

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
10 July 2000 *

In Case T-54/00 R,

Federación de Cofradías de Pescadores de Guipúzcoa, established in San Sebastián, Spain,

Federación de Cofradías de Pescadores de Vizcaya, established in Bilbao, Spain,

Federación de Cofradías de Pescadores de Cantabria, established in Santander, Spain,

and

the 59 applicants whose names are listed in the annex,

represented by R. García-Gallardo Gil-Fournier, of the Madrid Bar, and D. Domínguez Pérez, of the La Coruña Bar, c/o S.J. Berwin & Co., 19 Square de Meeûs, Brussels,

applicants,

v

Council of the European Union, represented by J. Carbery, I. Díez Parra and Mrs Sims-Robertson, of its Legal Service, acting as Agents, with an address for service

* Language of the case: Spanish.

in Luxembourg at the office of A. Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 boulevard Konrad Adenauer,

defendants,

APPLICATION for suspension of the operation of Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 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 limitations in catch are required, and amending Regulation (EC) No 66/98 (OJ 1999 L 341, p. 1), in so far as it provides that the anchovy quota allocated to Portugal in ICES zones IX and X, CECAF area 34.1.1 may partly be fished in the French sector of ICES zone VIII, or any other interim measure deemed to be appropriate,

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

makes the following

Order

Legal context and procedure

- 1 Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 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 limitations in catch are required, and amending

Regulation (EC) No 66/98 (OJ 1999 L 341, p. 1), specifies the total allowable catch ('TAC') of certain fish stocks, including anchovy. The TAC of anchovy is specified in Annex I D as follows:

	Total	France	Spain	Portugal
Zone VIII	16 000	1 600	14 400	—
Zone IX, X, CECAF 34.1.1	10 000	—	4 780	5 220

- 2 Since 1995 the French and Portuguese Republics have carried out exchanges of catch quotas. Under paragraph 1.1 of Annex IV to Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources (OJ 1995 L 71, p. 5), such exchanges are 'tacitly renewable for the period 1995 to 2002, subject to the possibility of annual amendment of the conditions thereof by each Member State at the time of the annual fixing of TACs and quotas'. On the basis of these exchanges, the Council, by means of Annex I D to Regulation No 2742/1999, in particular allowed 3 000 tonnes of the anchovy quota of 5 220 tonnes allocated to Portugal to be fished in the waters of ICES zone VIII which are under the sovereignty or within the jurisdiction of the French Republic.
- 3 Because of the concerns of scientists regarding the present state of the anchovy stock and changes in it, the TAC for anchovy fixed for ICES zone VIII for 2000 was considerably reduced by comparison with that for previous years.

- 4 By application lodged at the Court Registry on 11 March 2000, three associations of owners of vessels fishing or capable of fishing for anchovy in ICES zone VIII ('the three associations') and 59 owners of vessels (natural persons, jointly-owned entities and partnerships) in the Spanish provinces of Asturias, La Coruña, Pontevedra and Lugo ('the 59 owners') brought an action under the fourth paragraph of Article 230 EC for, first, the annulment of Regulation No 2742/1999 in so far as part nine of Annex I D thereof provides that 3 000 tonnes of the anchovy quota of 5 220 tonnes allocated to Portugal in ICES zones IX and X, CECAF area 34.1.1 may be fished in the waters of ICES zone VIII, which is under the sovereignty or within the jurisdiction of the French Republic and, second, a declaration that paragraph 1.1, indent (i), of Annex IV to Regulation No 685/95 is unlawful.
- 5 By separate document lodged at the Court Registry on 14 March 2000, they also applied for suspension of the operation of Regulation No 2742/1999 in so far as part nine of Annex I D thereof ('the contested provision') provides that 3 000 tonnes of the anchovy quota of 5 220 tonnes allocated to Portugal in ICES zones IX and X, CECAF area 34.1.1 may be fished in the waters of ICES zone VIII, which is under the sovereignty or within the jurisdiction of the French Republic, or any other interim measure which the Court considers appropriate.
- 6 The Council lodged its observations on the application for interim relief on 27 March 2000.

- 7 By separate document lodged at the Court Registry on 31 March 2000, the Commission of the European Communities, represented by T. Van Rijn, Legal Adviser, and J. Guerra, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg, sought leave to intervene in support of the Council's applications in the main action and in the proceedings for interim relief.
- 8 By separate document lodged at the Court Registry on 3 April 2000, the Comunidad Autónoma del País Vasco, represented by R. García-Gallardo Gil-Fournier, of the Madrid Bar, D. Domínguez Pérez, of the La Coruña Bar, and G. Pérez Olmo, of the Barcelona Bar, c/o S.J. Berwin & Co., 19 Square de Meeûs, Brussels, sought leave to intervene in support of the applicants' applications in the proceedings for interim relief.
- 9 The applications to intervene were served on the parties pursuant to Article 116(1) of the Rules of Procedure of the Court of First Instance and they were given an opportunity to submit their observations thereon at the hearing.
- 10 By letters of 4 April 2000, the Court Registry requested the prospective interveners to attend the hearing and served them with the application for interim relief and the Council's observations thereon.
- 11 The parties and the prospective interveners presented their oral arguments on 6 April 2000.

- 12 By document lodged at the Court Registry on 18 May 2000, the Council, pursuant to Article 114 of the Rules of Procedure, raised the objection that the application for annulment was inadmissible.

Law

Applications to intervene

- 13 Under the first paragraph of Article 37 of the EC Statute of the Court of Justice, which applies to the Court of First Instance pursuant to the first paragraph of Article 46 of the same Statute, Member States and institutions of the Community may intervene in cases before the Court. Consequently the Commission's application to intervene must be allowed as it was submitted in accordance with Article 115 of the Rules of Procedure.
- 14 With regard to the application to intervene submitted by the Comunidad Autónoma del País Vasco, it must be observed that, under the second paragraph of Article 37 of the EC Statute of the Court of Justice, which also applies to the Court of First Instance, the right to intervene is subject to proof of an interest in the result of the case.
- 15 On this point, it has consistently been held that 'an interest in the result of the case' means a direct and present interest in the decision on the claims (see the

order of the President of the Court of First Instance of 3 June 1999 in Case T-138/98 *ACAV and Others v Council* [1999] ECR I-1797, paragraph 14, and judgments cited). In particular, it is necessary to ascertain that the prospective intervener is directly affected by the measure in question and that his interest in the result of the case is certain.

- 16 In support of its application for leave to intervene, the Comunidad Autónoma del País Vasco submits in essence that it has an interest in intervening in the case in so far as its economic and social structure depends primarily on the fisheries sector. Referring to its self-governing status and powers and to the provisions of the 1978 Spanish Constitution, it states that it has the task of defending its identity and interests in relation not only to national, but also international, organisations whose decisions could affect it, as in the present case.
- 17 In this connection, it must be observed that it has not been shown that the economic and social structure of the Comunidad Autónoma del País Vasco as a whole depends primarily on activities in the fisheries sector (see the order in Case T-138/98, cited above, paragraph 20). According to the information supplied by the prospective intervener at the hearing, fishing in the strict sense contributes only 1% to the gross domestic product and to employment in the Comunidad Autónoma del País Vasco. Even if each seagoing job generates 3.5 direct jobs on land, as the applicant claims, it cannot be accepted that the economic and social structure of the Comunidad depends primarily on the fisheries sector.
- 18 It follows that the Comunidad Autónoma del País Vasco has not proved a direct and present interest in the decision on the applicants' claims in the proceedings

for interim relief, so that its application for leave to intervene must be dismissed.

Admissibility

- 19 Under the combined provisions of Articles 242 EC and 243 EC and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court may, if it considers that circumstances so require, order that application of the contested act be suspended or prescribe any necessary interim measures.
- 20 The first subparagraph of Article 104(1) of the Rules of Procedure provides that an application to suspend the operation of a measure is admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance. This rule is not a mere formality, but presupposes that the main action with which the application for interim relief is connected can be examined by the Court of First Instance.
- 21 According to settled case-law, the problem of the admissibility of an action before the court ruling on the facts must not, in principle, be examined in the framework of proceedings for interim relief because otherwise the decision on the substance may be prejudiced. It may nevertheless be found necessary where, as in the present case, it is claimed that the main action with which the application for interim relief is connected is manifestly inadmissible, to establish the existence of certain factors justifying a conclusion that that action is *prima facie* admissible (see the order of 15 February 2000 in Case T-1/00 R *Hözl and Others v Commission* [2000] ECR II-251, paragraph 21, and judgments cited).

- 22 In the present case, the judge hearing the application for interim relief considers it necessary to ascertain whether the application for annulment is manifestly inadmissible in that way.
- 23 As the applicants do not deny that the regulation containing the contested provision is general in nature and scope, it is necessary to consider whether they have adduced any arguments to show that the contested measure or provision is nevertheless of direct and individual concern to them (see the judgments in Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 19). In this connection, it must be observed that the contested measure or provision is of individual concern to the undertakings in question if it 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 are thereby distinguished individually just as in the case of a person to whom a decision is addressed (see the judgment in Case C-309/89, cited above, paragraph 20).
- 24 As the action for annulment has been brought by 59 owners of vessels and three associations representing the collective interests of owners, the capacity of the two groups of applicants to bring proceedings must be examined in turn.

Admissibility of the application lodged by the 59 owners

- 25 The 59 owners submit that, although the contested provision and the regulation of which it forms part are of a legislative nature, they are of direct and individual concern to them.

- 26 They add that the contested provision is of direct concern because it contains a complete set of rules which leaves no discretion to the national authorities of the Member States. The contested provision fixes with binding effect the maximum tonnage which can be caught in the zone in question, the French and Spanish authorities merely granting each other licences in respect of the maximum.
- 27 The 59 owners also submit that the contested provision is of individual concern to them because it was adopted on the basis of Article 8(4) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1). To adopt such a provision, the institutions ought to have taken account of the interests of operators, which are codified in Articles 2 and 4(1) of the same regulation. The 59 owners conclude that the Council and the Commission took account of the situation of the Spanish operators when the contested provision was adopted (see the judgments in Case 11/82 *Piraiki-Patraiki v Commission* [1985] ECR 207; Case C-152/88 *Sofrim-port v Commission* [1990] ECR I-2477, and Case C-390/95 P *Antillean Rice Mills and Others* [1999] ECR I-769, paragraphs 25 to 30).
- 28 They add that the contested provision applies to a closed class because it affects only the Portuguese Republic, the French Republic and the Kingdom of Spain. As the two latter States are the only ones which can fish in ICES zone VIII, the class is reduced to them alone. Spanish fishermen are the only ones damaged by the transfer of the quota because they and the French are the only ones authorised to fish in that zone and the French fishermen benefit from the quota transfer. It follows that the Spanish owners fishing in ICES zone VIII are the only operators with an interest in the annulment of the contested provision.

- 29 With regard to the argument that the contested provision is of individual concern to the 59 owners, it must be observed that Article 2 of Regulation No 3760/92 is worded as follows:

‘1. As concerns exploitation activities [in respect of those resources], the general objectives of the common fisheries policy shall be to protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system, and in particular taking account of the needs of both producers and consumers.

To that end, a Community system for the management of exploitation activities is established which must enable a balance to be achieved, on a permanent basis, between resources and exploitation in the various fishing areas.

...’.

Article 4 of the same Regulation provides as follows:

‘1. In order to ensure the rational and responsible exploitation of resources on a sustainable basis, the Council, acting, except where otherwise provided, in accordance with the procedure laid down in Article 43 of the Treaty, shall establish Community measures laying down the conditions of access to waters and resources and of the pursuit of exploitation activities. These measures shall be drawn up in the light of the available biological, socio-economic and technical

analyses and, in particular, of the reports drawn up by the Committee provided for in Article 16.

....’

- 30 It is true that, according to settled case-law, the fact that a Community institution must, by virtue of specific provisions, take account of the effects of the measure which it proposes to adopt on the situation of certain individuals is likely to differentiate them from all other persons (see the judgments in Case T-12/93 *CCE de Vittel and Others v Commission* [1995] ECR II-1247, paragraph 36, and Case T-135/96 *UEAPME v Council* [1998] ECR II-2335, paragraph 69, and the order of 30 September 1997 in Case T-122/96 *Federolio v Commission* [1997] ECR II-1559, paragraph 59).
- 31 However, the sole purpose of the two provisions relied upon by the 59 owners is to establish the framework within which the Council, on a proposal from the Commission, may adopt Community measures laying down the conditions of access to waters and resources and of the pursuit of exploitation activities so that the said provisions apply only in a general way to operators in the fisheries sector.
- 32 With regard to the argument that the contested provision applies to a limited class of traders, it is clear from the file that, even if the three associations and the 59 owners represent, according to the application for interim relief, all the potential holders of an anchovy fishing licence for the zone in question who are adversely affected by the contested provision, because they hold a licence issued by the Spanish authorities for the first quarter of the year, the number of vessels represented for the purpose of this application for interim relief is greater than the number of vessels holding, at the date on which the application was lodged, a

licence for the first quarter of 2000 because the figure also includes vessels which have indicated their intention of applying for a licence for the second quarter.

- 33 Therefore, if the number of anchovy fishing licences in ICES zone VIII may vary from quarter to quarter, depending on the applications from operators, this shows that Spanish fishermen holding a licence for anchovy fishing in ICES zone VIII only constitute a group the composition of which is variable, and not a restricted, closed class. In any case, it must be observed that French and Portuguese anchovy fishermen in the zone in question are also affected, and even mainly affected, by the contested provision.
- 34 Therefore it is not of individual concern to the 59 owners. Consequently their application for annulment pursuant to the fourth paragraph of Article 230 EC is not admissible and it is unnecessary to consider whether the contested provision is of direct concern to them.

Admissibility of the application lodged by the three associations

- 35 It must be observed that the associations have merely argued that they must be deemed to have capacity to bring proceedings because their members have such capacity.
- 36 According to settled case-law, an association formed for the protection of the collective interests of a category of persons could not be considered to be individually concerned for the purposes of the fourth paragraph of Article 230

EC, by a measure affecting the general interests of that category, and was therefore not entitled to bring an action for annulment where its members could not do so individually (see the judgments in Joined Cases 19/62 to 22/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes and Others v Council* [1962] ECR 491, and Case C-321/95 P *Greenpeace Council and Others v Commission* [1998] ECR I-1651, paragraphs 14 and 29). As found above, the 59 owners cannot be considered to be individually concerned by the contested provision. It follows that, in so far as it has not been shown that the members of the three associations are in a different situation from that of the 59 owners, the action brought by the associations must be declared inadmissible.

- 37 It follows that, in the present case, the associations cannot be considered by the judge hearing the application for interim relief to be individually concerned by the contested provision. Consequently their application for annulment under the fourth paragraph of Article 230 EC is not admissible and it is unnecessary to consider whether the contested provision is of direct concern to them.
- 38 For all the reasons set out above, the main action for the annulment of Regulation No 2742/1999 in relation to the contested provision appears to be *prima facie* manifestly inadmissible.
- 39 The present application for interim relief must therefore be dismissed as inadmissible.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The Commission is granted leave to intervene in Case T-54/00 R in support of the forms of order sought by the defendant.
2. The application by the Comunidad Autónoma del País Vasco for leave to intervene in Case T-54/00 R is dismissed.
3. The application for interim relief is dismissed.
4. Costs are reserved.

Luxembourg, 10 July 2000.

H. Jung

Registrar

B. Vesterdorf

President