

ORDER OF THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT
OF FIRST INSTANCE
3 June 1999 *

In Case T-138/98,

Armement Coopératif Artisanal Vendéen (ACAV), a cooperative constituted under French law, established at Sables d'Olonne (France),
Alain André, shipowner, residing on the Island of Yeu (France),
Thierry Arnaud, shipowner, residing on the Island of Yeu,
Alain Augereau, shipowner, residing on the Island of Yeu,
Jean-Luc Bernard and Angélique Bernard, shipowners, residing on the Island of Yeu,
Pascal Burgaud, shipowner, residing on the Island of Yeu,
José Burgaud, shipowner, residing on the Island of Yeu,
Bruno Chiron and Jean Noury, shipowners, residing on the Island of Yeu,
Fabien Gaillard, shipowner, residing on the Island of Yeu,
Bruno Girard, shipowner, residing on the Island of Yeu,
Denis Groisard, shipowner, residing on the Island of Yeu,
Fabrice Groisard, shipowner, residing on the Island of Yeu,
Armement Islais SARL, a company incorporated under French law, established on the Island of Yeu,
Marc Jolivet, shipowner, residing on the Island of Yeu,
Yannick Orsonneau, shipowner, residing on the Island of Yeu,
Christian Rafin, shipowner, residing on the Island of Yeu,
Éric Rivalin, shipowner, residing on the Island of Yeu,
Éric Taraud, shipowner, residing on the Island of Yeu,
Fernand Voisin and Alain Voisin, shipowners, residing on the Island of Yeu,
Patrick Voisin, shipowner, residing on the Island of Yeu,
Yeu Pêcheries SA, a company incorporated under French law, established on the Island of Yeu,
Bernard Zereg, shipowner, residing on the Island of Yeu,

* Language of the case: French.

represented by Lise Funck-Brentano and Stéphanie Ponsot, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Jacques Neuen, 1 Place du Théâtre,

applicants,

supported by

French Republic, represented by Jean-François Dobelle, Deputy Director of Legal Affairs in the Ministry of Foreign Affairs, Christina Vasak, Undersecretary for Foreign Affairs in the Legal Affairs Directorate, Kareen Rispal-Bellanger, Sub-director in the same Directorate, and Claude Chavance, Secretary for Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

intervener,

v

Council of the European Union, represented by John Carbery and Lauri Railas, of the Legal Service, acting at Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, General Counsel of the Legal Affairs Directorate in the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for annulment of Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources (OJ 1998 L 171, p. 1),

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT
OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES,

makes the following

Order

Procedure and parties' arguments

- 1 By application lodged at the Court Registry on 31 August 1998 the cooperative, Armement Coopératif Artisanal Vendéen and 22 other French owners of tuna boats established on the Isle d'Yeu (hereinafter 'the applicants'), brought an action for the annulment of Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources (OJ 1998 L 171, p. 1, hereinafter 'the contested regulation'), on the ground that, as from 1 January 2002, it bans the use by vessels flying the flag of a Member State of drift nets for catching certain species including the albacore species of tuna (*thunnus alalunga*).

- 2 By separate document lodged at the Court Registry on 29 October 1998, the Council raised an objection of inadmissibility under Article 114 of the Rules of Procedure. On 11 January 1999 the applicants submitted their observations on that objection.
- 3 By application lodged at the Court Registry on 11 November 1998 the French Republic sought leave to intervene in support of the form of order sought by the applicants.
- 4 By order of the President of the First Chamber dated 30 November 1998 the French Government was granted leave to intervene in support of the form of order sought by the applicants.
- 5 By application lodged at the Court Registry on 24 December 1998 the Kingdom of Spain, represented by Silva de Lapuerta, Abogado del Estado, of the Department for Community Legal Affairs, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais, sought leave to intervene in support of the form of order sought by the Council.
- 6 By application lodged at the Court Registry on 21 January 1999 the Department of the Vendée (France), represented by Béatrice Ghelber, of the Paris Bar, sought leave to intervene in support of the form of order sought by the applicants. In support of its application for leave to intervene, the Department of the Vendée claims first that the fishermen of the Island of Yeu, who make up 17% of the mariners active in the Vendée, account for a large proportion of the Department's catch. The economy of the Island of Yeu, it claims, is dependent on tuna fishing. Many fishermen's jobs would be lost if driftnets were banned. Secondly, the Department of the Vendée states that it has provided significant financial assistance to maritime activity in the Island of Yeu by contributing to the modernisation of fishing vessels, certain of which use driftnets, and by bringing into conformity with European health standards its auction market whose financial equilibrium would be jeopardised if there were to be a decrease in supplies of albacore tuna.

- 7 By application lodged at the Court Registry on 25 January 1999 the Municipality of the Island of Yeu, represented by René Houssin, of the Nantes Bar, with an address for service in Luxembourg at the Chambers of Jacques Neuen, 1 Place du Théâtre, sought leave to intervene in support of the form of order sought by the applicants. It claims that its economic and social structure is essentially dependent on the fishing sector and in particular tuna-fishing. More than half of the 45 vessels authorised to use driftnets in France are established on the Island of Yeu. The Island of Yeu's specific interest in the resolution of the dispute is moreover attested by the Commission communication of 8 April 1994 on the use of large driftnets under the common fisheries policy (COM (94) 50 final) in which it is stated as follows: 'The Island of Yeu poses a particular problem: 21 vessels used driftnets to fish for albacore in 1993, of which 15 benefited from the derogation. This gear accounts for a significant proportion of fishing activity, itself the linchpin of the island's economy. If driftnetting for albacore were to cease, apart from temporary measures to help avert an immediate crisis, a comprehensive plan would have to be worked out for exploring all the alternative forms of employment and, once the solutions had been selected, for providing the requisite funding.'
- 8 By application lodged at the Court Registry on 3 February 1999 the Commission of the European Communities, represented by Gérard Berscheid, of its Legal Service, and Thomas van Rijn, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg, sought leave to intervene in support of the form of order sought by the Council.
- 9 By application lodged at the Court Registry on 4 February 1999 Ireland, represented by Michael A. Buckley, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon, sought leave to intervene in support of the form of order sought by the applicants.
- 10 By application lodged at the Court Registry on 16 February 1999 Mr Thomas Kennedy and the 13 other fishermen whose names are set out in the appendix hereto, all established in Ireland and members of the Irish Tuna Association (ITA), represented by Donal O'Donnell SC, John Devlin, Barrister, and Gregory

Casey, Solicitor, of North Main Street, Bandon (Ireland), sought leave to intervene in support of the form of order sought by the applicants. The members of the ITA state that tuna fishing accounts for 50 to 70% of their turnover and is principally carried out by means of driftnets with the consequence that their banning would entail for them a loss of business and of jobs.

- 11 Under Article 116 of the Rules of Procedure, these applications for leave to intervene were notified to the applicants and the defendant, as well as to the French Republic, as intervener. None of these parties raised any objection to the admissibility of the applications for leave to intervene. However, the Council contends that the claim made by the ITA members in their application for leave to intervene that the legality of the contested regulation be examined under Article 184 of the EC Treaty (now Article 241 EC) must be rejected as inadmissible.

Findings of the Court

- 12 Under the first paragraph of Article 37 of the EC Statute of the Court of Justice, rendered applicable to the Court of First Instance by the first paragraph of Article 46 thereof, the Member States and Community institutions may intervene in disputes before the Court of First Instance. Since the applications for leave to intervene submitted by the Kingdom of Spain, the Commission and Ireland were made in accordance with Article 115 of the Rules of Procedure, they must be granted.
- 13 Under the second paragraph of Article 37 of the Statute of the Court of Justice any person establishing an interest in the result of the case is also entitled to intervene in cases before the Court of First Instance.

- 14 In that connection, it has been consistently held that the concept of an interest in the result of the case, within the meaning of the second paragraph of Article 37 of the Statute of the Court of Justice, must be understood as a direct, existing interest in the grant of the order sought (order of the Court of Justice in Joined Cases 197/80, 198/80, 199/80, 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle Erling v Council and Commission* [1981] ECR 1041, paragraph 9; order of the President of the Court of Justice in Cases C-151/97 P(I) and C-157/97 P(I) *National Power and PowerGen v Commission* [1997] ECR I-3491, paragraph 53; order of the President of the Second Chamber of the Court of First Instance in Case T-191/96 *CAS Succhi di Frutta v Commission* [1998] ECR II-573, paragraph 28. It is necessary, in particular, to ascertain whether the prospective intervenor is directly affected by the contested act and its interest in the result of the case is established (order of the Court of Justice in Case 25/59 *Netherlands v High Authority* [1960] ECR 787 and order in *National Power and PowerGen v Commission*, cited above, paragraph 53).
- 15 As regards applications for leave to intervene submitted by local or regional entities, the Court of Justice has thus held that regions defending the interests of traders established on their territory established the interest required in order to intervene in actions against Commission decisions abolishing preferential transport tariffs exclusively favouring, in one case, undertakings established on their territory or in the other case applicable solely to goods produced or processed on their territory (orders of the President of the Fifth Chamber of the Court of Justice of 17 December 1992 in Case C-6/92 *Federmineraria and Others v Commission* (not published in the ECR)). Similarly, the Court of First Instance has held that regional entities a part of whose territory bore the name of the geographical designation registered by the contested regulation in the context of the dispute before it (order of the President of the Second Chamber of 24 March 1998 in Case T-109/97 *Molkerei Großbraunshein and Bene Nahrungsmittel v Commission* (not published in the ECR, paragraph 11), or the economic and social structure of which was established as being essentially dependent on the sector affected by the contested regulation (order of the President of the Fifth Chamber in Case T-194/95 *Intv I Area Cova and Others v Council* [1996] ECR II-591, paragraphs 2 and 7) established the interest required for intervening.
- 16 In light of that case-law it should be pointed out, first of all, that, inasmuch as the contested regulation imposes a ban with effect from 1 January 2002 on the use by fishing vessels of driftnets for catching certain species of fish, it is likely to affect

the interests of all economic operators established in the Member States carrying on fishing activities by means of the technique mentioned in the contested regulation.

- 17 It follows that the ITA members, who are established in Ireland, have an interest in the result of the case, inasmuch as the contested regulation could prevent them from carrying on part of their fishing activities and affect their income. However, the observations already submitted on the merits of the case by the ITA members must be precluded as premature and the ITA members must be requested to set out in writing the pleas on which they rely in support of the form of order sought by the applicants, without prejudice at this stage to their admissibility.
- 18 The Island of Yeu has also established a direct and existing interest as defined in the abovementioned case-law although the contested regulation does not concern solely economic operators established in its territory, it being definitely established that its economic and social structure is essentially dependent on fishing a great part of which is carried on by means of driftnets and that the maintenance in force of the contested regulation could require a reconversion plan for the whole of the municipality and the island.
- 19 The interest in intervening pleaded by the Department of the Vendée is based on the risk of a reduction in driftnet fishing carried on by fishermen established on the Island of Yeu which could lead to a loss of jobs and a reduction in associated activity in that part of its territory.
- 20 However, it has not been demonstrated, nor moreover has it been alleged, that the economic and social structure of the Department of the Vendée as a whole is essentially dependent on those activities. The general interest which the Department may have in obtaining a favourable result as far as the prosperity of the undertakings established on the Island of Yeu is concerned and, as a result, as regards the level of employment in the geographical area where those undertakings carry on their activities, cannot in itself justify an intervention in the

proceedings under the conditions laid down in the abovementioned case-law, such interest being indirect and remote (see order in *Ludwigshafener Walzmühle Erling v Council and Commission*, cited above, paragraphs 8 and 9). Moreover, the arguments put forward by the Department of the Vendée in support of its application for leave to intervene are based not on a direct interest in the result of the case but on the presumed interest of another intervening party, in this case the Island of Yeu.

- 21 It follows from the foregoing that the application by the Department of the Vendée for leave to intervene must be rejected but that the like applications made by the ITA members and by the Island of Yeu must on the other hand be granted.
- 22 Since the defendant has lodged an objection of inadmissibility on which a decision has yet to be given, it is appropriate as a first step to hear the case put forward on that point by the intervening parties, except for the French Republic which already submitted its observations in a pleading lodged at the Registry on 2 February 1999.

Costs

- 23 Under Article 87(1) of the Rules of Procedure of the Court of First Instance, an order as to costs is to be made in the judgment or order bringing the proceedings to an end. Since this order brings the proceedings to an end as regards the Department of the Vendée, it is proper to make an order as to costs in connection with its application for leave to intervene.

- 24 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since no such application for costs was made, each party must be ordered to bear its own costs on the application for leave to intervene by the Department of the Vendée.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application for leave to intervene by the Department of the Vendée is refused.
2. The Department of the Vendée, the applicants and the defendant shall bear their own costs in connection with the application for leave to intervene made by the Vendée.
3. The Kingdom of Spain and the Commission are granted leave to intervene in Case T-138/98 in support of the form of order sought by the defendant.

4. Ireland, the Municipality of the Island of Yeu, together with Thomas Kennedy and the 13 other applicants for leave to intervene, whose names are listed in the annex hereto, are granted leave to intervene in Case T-138/98 in support of the form of order sought by the applicants.
5. The Registrar shall cause a copy of all the pleadings to be served on the intervening parties.
6. The intervening parties, other than the French Republic, are allowed a period within which to set out in writing the pleas and arguments in support of the form of order which they seek, to be limited as a first step to the admissibility of the action.
7. Costs are reserved.

Luxembourg, 3 June 1999.

H. Jung

Registrar

B. Vesterdorf

President