



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

18 June 2014*

(Fisheries — Conservation of fishery resources — Overfishing by Spain of mackerel in zones VIII c, IX and X and in European Union waters of CECAF 34.1.1 allocated for the year 2010 — Deductions from fishing quotas allocated for the years 2011 to 2015 — Rights of defence — Legal certainty — Legitimate expectations — Equal treatment)

In Case T-260/11,

Kingdom of Spain, represented initially by N. Díaz Abad and L. Banciella Rodríguez-Miñón, and subsequently by M. Sampoll Pucurull and Banciella Rodríguez-Miñón, abogados del Estado,

applicant,

v

European Commission, represented by A. Bouquet, F. Jimeno Fernández and D. Nardi, acting as Agents,

defendant,

ACTION for annulment of Commission Regulation (EU) No 165/2011 of 22 February 2011, providing for deductions from certain mackerel quotas allocated to Spain in 2011 and subsequent years on account of overfishing in 2010 (OJ 2011 L 48, p. 11),

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka and V. Kreuschitz (Rapporteur), Judges,

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2013,

gives the following

* Language of the case: Spanish.

Judgment

Background to the dispute

- 1 In 2010, the services of the European Commission carried out several missions to monitor the catches and control system administered by the Spanish authorities, including a mission from 15 to 19 March 2010 in Cantabria and the Basque Country (Spain).
- 2 Following the monitoring mission concerned and in the light of the data which the Spanish authorities had provided regarding the 2010 mackerel fishing year, the Commission concluded that the Kingdom of Spain had exceeded by 19 621 t the quotas allocated to it for that species for the year 2010. Accordingly, it is apparent from paragraph 3.8 of the mission report that, from March 2010, with 39 693 t caught, the annual mackerel quotas of 24 604 t had been exceeded by 61%.
- 3 By letter of 12 July 2010, the Commission sent the mission report to the Spanish authorities and requested them to make their observations.
- 4 By letter of 20 July 2010, the Spanish authorities responded to that request. In their observations, those authorities did not contest the figures relied on by the Commission.
- 5 By letter of 20 July 2010 to the Spanish Ministry of Agriculture, Fisheries and Food, Ms D., Commissioner for Maritime Affairs and Fisheries, pointed out that mackerel fishing was important not only for the Kingdom of Spain but also for the European Union as a whole, and that its monitoring and control were a priority for the Commission. She also stated that the controls carried out in respect of the Spanish mackerel-fishing fleet were inadequate and that it was difficult to obtain, from the competent Spanish authorities, which displayed a lack of cooperation, the information needed to assess the situation.
- 6 By letter of 30 September 2010 to the Spanish Minister for Agriculture, Fisheries and food, Ms D., in essence, reiterated her concern regarding mackerel overfishing and stated that the Commission reserved the right to use legal instruments at its disposal in order to ensure strict compliance with EU law.
- 7 On 28 November 2010, a meeting was held between Ms D. and Ms A., Spanish Minister for the Environment and Rural and Marine Affairs, during which the matter of mackerel overfishing was addressed. On that occasion, Ms A. accepted the principle that the mackerel quantities overfished had to be paid back but expressed her wish to negotiate the payback terms.
- 8 On 30 November 2010 a meeting was held between the Commission's services and representatives of the Spanish authorities; point 4 on the agenda provided as follows:

‘Mackerel and hake fishing — payback of estimated overfishing since 2009

Under this point, DG MARE C will present its estimates of overfishing for these two resources since 2009 and also address the question of the fishing effort allocated. This overfishing represents significant quantities for both resources. In those circumstances, the Commission's services have no alternative but to apply the provisions of Regulation (EC) No 1224/2009 relating to deduction from quotas, namely Article 105 of that regulation ... Our services are prepared to discuss payback terms with the Spanish authorities, on the basis of those provisions.’

- 9 The account of that meeting, as communicated to the Spanish authorities, stated *inter alia*:

‘The Commission points out that, since [the Kingdom of] Spain considers that there is no legal basis for payback for overfishing prior to the year 2010, these discussions are pointless. The Commission notes that the applicable regulations authorise it to operate, in 2011, deductions for overfishing carried out in 2010, the volume of which is estimated at approximately 19 000 [t]; the multiplying factor referred to in Article 105 [of Regulation No 1224/2009] would be applied. [The Kingdom of] Spain states that it accepts the overfishing figures used by the Commission. The Commission also explains that it is not required to consult [the Kingdom of] Spain regarding the form of the deductions operated for overfishing (unless it intends to operate deductions from resources other than mackerel). On the other hand, the consultation procedure to which the control regulation refers is prescribed for every case of payback sought for “historic” overfishing. The Commission considers that the new control regulation is applicable, since the starting point of the payback procedure is the fact that the Commission claims, on the basis of reliable data, that there has been overfishing, and that is what happened in 2010.’

- 10 By letter of 14 December 2010 to Ms A., Ms D., in essence, asked the Spanish authorities to tackle the problem of overfishing as a matter of urgency. She also noted that the Commission’s services and the Spanish authorities were collaborating in order to ascertain the actual overfishing volumes and then to design a payback scheme and also to establish a plan of action to reinforce the Spanish control system. In that regard, Ms D. strongly recommended that the 2011 mackerel fishing season be opened only up to 50% of the quota allocated to the Kingdom of Spain for that year.
- 11 On 21 December 2010, the Kingdom of Spain adopted Orden ARM/3315/2010, de 21 de diciembre, por la que se modifica la Orden ARM/271/2010, de 10 de febrero, por la que se establecen los criterios para el reparto y la gestión de la cuota de caballa, y se regula su captura y desembarque (Order ARM 3315/2010 amending Order ARM 271/2010 of 10 February 2010 laying down the criteria for distributing and managing the mackerel quota and governing its catch and landing BOE No 310, of 22 December 2010, p. 105 675, ‘Order ARM 3315/2010’. Under Article 2(2) of Order ARM 3315/2010, the mackerel fishing season was deemed to start on 15 February 2011.
- 12 On 11 January 2011 a meeting was held between the Commission’s services and the Spanish authorities. According to its agenda, that meeting was devoted to analysing the Spanish fleet’s mackerel catch in the North-East Atlantic during the period from 2002 to 2010, on the ground that that stock had probably been overfished. According to point 1 on that agenda:

‘Mackerel and hake fishing — payback of estimated overfishing since 2009

Under this point, DG MARE C will present its estimates of overfishing for these two resources since 2009 and also address the question of the fishing effort allocated. This overfishing represents significant quantities for both resources. In those circumstances, the Commission’s services have no alternative but to apply the provisions of the control regulation relating to deduction from quotas, namely Article 105 of that regulation ... Our services are prepared to discuss payback terms with the Spanish authorities, on the basis of those provisions.’

- 13 The account of the meeting of 11 January 2011, as communicated to the Spanish authorities, stated *inter alia*:

‘The Commission points out that, since [the Kingdom of] Spain considers that there is no legal basis for payback for overfishing prior to the year 2010, these discussions are pointless. The Commission notes that the applicable regulations authorise it to operate, in 2011, deductions for overfishing carried out in 2010, the volume of which is estimated at approximately 19 000 [t]; the multiplying factor referred to in Article 105 [of the control regulation] would be applied. [The Kingdom of] Spain

states that it accepts the overfishing figures used by the Commission. The Commission also explains that it is not required to consult [the Kingdom of] Spain regarding the form of the deductions operated for overfishing (unless it intends to operate deductions from resources other than mackerel). On the other hand, the consultation procedure to which the control regulation refers is prescribed for every case of payback sought for “historic” overfishing. The Commission considers that the new control regulation is applicable, since the starting point of the payback procedure is the fact that the Commission claims, on the basis of reliable data, that there has been overfishing, and that is what happened in 2010.’

- 14 On 24 January 2011, a meeting was held between Ms E., Director-General of the Commission’s Directorate-General for Maritime Affairs and Fisheries, and Ms V.I., Secretary General for the Sea at the Ministry of the Environment, Rural and Marine Affairs, at the request of the latter, concerning the mackerel overfishing situation. After that meeting, Ms V.I., by e-mail of 8 February 2011, suggested to Ms E., first, that the total quantity of the deduction be determined, second, that, following the ‘British example’, a deduction factor of 0.7 be established, third, that an appropriate period of fifteen years be prescribed, fourth, that, for social and economic reasons, a deduction rate of between 15% and 18% not be exceeded, fifth, that a review clause be drawn up for the purpose of examining the situation after half the period had elapsed, that is, after the seventh or eighth year, and, sixth, that the necessary adjustments be made to ensure compliance with the total quantity.
- 15 On 4 February 2011, a private meeting was held between Ms D. and Ms A., during which the latter was informed of the Commission’s intention to apply the deductions over a two-year period. Ms A., however, requested a longer period to take account of certain economic circumstances and interests of the Spanish fishing fleet, which would need some time to adapt to the possible consequences of overfishing and the subsequent deduction.
- 16 Later, the competent services of the Commission initiated the inter-service consultation procedure on the draft of the contested regulation by proposing to spread the deductions over a four-year period and gradually to increase the amount of those deductions.
- 17 During a telephone conversation held, either on 17 or 18 February 2011, between Ms K., a member of Ms D.’s Cabinet, and Ms A., the latter requested that the deductions be spread over a period of five or six years. Since Ms D. agreed to the request to spread those deductions over a five-year period, the inter-service consultation procedure mentioned in paragraph 16 above was suspended on 18 February and resumed on 22 February 2011, in order to make the necessary amendment to the annex to the draft of the contested regulation.
- 18 On 22 February 2011, the Commission adopted Regulation (EU) No 165/2011 providing for deductions from certain mackerel quotas allocated to Spain in 2011 and subsequent years on account of overfishing in 2010 (OJ 2011 L 48, p. 11, ‘the contested regulation’), on the basis of Article 105(1) and (2) of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ 2009 L 343, p. 1, ‘the control regulation’).
- 19 In recital 1 in the preamble to the contested regulation, it is stated that ‘[a] fishing quota for mackerel in zone VIIIc, IX and X; U[nion] waters of CECAF 34.1.1 was allocated to Spain for 2010 by Council Regulation (EU) No 53/2010 [OJ 2010 L 21, p. 1] and for 2011 by Council Regulation (EU) No 57/2011 [OJ 2011 L 24, p. 1]’.

- 20 Recital 3 in the preamble to the contested regulation states that '[t]he Commission detected inconsistencies in the [Kingdom of Spain's] data about the mackerel fishery in 2010 by crosschecking such data as they had been recorded and reported at different stages of the value chain, from catch to first sale', that '[t]hese inconsistencies were further corroborated through the conduct of several audits, verification missions and inspections in Spain in accordance with [the control regulation]' and that '[t]he evidence gathered in the course of the investigation allows the Commission to establish that this Member State has exceeded its mackerel quota in the year 2010 by 19 621 tonnes'.
- 21 Recitals 4 and 5 in the preamble to the contested regulation state that '[a]ccording to paragraph 1 of Article 105 of [the control regulation], when the Commission has established that a Member State has exceeded the fishing quotas which have been allocated to it, the Commission shall operate deductions from future fishing quotas of that Member State', and that '[p]aragraph 2 of Article 105 of Regulation (EC) No 1224/2009 provides that deductions from fishing quotas shall be operated in the following year or years by applying certain multiplying factors set out in that paragraph'.
- 22 Under Recital 6 in the preamble to the contested regulation, '[t]he deductions applicable for overfishing in 2010 are higher than the quota allocated to [the Kingdom of Spain] in 2011 for the stock concerned'.
- 23 Finally, Recital 7 in the preamble to the contested regulation states as follows:

'The mackerel stock in question is currently within safe biological limits and scientific advice indicates that this is likely to remain so in the foreseeable future. An immediate and full application of the deduction from the [Kingdom of Spain] mackerel quota for 2011 would lead to a complete closure of this fishery in 2011. In the specific circumstances of this case, such complete closure is likely to involve serious risks of disproportionate socio-economic consequences for both the fishing sector concerned and the associated processing industry. On balance, and taking into consideration the objectives of the Common Fisheries Policy, it is considered appropriate in this particular case to operate the deductions needed for the restitution of the overfishing amount due over a period of 5 years, from 2011 to 2015 and, if necessary, to operate any remainder deduction from the mackerel quota allocated in immediately subsequent years.'

- 24 Article 1 of the contested regulation provides that '[t]he fishing quota for mackerel (*Scomber scombrus*) in zone VIIIc, IX and X; EU waters of CECAF 34.1.1 allocated to Spain in the year 2011 by Regulation (EU) No 57/2011 shall be reduced as shown in the Annex'. Similarly, Article 2 of that regulation provides that '[t]he fishing quota for mackerel (*Scomber scombrus*) in zone VIIIc, IX and X; EU waters of CECAF 34.1.1 that may be allocated to Spain in the years from 2012 to 2015 and, where appropriate, the fishing quota for the same stock which may be allocated to Spain in subsequent years shall be reduced as shown in the Annex'.
- 25 The Annex to the contested regulation thus provides a table which includes a column entitled 'Difference quota-catches (overfishing)', under which is the information '- 19 621 [t] (79,7% of 2010 quota)', followed by a column giving a 'Multiplying factor of Article 105(2) of Regulation (EC) No 1224/2009 (overfishing × 2)' of '- 39 242 [t]', and columns providing for deductions for the years 2011 to 2015, namely, respectively, 4 500 t for 2011, 5 500 t for 2012, 9 748 t for 2013, 9 747 t for 2014 and 9 747 t for 2015, 'and, where appropriate, for subsequent years'.

Procedure and forms of order sought by the parties

- 26 The Kingdom of Spain brought the present action by application lodged at the Registry of the General Court on 19 May 2011.

- 27 The Kingdom of Spain claims that the Court should:
- annul the contested regulation;
 - Order the Commission to pay the costs.
- 28 The Commission contends that the Court should:
- dismiss the action as unfounded;
 - order the Kingdom of Spain to pay the costs.
- 29 After a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Fourth Chamber, to which the present case was, consequently, assigned.
- 30 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.
- 31 At the hearing held on 11 December 2013 the parties presented their oral arguments and answered the questions asked by the Court. At the hearing, the Court decided to leave the oral procedure open, so that the Commission might produce any relevant information to show that the Spanish authorities had been given the opportunity to state their views, before the adoption of the contested regulation, concerning the manner in which that regulation planned to make deductions from the mackerel quotas; this was noted in the record of the hearing.
- 32 By letter of 9 January 2014, the Commission submitted observations and further information in that regard.
- 33 By letter of 28 January 2014, the Kingdom of Spain submitted its observations on that letter from the Commission.
- 34 The General Court ordered the end of the oral procedure on 4 February 2014.

Law

Summary of the grounds for annulment

- 35 In support of the action, the Kingdom of Spain raises six pleas in law, alleging, first, infringement of Article 105(6) of the control regulation, second, infringement of essential procedural requirements for not having requested a prior reasoned opinion from the management committee within the meaning of Article 119 of that regulation, third, infringement of the rights of the defence, fourth, infringement of the principle of legal certainty, fifth, infringement of the principle of the protection of legitimate expectations and, sixth, infringement of the principle of equal treatment.

The first plea, alleging infringement of Article 105(6) of the control regulation

- 36 The Kingdom of Spain maintains that the contested regulation is unlawful in that it was adopted before the Commission laid down detailed rules of application in accordance with Article 105(6) of the control regulation, which requires the adoption of rules for determining the quantities at issue. It also contests that the provisions of Article 105(1) of that regulation are sufficiently clear and precise and do not require any implementing measure. The fact that Article 105(6) of that regulation provides

that detailed rules of application ‘may’ be adopted does not mean that the Commission has a discretionary power to adopt them or to choose for that purpose between the procedure laid down in Article 119 of the same regulation and another procedure.

37 The Commission disputes the arguments of the Kingdom of Spain and contends that this plea should be rejected.

38 It should be pointed out that Article 105(6) of the control regulation provides that ‘[d]etailed rules for the application of this Article, and in particular for determining the quantities concerned, may be adopted in accordance with the procedure referred to in Article 119’, namely the procedure under Article 119(2) of that regulation, read in conjunction with Articles 4 to 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23), as amended by Council Decision 2006/512/EC of 17 July 2006 (OJ 2006 L 200, p. 11).

39 Moreover, Article 119 of the control regulation, under the heading ‘Committee procedure’, provides, *inter alia*:

‘1. The Commission shall be assisted by the Committee set up under Article 30 of Regulation (EC) No 2371/2002.

2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC shall apply.

...’

40 In particular, the use, in Article 105(6) of the control regulation, of the word ‘may’ shows that the Commission has a discretion with regard to the fundamental question of whether a proposal to adopt detailed rules of application in that regard should be submitted to the competent committee (see, *inter alia*, the first sentence of Article 4(2) of Decision 1999/468) and that that discretion also includes the Commission’s power to choose, for that purpose, between the various subjects and instruments covered by that regulation. Only that interpretation is compatible with the fact that Article 105(6) states, by way of example (‘in particular’), the power — not the obligation — to lay down detailed rules of application ‘for determining the quantities concerned’.

41 The Kingdom of Spain is therefore working on an incorrect assumption by maintaining that the Commission was required to adopt detailed rules of application in order to be able to implement the instruments available to it under Article 105(1) and (2) of the control regulation, since the scope of the Commission’s power and the criteria governing the implementation of those instruments depend rather on the very wording of those provisions.

42 It is therefore necessary to determine whether those provisions are sufficiently clear, precise and unconditional to enable the Commission to implement them directly in relation to the Member States concerned.

43 Under the provisions of Article 105(1) and (2) of the control regulation:

‘1. When the Commission has established that a Member State has exceeded the quotas which have been allocated to it, the Commission shall operate deductions from future quotas of that Member State.

2. In the case of an overfishing of a quota, allocation or share of a stock or a group of stocks available to a Member State in a given year the Commission shall operate deductions in the following year or years from the annual quota, allocation or share of the Member State which has overfished by applying a multiplying factor according to the following table:

| Extent of overfishing relative to the permitted landings | Multiplying factor |
|--|--------------------|
| Up to 5% | Overfishing x 1.0 |
| Over 5% up to 10% | Overfishing x 1.1 |
| Over 10% up to 20% | Overfishing x 1.2 |
| Over 20% up to 40% | Overfishing x 1.4 |
| Over 40% up to 50% | Overfishing x 1.8 |
| Any further overfishing greater than 50% | Overfishing x 2.0 |

However, a deduction equal to the overfishing * 1,00 shall apply in all cases of overfishing relative to permitted landing equal to, or less than, 100 tonnes.’

- 44 In that regard, it must be stated that, contrary to what the Kingdom of Spain maintains, the wording of Article 105(1) of the control regulation affirms a circumscribed power of the Commission in the sense that, when it has established that there has been overfishing by a Member State, it is required to operate deductions from the future quotas of that Member State (‘shall operate’). Similarly, Article 105(2) does not confer a discretion on the Commission regarding the action to be taken on such overfishing ‘in a given year’, but requires it operate ‘deductions in the following year or years from the ... quota ... of the Member State which has overfished’ (‘shall operate’) by applying a prefix multiplying factor according to the level of overfishing found (‘by applying’). Moreover, it follows that, as the Commission points out, the total volume of the deductions to be operated is the result of a precise calculation, the parameters of which — namely, the level of overfishing and the multiplying factor — are specifically laid down by that provision itself, so that the Commission has no discretion for determining their limit. In that context, the Commission has a discretion only as regards the manner in which it intends to spread the deductions ‘in the following year or years from the annual quota, allocation or share of the Member State which has overfished’, namely, spreading them over time and determining the period during which those deductions must be operated in order to attain the prescribed limit.
- 45 It follows that the provisions of Article 105(1) and (2) of the control regulation, particularly those concerning the calculation of the total amount of the deductions to be made, are sufficiently clear, precise and unconditional and may therefore be applied directly by the Commission.
- 46 The Kingdom of Spain is therefore wrong to plead infringement of the Commission’s alleged unconditional obligation to adopt detailed rules of application, including for determining the quantities concerned, as a legal prerequisite for the adoption of deduction measures under Article 105(1) and (2) of the control regulation.
- 47 Therefore, the first plea must be rejected as unfounded, without there being any need to give a ruling on the other arguments put forward by the parties in that respect.

The second plea, alleging infringement of essential procedural requirements

- 48 By this plea, the Kingdom of Spain claims, in essence, that the contested regulation is invalidated by a procedural illegality on the ground that, before its adoption, the Commission did not obtain the reasoned opinion of the management committee in accordance with the procedure laid down in Article 119 of the control regulation.
- 49 The Kingdom of Spain criticises the Commission for having diverged from the procedure which it had usually followed in relation to penalties against Member States for overfishing. Contrary to that practice, it adopted the contested regulation without first having obtained the reasoned opinion of the management committee, the body within which the Member States concerned may present their observations and defend their interests, which is an infringement of essential procedural requirements. In addition, the Kingdom of Spain disputes the relevance of the distinction drawn by the Commission between two different deduction systems under Article 105 of the control regulation, namely, on the one hand, the 'ordinary' procedure (Article 105(2), (3) and (5)) and, on the other, the 'historic' procedure (Article 105(4)), which alone is subject to the committee procedure and requires consultation of the Member State concerned. Similarly, the argument that Article 105(6) of the control regulation relates only to Article 105(4) is incorrect. The fact that detailed rules of application may be adopted 'in particular for determining the quantities concerned ...' shows that paragraph 6 refers to the determination of those quantities under each of the paragraphs in that article.
- 50 The Commission disputes the arguments of the Kingdom of Spain and contends that this plea should be rejected.
- 51 In that regard, it need only be pointed out that the provisions of Article 105(1) and (2) of the control regulation, on which the contested regulation is exclusively based, do not provide any procedure for consulting the management committee within the meaning of Article 105(6), read in conjunction with Article 119 of the same regulation. As the Commission rightly notes, only Article 105(4) provides for such a procedure and also for prior consultation of the Member State concerned regarding deductions 'from future quotas of that Member State' '[i]n the case of an overfishing of a quota ... in earlier years', which the Commission describes as 'historic' deductions over several years. In contrast, the deductions under Article 105(2) of the control regulation refer only to overfishing 'in a given year' and cannot, therefore, be described as 'historic' in that sense.
- 52 Moreover, the special procedure, not applied in the present case, under Article 105(5) of the control regulation, authorising the Commission to 'deduct in the following year or years quotas for other stocks or groups of stocks available to [a] Member State in the same geographical area, or with the same commercial value', if, for the overfished resource, 'that quota ... is not or not sufficiently available' to the Member State concerned, likewise does not provide for recourse to the procedure under Article 119 of that regulation and therefore prior consultation of the management committee, but only for consultation of the Member State concerned.
- 53 In that context, it must be pointed out that even Article 140 of Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Regulation No 1224/2009 (OJ 2011 L 112, p. 1), which came into force after the adoption of the contested regulation and is therefore not applicable in the present case, provides that the Commission only has an obligation to consult the Member State concerned when it intends on operating deductions in accordance with Article 105(4) of the control regulation, and yet makes no mention of the committee procedure within the meaning of Article 119.
- 54 Consequently, the Kingdom of Spain's argument that the consultation procedure as referred to in Article 119 of the control regulation must be followed in any procedure leading to the adoption of deduction measures in accordance with Article 105 of that regulation is not supported either in the wording of that article or in its legislative context. Nor can the Kingdom of Spain claim that

Article 105(6) refers to ‘determining the quantities concerned’ under each of the paragraphs in that article so that detailed rules of application must be adopted by the Commission for all the possible situations envisaged in those paragraphs. As explained in paragraphs 38 to 47 above, Article 105(6) of that regulation confers a discretion on the Commission as regards the adoption of those detailed rules of application and the provisions of Article 105(1) and (2) of that regulation, in particular those concerning calculation of the total amount of the deductions to be operated, are sufficiently clear, precise and unconditional and may therefore be applied directly.

55 Finally, in so far as the Kingdom of Spain complains that the Commission abandoned the procedure usually followed, in particular that which preceded the adoption of Commission Regulation (EU) No 1004/2010 of 8 November 2010 on operating deductions from certain fishing quotas for 2010 on account of overfishing in the previous year (OJ 2010 L 291, p. 31), that argument must be rejected as immaterial in the present context, since that complaint can at most be relevant in connection with the fourth, fifth and sixth pleas, alleging infringements of the principles of legal certainty, protection of legitimate expectations and equal treatment respectively. Moreover, as the Commission points out, it is not apparent either from the operative part or from the statement of reasons of that regulation that its adoption was preceded by consultation of the management committee.

56 Accordingly, the second plea in law must be rejected as unfounded.

The third plea, alleging infringement of the rights of the defence

57 The Kingdom of Spain maintains, in essence, that deduction measures must be adopted in compliance with all the procedural guarantees enabling the Member State concerned to defend itself, including the right to be heard, which is usually exercised through the management committee. In that regard, referring to the judgment in Case T-76/11 *Spain v Commission* [2012] ECR, the Kingdom of Spain stated at the hearing that it no longer maintained its arguments alleging that the deduction measures were in the nature of ‘penalties’. Nevertheless, the Spanish authorities were never consulted regarding the conditions in which the deductions should be implemented, such as the maximum annual levels of deduction, the payback period and the current socio-economic situation in order to assess the expediency of a gradual or linear deduction. The mere fact that the Kingdom of Spain does not dispute the figures for mackerel overfishing in 2010 does not mean that it accepts payback under any conditions.

58 Finally, the Kingdom of Spain withdrew its claim, put forward for the first time in the reply, alleging that the Commission infringed its rights of defence by failing to propose that deductions be made from the quotas of other stocks or groups of stocks, in accordance with Article 105(5) of the control regulation; this was noted in the minutes of the hearing.

59 The Commission disputes the arguments of the Kingdom of Spain and contends that this plea should be rejected.

60 By this plea, the Kingdom of Spain alleges infringement of its rights of defence, on the ground that the Spanish authorities had not been duly heard, before the adoption of the contested regulation, regarding the detailed rules for implementing the deductions imposed, that is to say, regarding the application of the criterion ‘deductions in the following year or years from the ... quota’ within the meaning of Article 105(2) of the control regulation. On the other hand, the Kingdom of Spain does not deny having been duly informed and heard regarding the application of the other criteria laid down in Article 105(1) and (2) of the same regulation.

61 As explained in paragraph 44 above, the Commission has a discretionary power with regard to the question of whether and in what way it intends to spread those deductions ‘in the following year or years from the ... quota’ within the meaning of Article 105(2) of the control regulation, that is,

concerning the spreading of those deductions over time as well as the determining of the period during which they must be made in order to attain the limit imposed. It is apparent from recital 7 in the preamble to the contested regulation that, in the present case, the Commission used that discretionary power by taking into account several criteria including, inter alia, the fact that the mackerel stock in question '[was] currently within safe biological limits' and, according to scientific advice, was likely 'to remain so in the foreseeable future', and also of the inappropriateness of an 'immediate and full application of the deduction from the [Kingdom of Spain] mackerel quota for 2011', since it 'would lead to a complete closure of this fishery in 2011' and, consequently, very probably to 'disproportionate socio-economic consequences for both the fishing sector concerned and the associated processing industry'.

- 62 It is necessary to draw attention to settled case-law according to which, as is confirmed by Articles 41, 47 and 48 of the Charter of Fundamental Rights of the European Union, the rights of the defence, which include the right to be heard, occupy extensive space and have broad scope in the legal order of the European Union, and those rights must apply in all proceedings which are liable to culminate in a measure adversely affecting a person. Moreover, that provision applies even where the applicable legislation does not expressly provide for such a procedural requirement. The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see, to that effect, Case C-277/11 *M.M.* [2012] ECR, paragraphs 81 to 87 and the case-law cited; see also Case C-135/92 *Fiskano v Commission* [1994] ECR I-2885, paragraphs 39 and 40; Case C-32/95 P *Commission v Lisrestal and Others* [1996] ECR I-5373, paragraph 21, and Case C-287/02 *Spain v Commission* [2005] ECR I-5093, paragraph 37). Therefore, in the light of its character as a fundamental general principle of EU law, the application of the principle of the rights of the defence cannot be excluded or restricted by any legislative provision. Respect for that principle must therefore be ensured both where there is no specific legislation and also where legislation exists which does not itself take account of that principle (see, to that effect, Case T-260/94 *Air Inter v Commission* [1997] ECR II-997, paragraph 60).
- 63 Moreover, in cases in which the EU institutions have a discretion — as the Commission under Article 105(2) of the control regulation (see paragraph 61 above) —, observance of the guarantees conferred by the legal order of the European Union in administrative procedures is *a fortiori* of fundamental importance. Those guarantees include, in particular, the requirement that the competent institution examine, carefully and impartially, everything relevant to the particular case, and the right of the person concerned to put forward his point of view and to have sufficient reasons given for the decision. Only in this way can the Court verify whether the factual and legal elements upon which the exercise of the power of appraisal depends were present (Case C-269/21 *Technische Universität München* [1991] ECR I-90, paragraph 14; Case C-525/04 P *Spain v Lenzing* [2007] ECR I-9947, paragraph 58, and Case C-405/07 P *Netherlands v Commission* [2008] ECR I-8301, paragraph 56).
- 64 Consequently, the scope of the right to be heard, as a principle and fundamental right of the EU legal order, is afforded when the administration plans to adopt a measure adversely affecting a person, that is, a measure which may have a negative effect on the interests of the individual or Member State concerned, since its application does not depend on the existence of an express rule to that effect laid down by subordinate legislation. It must be pointed out that the deductions imposed by the contested regulation are such measures having a negative effect on the Kingdom of Spain in that they involve significant reductions in the annual fishing quotas allocated to it during the period between 2011 and 2015 at least. Moreover, in the present case, the Commission determined the respective amounts of those deductions and the period during which they were to be applied in the exercise of its discretion under Article 105(2) of the control regulation.

- 65 It is in the light of that case-law that it is necessary to assess whether, in the present case, the Commission observed that right of the Spanish authorities to be heard regarding the detailed rules for implementing the planned deductions, including the determination of their annual amount and their spread over time.
- 66 First, it is not disputed that, following the missions carried out in Spain concerning the 2010 mackerel fishing season, the Commission duly informed the Spanish authorities of its finding that the Kingdom of Spain had exceeded by 19 621 t the quotas allocated to it for that species for the year 2010 and that, from March 2010, with 39 693 t caught, the annual mackerel quotas of 24 604 t had been exceeded by 61%, and also invited those authorities to make their observations, in which they did not dispute the figures established by the Commission (see paragraphs 2 and 3 above). Similarly, in the light of that situation, from July 2010 at the latest, the Commission complained of a lack of cooperation on the part of the Spanish authorities in that regard and asked them to provide the information necessary to assess the situation (see paragraph 5 above).
- 67 Second, it is clear both from point 4 on the agenda of the meeting of 30 November 2010 and point 1 on the agenda of the meeting of 11 January 2011 that the Commission's services were 'prepared to discuss payback terms with the Spanish authorities, on the basis of th[e] provisions' of Article 105 of the control regulation (see paragraphs 8 and 12 above).
- 68 Third, although the Commission stated, in the accounts of the aforementioned meetings, that it was not required to consult the Spanish authorities 'regarding the form of the deductions operated for overfishing' (see paragraphs 9 and 13 above), it is apparent, *inter alia*, from the information and documents submitted by the Commission after the hearing, the content of which is not, as such, disputed by the Kingdom of Spain, that, during the period from the end of November 2010 to about mid-February 2011 and, therefore, before the adoption of the contested regulation, the Commission's services and those authorities were in constant touch regarding the specific implementation of the total quantity of deductions, as determined by the Commission and accepted by the Kingdom of Spain (see paragraphs 7 to 17 above). In particular, following a meeting held on 24 January 2011 between Ms E. and Ms V.I., the latter made several proposals, *inter alia*, with regard to the deduction factor, to the appropriate period over which to spread the deductions and to reduction rate to be applied (see paragraph 14 above). Moreover, having been informed, on 4 February 2011, during a private meeting with Ms D., of the Commission's intention to apply the deductions over a two-year period, Ms A. requested a longer period to take account of certain economic circumstances and interests of the Spanish fishing fleet, which would need some time to adapt to the possible consequences of overfishing and the subsequent deduction (see paragraph 15 above). Moreover, following the decision of the competent services of the Commission to propose, in the annex to the draft of the contested regulation, spreading the deductions over a four-year period and gradually increasing the amount of those deductions, Ms A. requested that the planned deductions be spread over a period of five or six years. That request led to the suspension of the Commission's inter-service consultation procedure between 18 and 22 February 2011 and to the extension of that period to five years, as affirmed in the annex to the contested regulation (see paragraphs 16 and 17 above).
- 69 It is therefore apparent from the foregoing considerations that the Spanish authorities had repeatedly had and taken the opportunity to put their case properly and that they were indeed able, during the period between July 2010 and February 2011, to provide any relevant information, particularly concerning the socio-economic situation of the Spanish fishing sector, in order to enable the Commission to exercise its discretion pursuant to Article 105(2) of the control regulation, or were even in a position to influence the outcome.
- 70 It follows that, in the present case, the right of the Kingdom of Spain to be heard has been respected.

- 71 In that regard, the Kingdom of Spain's argument that the Commission should have given the Spanish authorities a formal hearing regarding the deduction measures provided for in the contested regulation cannot succeed.
- 72 It should be pointed out, first, that, as the Commission claims, unlike Article 105(4) and (5) of the control regulation, read in conjunction with Article 140 of Implementing Regulation No 404/2011 (see paragraph 53 above), Article 105(1) and (2) of the control regulation do not expressly provide that the Commission is under an obligation to consult the Member State concerned, by means of a formal hearing, regarding the planned deduction measures before their adoption and is therefore under even less of an obligation to consult the Member State concerned, by means of a formal hearing, regarding the detailed rules for implementing them.
- 73 Also, in the light of the circumstances referred to in paragraphs 66 to 69 above, the Kingdom of Spain cannot reasonably argue that, as it was not granted a formal hearing by the Commission, it was unable, if necessary after consulting the fishing sector, to make appropriate proposals which may have influenced the content of the contested regulation. First, in a case such as this, where the total quantity of the deductions to be made is not contested by the Member State concerned, the right to be heard does not require the Commission to give that Member State the opportunity to express its views on the specific deduction figures which it intends to use in the contested measure and to spread over several years in order to attain the limit imposed. Second, in the present case, following its acceptance of its obligation to pay back the aforementioned total quantity of quotas and in accordance with its duty to cooperate in good faith, as provided in Article 4(3) TEU, the Kingdom of Spain was required to provide, on its own initiative and in good time, any information relevant to the matter in order to enable the Commission to exercise, in an appropriate manner and with full knowledge of the facts, its discretion under Article 105(2) of the control regulation. However, the Spanish authorities have not demonstrated that they repeatedly took the opportunity, during the administrative procedure, to fulfil their obligation to cooperate in good faith and to present that relevant information, in spite of the fact that they were aware of the importance of the issue for the fishing sector and that, in the beginning, the Commission had intended to spread the necessary deductions over a much shorter period than five years. Finally, the Kingdom of Spain has failed to explain whether and to what extent it consulted the Spanish fishing sector concerning the way in which the total quantity of the deductions imposed should be spread over time, even though it had been aware of the matter since July 2010 (see paragraph 3 above).
- 74 In those circumstances, the Kingdom of Spain cannot complain that the Commission infringed its rights of defence on the ground that it had not given the Spanish authorities a formal hearing concerning the deductions finally made in the contested regulation.
- 75 Consequently, this plea in law must be rejected as unfounded.

The fourth plea, alleging infringement of the principle of legal certainty

- 76 The Kingdom of Spain maintains, in essence, that the deduction measures imposed on it by the contested regulation, in particular by Article 2 thereof, do not meet the requirements of clarity, precision and certainty. By assuming a very wide discretion and using the expression 'where appropriate', the Commission kept open the option to increase future deductions at will and to spread them over an indefinite period, instead of laying down, inter alia, foreseeable criteria ensuring that the deductions of the quotas available each year did not exceed a certain limit. In that regard, the Kingdom of Spain points out that such a power has no legal basis and was exercised in the absence of detailed rules of application approved in the course of the committee procedure and, therefore, without the participation of all the Member States. Such a situation is, it submits, contrary to the principle of legal certainty.

- 77 The Commission disputes the arguments of the Kingdom of Spain and contends that this plea should be rejected.
- 78 Following the example of the Commission's arguments, it need only be stated that, in accordance with the requirements of Article 105(1) and (2) of the control regulation, the annex to the contested regulation contains a precise calculation, on the basis of data which is not disputed by the Spanish authorities and in accordance with the relevant multiplying factor, of the deductions to be applied, the total limit of which, 39 242 t, is clearly stated in the sixth column of the table. Moreover, as is clearly evidenced by the seventh to eleventh columns of that table, that total amount of deductions is divided into five different amounts ($4\,500 + 5\,500 + 9\,748 + 9\,747 + 9\,747 = 39\,242$), charged to the years 2011 to 2015 respectively. Finally, as explained in recital 7 in the preamble to the contested regulation and by the Commission in its pleadings, the expression 'where appropriate' in the column relating to the year 2015 cannot have the effect of increasing that total amount of the deductions imposed by that regulation, but serves only to leave the Commission the option of supplementing the deductions thus imposed in later years if the quotas (as yet unknown) to be allocated to the Kingdom of Spain for the years 2011 to 2015 are not adequate to support the deduction provided for. In other words, the Commission only intends to charge one deduction of 9 747 t, as prescribed for the year 2015, to the 'subsequent years' in so far as such a deduction proves, at least in part, necessary in order to reach the limit of 39 242 t of the deductions imposed.
- 79 Therefore, the Kingdom of Spain's argument that the Commission retains the power to increase at will the limit of the amount of the deductions provided for cannot be upheld.
- 80 Accordingly, in the light of the legislative approach described in paragraph 78 above, which is sufficiently clear, precise and predictable in its effects (see, to that effect, Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 80, and the case-law cited) and which enables the Spanish authorities to be sufficiently aware of the extent of the obligations which it imposes on them in terms of deductions (see, to that effect and by analogy, Case C-17/01 *Sudholz* [2004] ECR I-4243, paragraph 34 and the case-law cited), the plea alleging infringement of the principle of legal certainty cannot succeed.
- 81 Consequently, this plea in law must be rejected as unfounded.

The fifth plea, alleging infringement of the principle of the protection of legitimate expectations

- 82 According to the Kingdom of Spain, the contested regulation, which was adopted on 22 February 2013 and came into force on 23 February 2013, severely disrupted the implementation of the provisions of Order ARM 271/2010, under which the mackerel fishing season had already begun on 15 February 2011 (see paragraph 11 above). The preparation of that national legislation required a long period of consultation with the sector concerned and, finally, its draft was communicated to the Commission in accordance with Article 46 of Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ 1998 L 125, p. 1). However, that approach is contrary, inter alia, to the principle of the protection of legitimate expectations. The Kingdom of Spain states, in essence, that, although quotas and fishing possibilities are not unalterable subjective rights, the fact remains that those quotas already constitute specific authorisations to exercise fishing activities at a given moment and that those possibilities are real, identifiable and quantifiable for a specific period, so that 'they become specific rights which are allocated for a specified duration'. Those fishing rights or possibilities were amended *a posteriori* by the contested regulation, which gave rise, inter alia, to an infringement of the principle of the protection of the legitimate expectations of the holders of those rights or possibilities.
- 83 The Commission disputes the arguments of the Kingdom of Spain and contends that this plea should be rejected.

- 84 According to settled case-law, the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation where a Union institution has caused him or her to have justified expectations. Nevertheless, the right to rely on that principle requires that three conditions be satisfied cumulatively. First, precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the European Union authorities. Second, those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed. Third, the assurances given must comply with the applicable rules (see Case T-549/08 *Luxembourg v Commission* [2010] ECR II-2477, paragraph 71, and the case-law cited, and Case T-387/09 *Applied Microengineering v Commission* [2012] ECR, paragraphs 57 and 58, and the case-law cited; see also, to that effect, Case C-221/09 *AJD Tuna* [2011] ECR I-1655, paragraphs 71 and 72).
- 85 In the present case, it must be stated that the Kingdom of Spain has not invoked any precise, unconditional and consistent assurances within the meaning of the aforementioned case-law which might justify the finding of an infringement of the principle of the protection of legitimate expectations in its respect. On the contrary, it is not disputed that the Spanish authorities had been informed at a very early stage of the administrative procedure that the Commission intended to make deductions owing to the overfishing in question in 2010 (see paragraphs 6 to 9 above) and that its services had even warned the Spanish authorities, by letter of 14 December 2010, that is to say, before the adoption of Order ARM 271/2010, of the imminent adoption of deduction measures and had recommended that they authorise the 2011 fishing season only up to a maximum of 50% of the quota allocated (see paragraphs 10 and 11 above). In those circumstances, the Kingdom of Spain cannot therefore complain that the Commission caused it to have justified expectations concerning the continuation of the mackerel fishing quotas from the year 2011, without there being any need to give a ruling on whether those quotas involved ‘vested rights’ for the fishing operators concerned.
- 86 Moreover, even if the Kingdom of Spain intended to invoke, in the present case, an infringement of the protection of the legitimate expectations of fishing operators, and if that plea were admissible, it cannot succeed.
- 87 It should be noted in that regard that whilst the possibility of relying on the protection of legitimate expectations, as a fundamental principle of Union law, is available to any economic operator whom an institution has caused to have justified expectations, the fact remains that, where a prudent and circumspect economic operator is able to foresee the adoption of a measure likely to affect his interests, he cannot plead that principle if the measure is adopted. Furthermore, economic operators are not justified in having a legitimate expectation that an existing situation which is capable of being altered by the Union institutions in the exercise of their discretionary power will be maintained. This is particularly true in an area such as the common fisheries policy, the objectives of which require constant adjustments in order to meet changes in economic circumstances (see, to that effect, Case C-201/08 *Plantanol* [2009] ECR I-8343, paragraph 53, and the case-law cited, and *AJD Tuna*, paragraph 84 above, paragraph 73; Case T-415/03 *Cofradía de pescadores ‘San Pedro de Bermeo’ and Others v Council* [2005] ECR II-4355, paragraph 78).
- 88 Finally, it is also clear from settled case-law that a breach of the protection of legitimate expectations may not be relied upon by a person who has committed a manifest infringement of the rules in force (see, to that effect, the judgment in Case 67/84 *Sideradria v Commission* [1985] ECR 3983, paragraph 21, and the order in Case C-18/03 P *Vela and Tecnagrind v Commission* [2004], not published in the ECR, paragraphs 117 to 119; see Case T-217/01 *Forum des migrants v Commission* [2003] ECR II-1563, paragraph 76 and the case-law cited). Clearly, in the present case, the overfishing, which is not disputed by the Spanish authorities, by Spanish fishermen of the mackerel quotas allocated to the Kingdom of Spain for the year 2010 by Council Regulation (EU) No 23/2010 of 14 January 2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish

stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required and amending Regulations (EC) No 1359/2008, (EC) No 754/2009, (EC) No 1226/2009 and (EC) No 1287/2009 (OJ 2010 L 21, p. 1 and 55), constitutes such a manifest infringement.

- 89 It follows from all of the foregoing considerations that this plea must therefore be rejected as unfounded.

The sixth plea, alleging infringement of the principle of equal treatment

- 90 The Kingdom of Spain complains that the Commission treated it unequally in relation to Ireland and the United Kingdom of Great Britain and Northern Ireland, in spite of the existence of comparable situations. In that regard, it notes that recital 7 in the preamble to the contested regulation states, first, the risk of disproportionate socio-economic consequences for both the fishing sector concerned and the associated processing industry, and, second, the consequent need to apply the deductions over a period of 5 years, from 2011 to 2015 and, also the possibility of making new deductions, if necessary, for subsequent years. The criterion of the risk of socio-economic consequences was also taken into account previously, at the time of the adoption of Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2007 L 46, p. 10), concerning deductions from the mackerel quotas allocated to Ireland and to the United Kingdom, which were limited to 15% of the annual quota. However, in the contested regulation, in spite of similar reasoning and of the existence of a comparable situation, the Commission did not apply that same limit, but an annual deduction percentage of over 15%, which is an unjustified discrimination. The Kingdom of Spain adds that, unlike the contested regulation, Regulation No 147/2007 was adopted within the framework of the committee procedure and, although that committee did not issue an opinion within the time limits, the Member States concerned had the opportunity, as is confirmed in recital 13 in its preamble, to express their views regarding the criteria for deduction. Having omitted to give the Spanish authorities a hearing, the Commission did not take into consideration any criterion specific to Spanish fishing, which might have made it possible to determine the relevant situations for the purpose of applying the principle of equal treatment properly. In any event, the criterion of the risk of socio-economic consequences applies in the same way to the respective situations of Ireland and the United Kingdom, on the one hand, and the Kingdom of Spain, on the other. Therefore, the Commission was required to apply, inter alia, the same maximum annual reduction limit of 15% in the contested regulation.

- 91 The Commission denies that it infringed the principle of equal treatment in respect of the Kingdom of Spain, since the situations it invokes are manifestly different from both a factual and a legal point of view.

- 92 First of all, it should be pointed out that the first, second and third pleas, alleging infringements of procedural requirements, have been rejected as unfounded, so that the Kingdom of Spain's arguments to the same effect, as reiterated in support of this plea, must also be rejected.

- 93 With regard more specifically to the alleged infringement of the principle of equal treatment, it should be pointed out that the general principle of equal treatment requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified. Furthermore, a breach of the principle of equal treatment as a result of different treatment presumes that the situations concerned are comparable, having regard to all the elements which characterise them. The elements which characterise different situations, and hence their comparability, must in particular be determined and assessed in the light of the subject-matter and purpose of the European Union act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (see, to that effect, Case

C-127/07 *Arcelor Atlantique and Lorraine and Others* [2008] ECR I-9895, paragraphs 23, 25 and 26, and the case-law cited, and Case C-176/09 *Luxembourg v Parliament and Council* [2011] ECR I-3727, paragraphs 31 and 32).

- 94 In the present case, it must be stated that, both from a legal and factual point of view, the situations leading to the adoption of the contested regulation and of Regulation No 147/2007 were neither identical nor similar so as to justify being treated equally by the Commission.
- 95 Indeed, from a legal point of view, Regulation No 147/2007 was based on Article 23(4) of Council Regulation No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59), which was replaced by Article 105 of the control regulation [see Article 21(2)(b) thereof] which aimed to make 'historic' deductions owing to mackerel overfishing during the years 2001 to 2005 by, inter alia, the United Kingdom, a situation which is now governed by Article 105(4) of that regulation, which is not applicable in this case. On the other hand, in the present case, the Commission was not even authorised to apply that provision, since the overfishing found fell within the scope of Article 105(2) of the control regulation, which refers to overfishing for a single 'given year'.
- 96 Moreover, it should be pointed out that, contrary to the very precise criteria laid down by Article 105(2) of the control regulation, which confers a circumscribed power on the Commission with regard to calculation of the exact amount of the deductions to be made (see paragraph 44 above), the first subparagraph of Article 23(4) of Regulation No 2371/2007, the wording of which is essentially the same as that of Article 105(1) of the control regulation, involved — owing to its general nature and the lack of further precision in other provisions of Regulation No 2371/2002 — the conferment of a wide discretion on the Commission with regard to determining that amount and the manner of calculating it. Moreover, it was in the exercise of that discretion that the Commission had considered it expedient to amend the applicable correction factor and to limit the deductions planned for the period between 2007 to 2012 to 15% of the annual fishing quota allocated to the Member State concerned (see recitals 7 and 11 in the preamble to Regulation No 147/2007). Under Article 105(2) of the control regulation, which the Commission applied in this case, such an approach would not have been legally possible.
- 97 Therefore, if only for legal reasons, the Kingdom of Spain is wrong to claim that the situations governed by the control regulation and Regulation No 147/2007 respectively, were, at the very least, comparable and that the Commission should have applied to it the same reduction percentage of 15% in the present case in accordance with the principle of equal treatment.
- 98 In those circumstances, even if, as the Kingdom of Spain claims, the socio-economic situation of the fishing industry in the respective Member States had been at least comparable, an argument for which the Kingdom of Spain does not adduce any specific evidence, it was not permissible for the Commission, in the light of the mandatory criteria in Article 105(2) of the control regulation, to apply the same method of calculating the deductions as that used under Regulation No 147/2007, which was based on the first subparagraph of Article 23(4) of Regulation 2371/2002.
- 99 Therefore, since the situations concerned were not comparable and were treated differently, the plea alleging an infringement of the principle of equal treatment must be rejected as unfounded, without it being necessary to give a ruling on the other arguments put forward by the parties in this context.
- 100 In the light of all the foregoing considerations, the action must be dismissed in its entirety.

Costs

- ¹⁰¹ Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- ¹⁰² Since the Kingdom of Spain has been unsuccessful in all of its pleas in law and the Commission has applied for costs, the Kingdom of Spain must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders the Kingdom of Spain to bear its own costs and to pay those incurred by the European Commission.**

Prek

Labucka

Kreuschitz

Delivered in open court in Luxembourg on 18 June 2014.

[Signatures]

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