

Nor is there any objective justification for that discrimination. The general rule is the full applicability of all the Community stock to new Member States from the very moment of accession and the derogations from that full applicability contained in an Act of Accession are always of a temporary nature and must be interpreted strictly. To extend those derogations beyond the transitional period provided for in the Act of Accession is to disregard the very essence of those derogations, namely their transitional and limited exceptional nature, and their purpose, which is solely to permit the gradual integration of a new Member State into the Community.

- Infringement of the Act of Accession of Spain: the non-allocation to Spain in the contested regulation of part of the quotas in the Community waters of the North Sea and the Baltic Sea which have been allocated since Spain's accession has the effect of extending the transitional period beyond that provided for in the Act and of thus infringing its provisions.

It cannot be overlooked that had it not been for the transitional period in Article 166 of the Act of Accession, Spain would have participated in the allocation of new quotas since 1986, on the basis of three factors:

- its historical catches during the years 1973/1978, i.e. the period taken into consideration when the principle of relative stability was first established;
 - its catches of the same species in adjoining zones; and
 - the need to rely on by-catches.
- Infringement of Article 20(2) of Council Regulation (EC) No 2371/2002⁽²⁾ of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy: upon expiry of the transitional period, the new fishing opportunities allocated in the waters in question between 1992 and 1998 must be allocated taking into account the interests of each Member State and therefore Spain's too.

⁽¹⁾ OJ L 356, 31.12.2002, p. 12.

⁽²⁾ OJ L 358, 31.12.2002, p. 59.

Action brought on 28 February 2003 by the Kingdom of Spain against the Council of the European Union

(Case C-90/03)

(2003/C 135/12)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 28 February 2003 by the Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul Article 9(1)(b) of Regulation 2792/1999⁽¹⁾ laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, as amended by Council Regulation 2369/2002 of 20 December 2002⁽²⁾;
2. order the Council to pay the costs.

Pleas in law and main arguments

- Breach of essential procedural requirements: Spain contends that the text of Article 9(1)(b) of Regulation 2792/1999, as amended by Regulation 2369/2002, published in Official Journal L 358 of 31 December 2002, is not the text approved by the Council. In the present case, the text approved by the Council was that contained in the final compromise document, i.e. the one bearing the number SN 113/02, which tacitly amended the document containing the second compromise, SN 105/02, by providing the possibility of applying a basic weighting of 1:1.35 to vessels of more than 100 GT, which implies that that weighting would also apply to vessels of more than 400 GT and, therefore, the possibility of granting aid for renewal this vessels of that type.

- Infringement of Article 254 EC: publication must be limited to reproducing the text of the measure, as adopted by the Organ with legislative or regulatory power. What

is not possible is the introduction, by publication, of amendments of the text approved by the legislature since to do so presupposes a usurpation of its powers.

(¹) OJ L 337, 30.12.1999, p. 10.

(²) OJ L 358, 31.12.2002, p. 49.

Action brought on 28 February 2003 by the Kingdom of Spain against the Council of the European Union

(Case C-91/03)

(2003/C 135/13)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 28 February 2003 by the Kingdom of Spain, represented by Nuria Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul point 6 of Annex I to Council Regulation 2371/2002 (¹) of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.
- order the Council to pay the costs.

Pleas in law and main arguments

- Infringement of the principle of non-discrimination: during the negotiations for Regulation 2371/2002, Spain sought amendment of point 6 of Annex I in order to remove the restriction applying to its vessels in the 6 to 12 mile zone of the Atlantic waters off France deriving from the Act of Accession and to balance the conditions of access to that zone with those enjoyed by French vessels in Spanish waters. However, the Council decided to leave point 6 of Annex I unaltered by comparison with that recognised in Regulation 3760/92 (²) and thus to set

limits which do not exist either for access by French vessels to Spanish coastal waters or for access by vessels of the remaining Member States to the coastal waters of other Member States.

- Infringement of the Act of Accession of Spain: following the abolition of limits on access by Spanish vessels to waters under French jurisdiction outside the 12-mile zone upon expiry of the transitional period provided for in the Act of Accession, there is no justification for maintaining the 12-mile derogations. There are no specific measures for access to pelagic species in that zone that might require special management and, furthermore, catches of those pelagic species are taken by the same type of vessels (Cerco).

In short, the maintenance of a restrictive and discriminatory arrangement for access by Spanish vessels to the waters of the French 12-mile zone in the Atlantic beyond the transitional period provided for in the Act of Accession, and a derogation from equivalent rules on access to French waters in the Atlantic outside the 12 miles in issue, are contrary to the restrictive and limited nature required of any exception to a general rule of the Treaty, a fortiori when what is being limited is a principle as essential as the principle of non-discrimination on ground of nationality and, infringes the very essence of the provisions of an Act of Accession.

(¹) OJ L 358, 31.12.2002, p. 59.

(²) Council Regulation of 20 December 1992 establishing a Community system for fisheries and aquaculture, OJ L 389, 31.12.1992, p. 1.

Action brought on 4 March 2003 by the Kingdom of Spain against the Council of the European Union

(Case C-100/03)

(2003/C 135/14)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 4 March 2003 by the Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.