

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 (Cercos).

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.