



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

11 January 2017*

(Actions for annulment — Fisheries — Regulation (EU) No 1380/2013 — Regulation (EU) No 1367/2014 — Validity — Fishing opportunities — Precautionary approach — Principle of relative stability of fishing activities — Principle of proportionality — Principle of equal treatment — Roundnose grenadier and roughhead grenadier)

In Case C-128/15,

ACTION for annulment under Article 263 TFEU, brought on 13 March 2015,

Kingdom of Spain, represented by A. Rubio González and L. Banciella Rodríguez-Miñón, acting as Agents,

applicant,

v

Council of the European Union, represented by A. Westerhof Löfflerová and by A. de Gregorio Merino and F. Florindo Gijón, acting as Agents,

defendant,

supported by

European Commission, represented by A. Bouquet and by I. Galindo Martín and A. Stobiecka-Kuik, acting as Agents,

intervener,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and F. Biltgen (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 11 May 2016,

after hearing the Opinion of the Advocate General at the sitting on 21 July 2016

* Language of the case: Spanish.

gives the following

Judgment

- 1 By its application, the Kingdom of Spain seeks the annulment of Council Regulation No 1367/2014 of 15 December 2014 fixing for 2015 and 2016 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ 2014 L 366, p. 1) on the ground that the Council of the European Union exceeded the bounds of its discretion by establishing and allocating total allowable catches (TACs) covering both roundnose grenadier (*Coryphaenoides rupestris*) and roughhead grenadier (*Macrourus berglax*), in two management zones, 5B67 and 8X14, without taking account of the principle of relative stability of fishing activities and in breach of the principles of proportionality and equal treatment.

Legal context

Regulation (EU) No 1380/2013

- 2 Regulation No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22) ('the CFP Regulation') contains provisions aimed at implementing the Common Fisheries Policy ('the CFP').

- 3 Recitals 4, 6, 10 and 24, and 34 to 36 in the preamble to the CFP Regulation state:

'(4) The CFP should ensure that fishing and aquaculture activities contribute to long-term environmental, economic, and social sustainability. It should include rules that aim to ensure the traceability, security and quality of products marketed in the Union. Furthermore, the CFP should contribute to increased productivity, to a fair standard of living for the fisheries sector including small-scale fisheries, and to stable markets, and it should ensure the availability of food supplies and that they reach consumers at reasonable prices. The CFP should contribute to the Europe 2020 Strategy for smart, sustainable and inclusive growth, and should help to achieve the objectives set out therein.

...

(6) Those international instruments predominantly lay down conservation obligations, including obligations to take conservation and management measures designed to maintain or restore marine resources at levels which can produce the maximum sustainable yield both within sea areas under national jurisdiction and on the high seas, and to cooperate with other States to that end, obligations to apply the precautionary approach widely to conservation, management and exploitation of fish stocks, obligations to ensure compatibility of conservation and management measures where marine resources occur in sea areas of different jurisdictional status and obligations to have due regard to other legitimate uses of the seas. ...

...

(10) Sustainable exploitation of marine biological resources should be based on the precautionary approach, which derives from the precautionary principle referred to in the first subparagraph of Article 191(2) of the Treaty, taking into account available scientific data.

...

(24) Multiannual plans should, where possible, cover multiple stocks where those stocks are jointly exploited. The multiannual plans should establish the framework for the sustainable exploitation of stocks and marine ecosystems concerned, defining clear time-frames and safeguard mechanisms for unforeseen developments. Multiannual plans should also be governed by clearly defined management objectives in order to contribute to the sustainable exploitation of the stocks and to the protection of the marine ecosystems concerned. Those plans should be adopted in consultation with Advisory Councils, operators in the fishing industry, scientists and other stakeholders having an interest in fisheries management.

...

(34) For stocks for which no multiannual plan has been established, exploitation rates delivering maximum sustainable yield should be ensured by setting catch or fishing effort limits. If available data is insufficient, fisheries should be managed by using approximative parameters.

(35) In view of the precarious economic state of the fishing industry and the dependence of certain coastal communities on fishing, it is necessary to ensure the relative stability of fishing activities by allocating fishing opportunities among Member States, based on a predictable share of the stocks for each Member State.

(36) Such relative stability of fishing activities, given the temporary biological situation of stocks, should safeguard and take full account of the particular needs of regions where local communities are especially dependent on fisheries and related activities, as decided by the Council in its Resolution of 3 November 1976 ...'

4 Article 1(1)(a) of the CFP Regulation provides that the CFP covers 'the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources'.

5 Article 2(2) of that regulation provides:

'The CFP shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.

...'

6 Under Article 3(c) of that regulation, the measures adopted under the CFP are to be established 'in accordance with the best available scientific advice'.

7 Article 4 of the CFP Regulation, entitled 'Definitions', provides in paragraph (1)(8):

'For the purpose of this Regulation the following definitions shall apply:

...

"precautionary approach to fisheries management", as referred to in Article 6 of the UN Fish Stocks Agreement, means an approach according to which the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment'.

8 Article 6(2) of that regulation is worded as follows:

‘When applying this Regulation, the Commission shall consult the relevant advisory bodies and the relevant scientific bodies. Conservation measures shall be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by [the Scientific, Technical and Economic Committee for Fisheries (STECF)] and other advisory bodies, advice received from Advisory Councils and joint recommendations made by Member States pursuant to Article 18.’

9 Article 16 of that regulation provides:

‘1. Fishing opportunities allocated to Member States shall ensure relative stability of fishing activities of each Member State for each fish stock or fishery. The interests of each Member State shall be taken into account when new fishing opportunities are allocated.

2. When the landing obligation in respect of a fish stock is introduced, fishing opportunities shall be fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing opportunities that reflect catches, on the basis of the fact that, for the first and subsequent years, discarding of that stock will no longer be allowed.

3. Where new scientific evidence shows that there is a significant disparity between the fishing opportunities that have been fixed for a specific stock and the actual state of that stock, Member States having a direct management interest may submit a reasoned request to the Commission for it to submit a proposal to alleviate that disparity, while respecting the objectives set out in Article 2(2).

4. Fishing opportunities shall be fixed in accordance with the objectives set out in Article 2(2) and shall comply with quantifiable targets, time-frames and margins established in accordance with Article 9(2) and points (b) and (c) of Article 10(1).

...’

10 Article 25 of the CFP Regulation, which was inserted into Part V thereof, entitled ‘Scientific base for fisheries management’, provides:

‘1. Member States shall, in accordance with the rules adopted in the area of data collection, collect biological, environmental, technical, and socio-economic data necessary for fisheries management, manage those data and make them available to end-users, including bodies designated by the Commission. The acquisition and management of such data shall be eligible for funding through the European Maritime and Fisheries Fund in accordance with a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the period 2014-2020. Those data shall, in particular, enable the assessment of:

- (a) the state of exploited marine biological resources,
- (b) the level of fishing and the impact that fishing activities have on the marine biological resources and on the marine eco-systems, and
- (c) the socio-economic performance of the fisheries, aquaculture and processing sectors within and outside Union waters.

2. The collection, management and use of data shall be based on the following principles:

- (a) accuracy and reliability, and collection in a timely manner;

- (b) the use of coordination mechanisms with a view to avoiding duplication of data collection for different purposes;
 - (c) safe storage and protection of collected data in computerised databases, and their public availability where appropriate, including at aggregated level, whilst ensuring confidentiality;
 - (d) access by the Commission, or by bodies designated by it, to the national databases and systems used for processing the collected data for the purpose of verification of the existence and quality of the data;
 - (e) the availability in a timely manner of the relevant data and the respective methodologies by which they are obtained, for bodies with a research or management interest in the scientific analysis of data in the fisheries sector and for any interested parties, save in circumstances where protection and confidentiality are required under applicable Union law.
3. Every year, Member States shall submit to the Commission a report on the execution of their national data collection programmes and shall make it publicly available.

The Commission shall assess the annual report on data collection after consulting its scientific advisory body and, where appropriate, regional fisheries management organisations (RFMOs) to which the Union is a contracting party or observer and relevant international scientific bodies.

4. Member States shall ensure the national coordination of the collection and management of scientific data for fisheries management, including socio-economic data. To this end, they shall designate a national correspondent and organise an annual national coordination meeting. The Commission shall be informed of the national coordination activities and be invited to the coordination meetings.

...'

Regulation (EU) No 1367/2014

11 Recitals 3 to 7 in the preamble to Regulation No 1367/2014 state:

- '(3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should 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 and having due regard to the objectives of the Common Fisheries Policy established in Regulation (EU) No 1380/2013.
- (4) The [TACs] should be established on the basis of available scientific advice, taking into account biological and socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, in particular at the meetings of the Regional Advisory Councils concerned.
- (5) Fishing opportunities should be in accordance with international agreements and principles, such as the 1995 United Nations agreement concerning the conservation and management of straddling stocks and highly migratory fish stocks ..., and the detailed management principles laid down in the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organisation of the United Nations, according to which, in particular, a regulator should be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

- (6) The latest scientific advice from the International Council for the Exploration of the Sea (ICES) ... indicates that most deep-sea stocks are still harvested unsustainably and that fishing opportunities for those stocks, in order to assure their sustainability, should be further reduced until the evolution of the stocks shows a positive trend. The ICES has further advised that no directed fishery should be allowed for orange roughy in all areas and for certain stocks of red seabream and roundnose grenadier.
- (7) As regards the four stocks of roundnose grenadier, scientific advice and recent discussions in the North East Atlantic Fisheries Commission (NEAFC) indicate that catches of this species may be misreported as catches of roughhead grenadier. In this context, it is appropriate to establish a TAC covering both species while enabling a separate reporting for each of them.'

12 Article 2(1) of Regulation No 1367/2014 provides:

'For the purposes of this Regulation, the following definitions shall apply:

- (a) "Union fishing vessel" means a fishing vessel flying the flag of a Member State and registered in the Union;
- (b) "EU waters" means waters under the sovereignty or jurisdiction of the Member States with the exception of waters adjacent to the territories mentioned in Annex II to the Treaty;
- (c) "total allowable catch" (TAC) means the quantity that can be taken and landed from each fish stock each year;
- (d) "quota" means a proportion of the TAC allocated to the Union or a Member State;
- (e) "international waters" means waters falling outside the sovereignty or jurisdiction of any State.'

13 Part 2 of the annex to that regulation lists the TACs for the different zones and species. The fishing opportunities for roundnose grenadier and roughhead grenadier were established in a common TACs for both species. The TAC relevant to the present case were established as follows:

- for management zone 5B67: 4 010 tonnes for 2015 and 4 078 tonnes for 2016; in neither case are landings of roundnose grenadier to exceed 95% of each Member State quota;
- for management zone 8X14: 3 644 tonnes for 2015 and 3 279 tonnes for 2016 in neither case are landings of roundnose grenadier to exceed 80% of each Member State quota.

14 For the first zone, Spain obtained 65 tonnes for 2015 and 66 tonnes for 2016. For the second zone, Spain obtained 2 617 tonnes for 2015 and 2 354 tonnes for 2016.

Background to the dispute

15 It is apparent from the observations submitted by the Council and the Commission that roundnose grenadier and roughhead grenadier are two deep-sea species which, to the naked eye, are distinguishable one from the other only by the shape of the head. Once the head has been removed from fish of these species and they have been frozen, it is practically impossible to tell them apart.

- 16 The Commission states that roundnose grenadier is a target species in the two management zones in question and that fishing of that species in those areas has been regulated since 2003 by a TAC established at Union level. It adds that roughhead grenadier is less common in those areas and that its fishing was not regulated by any TAC at Union level prior to the adoption of Regulation No 1367/2014.
- 17 According to the Council and the Commission, the working group on biology and assessment of deep-sea fisheries within the ICES, which met from 4 to 11 April 2014, stated in its report for 2014 ('the WGDEEP 2014 report') that it had learned of substantial catches of roughhead grenadier in recent years on the Hatton Bank, in particular by Spanish trawlers. Those institutions also state that the WGDEEP 2014 report mentioned substantial mismatches between observer and official Spanish data on landings of roundnose grenadier, raising concerns regarding possible misreporting of the various species of grenadier.
- 18 The content of the WGDEEP 2014 report was discussed within the NEAFC Permanent Committee on management and science in September 2014. The Permanent Committee emphasised, in particular, that the level of reported roughhead grenadier fisheries compared to roundnose grenadier was 'surprising', as roughhead catches had traditionally been small in comparison. ICES was asked to provide clarification, as far as possible, regarding those fisheries. In particular, ICES was asked to consider whether there were possible errors in the catch reporting or whether there was a new and/or rapidly growing fishery in roughhead grenadier.
- 19 In parallel, the European Union, represented by Unit C2 of the Commission's Directorate-General for Maritime Affairs and Fisheries also asked ICES about this matter, in September 2014.
- 20 On 3 October 2014, the Commission submitted to the Council a proposal for a Council regulation fixing for 2015 and 2016 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks. In particular, the Commission proposed that, in each of the management zones in question, a TAC should be established covering both roundnose grenadier and roughhead grenadier. The TAC level established for both species together was based on scientific advice provided by ICES in relation to roundnose grenadier, there being no such advice in relation to roughhead grenadier. Similarly, national quotas distributing the common TACs were determined in accordance with the principle of relative stability of fishing activities in relation to roundnose grenadier alone.
- 21 On 7 November 2014, ICES produced a scientific advice responding to the requests made by NEAFC and the Union ('the ICES advice of 7 November 2014'). It is apparent from that advice that uncertainties existed in the species composition of reported grenadier catches of roundnose grenadier and roughhead grenadier. In so far as concerned the distribution and abundance of the two species of grenadier, ICES indicated that they occurred in different hydrological environments, the roughhead grenadier being associated with colder, more boreal waters.
- 22 The ICES advice of 7 November 2014 emphasised that substantial catches of roughhead grenadier had been reported in management zone 8X14 and in part of management zone 5B67. On average, observed commercial catches of roundnose grenadier in Subareas VI and XII, belonging to those management zones, were three orders of magnitude larger than those of roughhead grenadier. However, ICES emphasised that there were considerable differences, of more than one order of magnitude, between the relative proportions of roundnose and roughhead grenadier reported in the official landings, on the one hand, and the observed catches and scientific surveys in the areas where roughhead grenadier fishing was currently occurring, on the other.
- 23 The ICES advice of 7 November 2014 nevertheless stated that the available survey and observer data both provided inconclusive information, with limited spatial and temporal coverage. ICES thus concluded that there was a need for more comprehensive catch and effort data relating to roughhead grenadier if NEAFC and the Union wished to regulate that fishery.

- 24 On Monday 10 November 2014, the Council discussed the proposal for a regulation submitted by the Commission on 3 October 2014. On the basis of the Council's discussions and with the agreement of the Commission, the Presidency proposed a compromise text. In essence, the compromise consisted in increasing the TACs originally established for roundnose grenadier to allow for the inclusion of roughhead grenadier.
- 25 It is apparent from the observations submitted by the Council that, in practice, the additional amount was calculated on the basis of the average proportion of roughhead grenadier landings to roundnose grenadier landings. Accordingly, for management zone 5B67, since the ICES scientific advice suggested a TAC of 3 794 tonnes for roundnose grenadier and the average annual landings of roughhead grenadier in that zone represented 5.7% of the average estimated annual landings of roundnose grenadier, the figure of 3 794 tonnes was increased by 216 tonnes (5.7% of 3 794 tonnes), giving a final quantity of 4 010 tonnes. The same method was followed for management zone 8X14, where the average estimated annual landings of roughhead grenadier represented 25.6% of the average estimated annual landings of roundnose grenadier.
- 26 The TACs thus established were distributed among the Member States concerned in accordance with the allocation formula corresponding to relative stability of fishing activities for roundnose grenadier. As a result, the quotas for the Kingdom of Spain represented 1.62% and 71.8% respectively of the common TACs established for management zones 5B67 and 8X14.
- 27 On 15 December 2014, political agreement was reached on the basis of the Presidency compromise, with slight alterations. All the delegates expressed their approval of the political agreement, with the exception of the Spanish and Portuguese delegates, who submitted a statement for inclusion in the Council's minutes. In that statement the Kingdom of Spain argued that the allocation of the common TACs established for roundnose grenadier and roughhead grenadier did not comply with the principle of relative stability of fishing activities on the basis of the historic catches of each Member State.
- 28 Regulation No 1367/2014 was adopted in the terms resulting from the political agreement and was published in the *Official Journal* on 20 December 2014. It entered into force on the day following its publication.

Forms of order sought and procedure before the Court

- 29 The Kingdom of Spain claims that the Court should:
- annul Regulation No 1367/2014, and
 - order the Council to pay the costs.
- 30 The Council contends that the Court should:
- dismiss the action in its entirety, and
 - order the Kingdom of Spain to pay the costs.
- 31 By decision of the President of the Court of 1 July 2015, the Commission was granted leave to intervene in support of the form of order sought by the Council.

The request to have the oral procedure reopened

- 32 Following the delivery of the Opinion of the Advocate General, on 9 September 2016 the Council requested that the oral procedure be reopened pursuant to Article 83 of the Rules of Procedure of the Court of Justice. By letter received at the Court Registry on the same date, the Commission made a similar request.
- 33 In support of their requests the Council and the Commission submit, in essence, that the Advocate General's interpretation of the principle of relative stability of fishing activities is based on arguments that were not debated by the parties.
- 34 It should be noted in that regard that the Court may, at any time, after hearing the Advocate General, order that the oral procedure be reopened, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or that the case must be dealt with on the basis of an argument that has not been debated by the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 35 In the present case the Court considers, after hearing the views of the Advocate General, that it has all the material necessary to enable it to give a decision on the reference for a preliminary ruling before it and that the case does not have to be examined in the light of an argument that has not been debated before it.
- 36 The Council's and Commission's requests that the oral procedure be reopened must accordingly be rejected.

The action

- 37 In support of its action for annulment of Regulation No 1367/2014, the Kingdom of Spain relies on three pleas in law: (i) the Council exceeded the bounds of its discretion and there has been infringement of the principle of relative stability of fishing activities; (ii) infringement of the principle of proportionality; and (iii) infringement of the principle of equal treatment.

The first plea

Arguments of the parties

- 38 By the first part of its first plea, the Kingdom of Spain criticises the Council for having based itself on incorrect data when it established a common TAC covering roundnose grenadier and roughhead grenadier on the ground that catches of roundnose grenadier 'may be reported as catches of roughhead grenadier'. As evidenced by recital 7 in the preamble to Regulation No 1367/2014, that decision was adopted on the basis of the scientific advice and recent discussions in the NEAFC. However, the NEAFC's scientific advice was not conclusive as to the question whether it was necessary to establish a common TAC for both grenadier species.
- 39 Moreover, in its advice of 7 November 2014, ICES stated that it was impossible to reach a conclusion regarding the existence of a roughhead grenadier fishery, as there was no information about catches of the different species of grenadier, since the data for 2010 were insufficient to enable any conclusions to be drawn on that point. It is also stated in that advice that there are considerable differences between the data concerning landings of catches of roughhead grenadier and roundnose grenadier. The ICES accordingly concluded that, in order to establish a fishery for roughhead grenadier, it was necessary to

obtain more complete and detailed information on catches and landings. It is thus clear from that advice that there is no clear scientific data supporting a conclusion that both species occurred in management zones 5B67 and 8X14.

- 40 Moreover, according to the Kingdom of Spain, it cannot be argued that it was not possible to take account of the data provided by it on 28 November 2014 in response to a request for information on the ground that political agreement on Regulation No 1367/2014 had been reached on 10 November 2014, whereas that regulation was adopted only on 15 December 2014.
- 41 The Kingdom of Spain infers from that that the Council exceeded the bounds of its discretion by establishing common TACs for both species, whereas the ICES advice indicated that the available data did not prove that those two species occurred in the management zones in question and were therefore liable to be caught together.
- 42 In the second part of its first plea, the Kingdom of Spain argues that neither the Council nor the Commission took historic catches of roughhead grenadier into consideration when defining the allocation formula to be applied to the common TACs established for roughhead grenadier and roundhead grenadier. The national quotas established in the contested provisions therefore breach the principle of relative stability of fishing activities, in accordance with which account must be taken of the historic distribution of catches among the Member States' fishing fleets for each species concerned.
- 43 The Kingdom of Spain considers that the common fishing quotas which it was allotted for roundnose grenadier and roughhead grenadier should have been higher, since the Spanish fishing fleet took a significant proportion of roughhead grenadier catches over the period from 2009 to 2013. The loss sustained by the Spanish fishing fleet as a result of that alleged breach of the principle of relative stability of fishing activities amounts to EUR 346 926.
- 44 Neither the Council nor the Commission has disputed the fact that no account was taken of historic catches of roughhead grenadier when the common TACs at issue were established. It is in fact common ground that that TAC was allocated among the Member States in accordance with the allocation formula ensuring relative stability of fishing activities of roundnose grenadier alone.
- 45 The Council and the Commission contend that the first plea should be rejected as unfounded.

Findings of the Court

- 46 As regards, first of all, the Council's allegedly exceeding the bounds of its discretion, it should first be borne in mind that when it is fixing TACs and allocating fishing opportunities among the Member States, the Council has to evaluate a complex economic situation. In such circumstances, the Council's discretion is not limited to the nature and scope of the measures to be taken but extends, to some degree, to the finding of the basic facts. In reviewing the exercise of such a power, the Court must confine itself to examining whether there has been a manifest error or misuse of power or whether the authority in question has clearly exceeded the bounds of its discretion (see to that effect, judgments of 19 February 1998, *NIFPO and Northern Ireland Fishermen's Federation*, C-4/96, EU:C:1998:67, paragraphs 41 and 42; 5 October 1999, *Spain v Council*, C-179/95, EU:C:1999:476, paragraph 29; and 9 September 2004, *Spain v Commission*, C-304/01, EU:C:2004:495, paragraph 23).
- 47 Next, it is apparent from Article 2(2) of the CFP Regulation that 'the precautionary approach' is to be applied in fisheries management.

- 48 According to the definition thereof given in point 8 of Article 4(1) of that regulation, that approach implies that the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment.
- 49 Lastly, as observed by the Advocate General in points 54 and 55 of his Opinion, Article 6(2) of the same regulation merely establishes an obligation to ‘take account’ of available scientific, technical and economic advice when adopting conservation measures, but does not prevent the European Union legislature from adopting such conservation measures where there is no conclusive scientific, technical and economic advice.
- 50 The Court has, moreover, held in relation to a similar obligation under Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1), that fishery conservation measures need not be completely consistent with the scientific advice and the absence of such advice or the fact that it is inconclusive cannot prevent the Council from adopting such measures as it deems necessary for achieving the objectives of the CFP (see, by analogy, judgment in *Mondiet*, C-405/92, EU:C:1993:906, paragraph 31).
- 51 It follows from the foregoing that, in the present case, the Council had the power to adopt a common TAC for roundnose grenadier and roughhead grenadier even in the absence of ‘conclusive’ scientific evidence that those two species occur and are caught in the management zones in question, as it considered that that measure was appropriate for the conservation of roundnose grenadier resources.
- 52 Moreover, the WGDEEP 2014 report and the ICES advice of 7 November 2014 referred to reports of catches of roughhead grenadier in the management zones in question, the magnitude of which raised doubts as to their reliability, as the catches of roundnose grenadier were likely reported as catches of roughhead grenadier, which risked having a substantial impact on the effectiveness of the TACs established for roundnose grenadier, given that the two species in question are indistinguishable from each other once the head has been removed and they have been frozen. The Council was thus empowered to adopt a measure to counteract that risk.
- 53 In those circumstances, the Council did not exceed the bounds of its discretion in establishing a common TAC for roundnose grenadier and roughhead grenadier.
- 54 The first part of the second plea must therefore be dismissed as unfounded.
- 55 As regards, secondly, the alleged infringement of the principle of relative stability of fishing activities, it must be remembered that Article 16 of the CFP Regulation states that ‘[f]ishing opportunities allocated to Member States shall ensure relative stability of fishing activities of each Member State for each fish stock or fishery’ and that the ‘interests of each Member State shall be taken into account when new fishing opportunities are allocated’.
- 56 Moreover, recitals 35 and 36 in the preamble to that regulation state that, in view of, inter alia, the dependence of certain coastal communities on fishing, it is necessary to ensure the relative stability of fishing activities by allocating fishing opportunities among Member States, based on a predictable share of the stocks for each Member State, and that that stability should ‘safeguard and take full account of the particular needs of regions where local communities are especially dependent on fisheries and related activities’.
- 57 It follows from the foregoing that the aim of the national quotas scheme consists in ensuring that each Member State has an equitable share of the established TAC, determined essentially on the basis of catches from which traditional fishing activities, the local populations that are especially dependent on

fisheries and related industries of that Member State benefited before the quota scheme was established (see, to that effect, judgment of 14 December 1989, *Agegate*, C-3/87, EU:C:1989:650, paragraph 24).

- 58 It is in the light of those considerations and the fact that the European Union legislature has broad discretion in determining the nature and scope of the measures to be taken that it must be ascertained whether the Council, in not taking account of the historic catches of roughhead grenadier reported by the Kingdom of Spain when it determined the quotas to be allocated to each Member State following the establishment of a common TAC for that species and roundnose grenadier, infringed the principle of relative stability of fishing activities.
- 59 It should be noted in that regard that the present case is distinguishable on a number of points from other cases which to date have been brought before the Court concerning the CFP. To begin with, the two fish species in question are indistinguishable from one another to the naked eye once the head has been removed from the fish and it has been frozen. Next, the scientific advice available to the European Union legislature refers to the possibility that high reported catches of roughhead grenadier originating principally from a single Member State, namely the Kingdom of Spain, relate to catches of roundnose grenadier misreported as catches of roughhead grenadier. Lastly, the Council did not establish a new TAC for roughhead grenadier and therefore did not allocate a new fishing possibility, but merely established, for 2015 and 2016 only, a common TAC for both species.
- 60 Thus, in the present case the Council decided not to allocate quotas as advocated by the Kingdom of Spain, whilst its taking account of reported catches of roughhead grenadier submitted by that Member State for the calculation of the quotas in question had the effect of creating a lasting advantage for a Member State whose catch reports may, according to scientific advice, be incorrect. By contrast, in taking the approach it did, consisting initially of not taking account of those catches as reported in the calculation of national quotas, the Council avoided providing assurances in that regard that were liable to give rise to a legitimate expectation, whilst retaining the right to establish, once the information on reported catches had been verified and conclusive scientific advice had been lodged, quotas based on established data which could therefore be considered equitable quotas.
- 61 The foregoing conclusion is not affected by the Kingdom of Spain's argument to the effect that, since the Council took account of reported catches of roughhead grenadier in establishing a common TAC for both species, it ought to have taken into consideration historic catches of roughhead grenadier reported by the Kingdom of Spain, given the doubts as to the reliability of the reports of catches of the fish species in question raised by the scientific advice referred to in paragraph 52, and given the European Union legislature's broad discretion in CFP matters.
- 62 Therefore, the Council cannot be criticised in the present case for having infringed the principle of relative stability of fishing activities.
- 63 In the light of the foregoing considerations, the second part of the first plea must also be rejected as unfounded.
- 64 The first plea must therefore be dismissed in its entirety.

The second plea

Arguments of the parties

- 65 The Kingdom of Spain criticises the Council for having infringed the principle of proportionality by establishing, in Regulation No 1367/2014, a common TAC covering roundnose grenadier and roughhead grenadier in zones 5B67 and 8X14.

- 66 First of all, the measure in question is not appropriate because, when a common TAC was established for roundnose grenadier and roughhead grenadier, the principle of relative stability of fishing activities was not observed in relation to historic catches of roughhead grenadier in the Kingdom of Spain during preceding years.
- 67 Next, the establishment of a common TAC for both species of grenadier is not a necessary measure, as it was not possible to take account of the Kingdom of Spain's historic catches of roughhead grenadier and thus adopt a measure less prejudicial to the interests of the Kingdom of Spain.
- 68 Lastly, the measure in question is disproportionate because it is based on a scenario in which significant catches of roundnose grenadier may have been misreported as catches of roughhead grenadier. That scenario has not been scientifically verified, however, and to use it as a basis is disproportionate to the harm to the Kingdom of Spain's interests caused by the failure to take account of historic catches of roughhead grenadier in establishing the common TAC for both species.
- 69 The Kingdom of Spain adds that it is not so much the establishment of a common TAC for roundnose grenadier and roughhead grenadier that is prejudicial to it, but rather the fact that historic catches of roughhead grenadier were not taken into account by the Council in the establishment of the common TAC for both species.
- 70 The Council and the Commission consider that this plea must be rejected as being unfounded.

Findings of the Court

- 71 It should be borne in mind that the principle of proportionality, which is one of the general principles of EU law, requires that acts adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; 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 (see, *inter alia*, judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 42 and the case-law cited).
- 72 According to settled case-law, as regards judicial review of the implementation of that principle, bearing in mind the wide discretion enjoyed by the European Union legislature where the common fisheries policy is concerned, the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue. What must be ascertained is therefore not whether the measure adopted by the legislature was the only one or the best one possible but whether it was manifestly inappropriate (see, in regards to the common agricultural policy, judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 43 and the case-law cited).
- 73 As regards the proportionality of the rules in question in the present case, it should be noted that, as evidenced by paragraphs 59 and 60 of the present judgment, taking account of the Kingdom of Spain's historic catches of roughhead grenadier in the establishment of the common TAC for roundnose grenadier and roughhead grenadier had precisely the effect of allocating quotas to that Member State on the basis of reported catches which the Council could, on the basis of scientific advice, consider to be in all likelihood incorrect.
- 74 Since the Council intended to protect the roundnose grenadier against overfishing, whilst also retaining the possibility of fixing, once the information on reported catches of roughhead grenadier had been verified and conclusive scientific advice lodged, TACs and quotas based on established reliable data,

the decision not to take account of reports of catches of roughhead grenadier submitted by the Kingdom of Spain in the establishment of the common TAC for roundnose grenadier and roughhead grenadier cannot be regarded as manifestly inappropriate.

75 Moreover and in any event, the Kingdom of Spain has not shown that a measure less prejudicial to its interests would have also enabled attainment of the objectives pursued by the Council.

76 Therefore, the second plea must be rejected as unfounded.

The third plea

Arguments of the parties

77 By its third plea, the Kingdom of Spain criticises the Council for having infringed the principle of equal treatment by establishing unilaterally a common TAC covering roundnose grenadier and roughhead grenadier whilst, in similar cases, the EU institutions have either observed the principle of relative stability of fishing activities by taking account of the Member States' historic catch quotas for establishing the TAC, or did not establish common TACs when one of the Member States opposed it.

78 Thus, first of all, in 2011, following discussions concerning the inclusion of a new species, the demersal redfish, in the TAC covering redfish, the Commission took account of the allegations of the Federal Republic of Germany and the Republic of Estonia relating to the establishment of the TAC for demersal redfish. Next, the Commission, which has been planning to establish a TAC for sea bass since 2012, when faced with opposition from certain Member States including Ireland, stated that a TAC would be established for that species taking account of the historic catches of each Member State, in accordance with the principle of relative stability of fishing activities, and allowed the Member States to negotiate freely an agreement liable to suit each of them. Lastly, and continuing in its efforts to reach a consensus, the Commission has for several years encouraged the Kingdom of Spain and the Republic of Portugal to conclude an agreement on sardines, with a view to establishing a TAC that takes account of the principle of relative stability of fishing activities.

79 The Council and the Commission consider that the third plea should be rejected as unfounded.

Findings of the Court

80 Regarding the principle of equal treatment, it should be borne in mind that, according to settled case-law, the second subparagraph of Article 40(2) TFEU, which prohibits all discrimination in the context of the common agricultural and fisheries policy, is merely a specific expression of the general principle of equal treatment, which requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified (see, to that effect, judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 48 and the case-law cited).

81 It should be borne in mind in the present case that the establishment of the common TAC for roundnose grenadier and roughhead grenadier and not taking account of historic catches of roughhead grenadier as reported by the Kingdom of Spain were, in the view of the Council, necessary to ensure effective protection of the roundnose grenadier in a situation characterised by very specific circumstances, as evidenced by paragraph 59 above.

82 The Kingdom of Spain has not produced anything demonstrating that the examples on which it relies in support of its third plea were characterised by circumstances identical or similar to those referred to in the preceding paragraph. In particular, the Kingdom of Spain has not demonstrated that, in the

cases referred to by way of comparison, it was highly likely that significant errors were committed in the reports of catches of a species subject to a TAC which, at the time the catches were landed, may have been confused with another species not subject to a TAC.

83 Therefore, the third plea should also be dismissed as unfounded.

84 Since none of the pleas in law put forward has been upheld, the action brought by the Kingdom of Spain must be dismissed in its entirety.

Costs

85 Under Article 138(1) 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 the Council has applied for costs to be awarded against the Kingdom of Spain and the latter has been unsuccessful, the Kingdom of Spain must be ordered to pay the costs. The Commission, which intervened in support of the form of order sought by the Council, must be ordered, in accordance with Article 140(1) of the Rules of Procedure, to bear its own costs.

On those grounds, the Court (Fifth Chamber) hereby:

- 1. Dismisses the action;**
- 2. Order the Kingdom of Spain to pay the costs;**
- 3. Order the European Commission to bear its own costs.**

[Signatures]