applicant in the main proceedings.

3) Article 3 of Regulation No 530/2008 is invalid for infringement of the principle of proportionality.

4) Articles 1 and 2 of Regulation No 530/2008 are invalid for infringement of the principle of non-discrimination on grounds of nationality within the meaning of Article 12 EC.

5) Regulation No 530/2008 and Article 7 of Regulation No 2371/2002 do not infringe the principle of an effective judicial remedy and the adversarial principle.'