

JUDGMENT OF THE COURT (Second Chamber)

17 March 2011 *

In Case C-221/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Prim'Awla tal-Qorti Ċivili (Malta), made by decision of 4 June 2009, received at the Court on 17 June 2009, in the proceedings

AJD Tuna Ltd

v

Direttur tal-Agrikoltura u s-Sajd,

Avukat Generali,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, A. Rosas, A. Ó Caoimh and P. Lindh (Rapporteur), Judges,

* Language of the case: Maltese.

Advocate General: V. Trstenjak,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 20 May 2010,

after considering the observations submitted on behalf of:

- AJD Tuna Ltd, by J. Refalo and R. Mastroianni, avukati,
- the Maltese Government, by S. Camilleri, acting as Agent, and by A. Buhagiar, avukat,
- the Greek Government, by I. Chalkias and S. Papaïoannou, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by F. Arena, avvocato dello Stato,
- the Council of the European Union, by M. Sims, G. Kimberley, A. Westerhof Löfflerova and M. Sammut, acting as Agents,
- the European Commission, by K. Banks, E. Depasquale and D. Nardi, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 September 2010,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the validity and interpretation of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and in the Mediterranean Sea (OJ 2008 L 155, p. 9; ‘the Regulation’), and the validity of Article 7(2) of Council Regulation (EC) 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; ‘the Basic Regulation’).
- ² The reference has been made in proceedings between AJD Tuna Ltd (‘AJD Tuna’), on the one hand, and the Direttur tal-Agrikoltura u s-Sajd (Director for Agriculture and Fisheries) and the Avukat Generali (Advocate General), on the other hand, concerning a decision whereby the Director prevented AJD Tuna from buying in or importing into Malta bluefin tuna for its farming and fattening activities, a decision which was intended to apply the Regulation.

Legal context

The Basic Regulation

- 3 The Basic Regulation implements the common fisheries policy in respect of the conservation, management and exploitation of fisheries resources.

- 4 Article 2 of that regulation, headed ‘Objectives’ reads:

‘1. The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

For this purpose, the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking into account the interests of consumers.

2. The Common Fisheries Policy shall be guided by the following principles of good governance:

- (a) clear definition of responsibilities at the Community, national and local levels;
- (b) a decision-making process based on sound scientific advice which delivers timely results;
- (c) broad involvement of stakeholders at all stages of the policy from conception to implementation;
- (d) consistenc[y] with other Community policies, in particular with environmental, social, regional, development, health and consumer protection policies.’

5 Article 5 of that regulation, headed ‘Recovery plans’, reads:

‘1. The Council shall adopt, as a priority, recovery plans for fisheries exploiting stocks which are outside safe biological limits.

2. The objective of recovery plans shall be to ensure the recovery of stocks to within safe biological limits.

...’

6 Article 7 of that regulation, headed 'Commission emergency measures' reads:

'1. If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.

2. The Member State shall communicate the request simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils concerned. They may submit their written comments to the Commission within five working days of receipt of the request.

...

3. The emergency measures shall have immediate effect. They shall be notified to the Member States concerned, and published in the Official Journal.

...'

7 Article 20 of the Basic Regulation, headed 'Allocation of fishing opportunities' reads:

'1. The Council, acting by qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those

limits. Fishing opportunities shall 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.

2. When the Community establishes new fishing opportunities the Council shall decide on the allocation for those opportunities, taking into account the interests of each Member State.

3. Each Member State shall decide, for vessels flying its flag, on the method of allocating the fishing opportunities assigned to that Member State in accordance with Community law. It shall inform the Commission of the allocation method.

4. The Council shall establish the fishing opportunities available to third countries in Community waters and allocate those opportunities to each third country.

5. Member States may, after notifying the Commission, exchange all or part of the fishing opportunities allocated to them.'

8 Article 26 of that regulation, headed 'Responsibilities of the Commission' provides:

'...

2. If there is evidence that rules on conservation, control, inspection or enforcement under the Common Fisheries Policy are not being complied with and that this may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system necessitating urgent action, the Commission shall inform in writing the Member State concerned of its findings and set a deadline of no less than fifteen working days to demonstrate compliance and to give its comments. The Commission shall take account of Member States' comments in any action it may take under paragraph 3.

3. If there is evidence of a risk that fishing activities carried out in a given geographical area could lead to a serious threat to the conservation of living aquatic resources, the Commission may take preventive measures.

These measures shall be proportionate to the risk of a serious threat to the conservation of living aquatic resources.

They shall not exceed three weeks in duration. They may be prolonged up to a maximum of six months, as far as necessary for the conservation of living aquatic resources, by a decision taken in accordance with the procedure laid down in Article 30(2).

The measures shall be lifted immediately when the Commission finds that the risk no longer exists.

4. In the event of a Member State's quota, allocation or available share being deemed to be exhausted, the Commission may, on the basis of the information available, immediately stop fishing activities.

...'

Specific rules governing bluefin tuna fishing

International rules

- 9 The main purpose of the International Convention for the Conservation of Atlantic Tunas ('the Convention'), which was signed in Rio de Janeiro (Brazil) on 14 May 1966 and entered into force on 21 March 1969, is to ensure optimum conservation and management of resources of tunas in the Atlantic Ocean and its adjacent seas. That objective is to be achieved through close cooperation between the Contracting Parties in order to maintain the populations of tuna at levels which will permit the maximum sustainable catch for food and other purposes.
- 10 To that end, the Contracting Parties agreed to establish a commission, known as the International Commission for the Conservation of Atlantic Tunas ('ICCAT'), whose role is to ensure that the objectives of the Convention are carried out.

- 11 Council Decision No 86/238/EEC of 9 June 1986 (OJ 1986 L 162, p. 33) approved accession by the European Union to the Convention, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984, and accession took effect on 14 November 1997. Under Article XIV(6) of the Convention, as amended by that Protocol, the Union was subrogated on that date to the rights and obligations of the Member States which were already parties to the Convention. Consequently, it took the place of those Member States within ICCAT.
- 12 At its Annual Meeting in November 2006, ICCAT adopted Recommendation 06-05 to establish a fifteen-year recovery plan for bluefin tuna (*Thunnus thynnus*) in the Eastern Atlantic and Mediterranean.
- 13 In order to rebuild the stock, that plan provides for a graduated reduction in the total allowable catch ("TAC") level from 2007 to 2010, restrictions on fishing within certain areas and time periods, a new minimum size for bluefin tuna, measures concerning sport fishery and recreational fishery as well as control measures and the implementation of the ICCAT scheme for joint international inspection to ensure the effectiveness of that plan.

European Union legislation

- 14 The Council, in pursuance of Article 5 of the Basic Regulation, adopted Regulation (EC) No 1559/2007 of 17 December 2007 establishing a multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and Mediterranean and amending Regulation (EC) No 520/2007 (OJ 2007 L 340, p. 8).

15 Article 1 of Regulation No 1559/2007 provides that the purpose of that regulation is to lay down general rules for the application of a multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and the Mediterranean.

16 Recitals 3 and 5 in the preamble to that regulation read as follows:

‘(3) In order to rebuild the stock [of bluefin tuna], the ICCAT recovery plan provides for a graduated reduction in the total allowable catch (TAC) level from 2007 to 2010, restrictions on fishing within certain areas and time periods ...

...

(5) It is therefore necessary to implement the ICCAT recovery plan on a permanent basis by means of a Regulation establishing a recovery plan as provided for in Article 5 of [the Basic Regulation] ...’

17 Article 3 of Regulation No 1559/2007 provides that the TACs fixed by ICCAT for the bluefin tuna stock in the Eastern Atlantic and Mediterranean are to be as follows: 28 500 tonnes for the year 2008, 27 500 tonnes for the year 2009, and 25 500 tonnes for the year 2010.

18 Article 4 of that regulation provides:

‘1. Each Member State shall take the necessary measures to ensure that the fishing effort of its vessels and its traps are commensurate with the fishing opportunities on bluefin tuna available to that Member State in the Eastern Atlantic and Mediterranean Sea.

2. Each Member State shall draw up an annual fishing plan for the vessels and traps fishing bluefin tuna in the Eastern Atlantic and Mediterranean Sea. ...

3. The annual fishing plan shall identify:

(a) inter alia, the vessels over 24 metres included in the list referred to in Article 12 and the individual quota allocated to them;

(b) for the vessels less than 24 metres and traps, at least the quota allocated to producer organisations or groups of vessels fishing with similar gear.

...’

19 Article 5(2) of that regulation provides that purse seiner fishing for bluefin tuna is prohibited in the Eastern Atlantic and Mediterranean during the period from 1 July to 31 December.

- ²⁰ Article 12(1) of that regulation provides that '[b]y 31 January 2008, each Member State shall send the Commission electronically a list of all fishing vessels flying its flag authorised to fish actively for bluefin tuna in the Eastern Atlantic and Mediterranean Sea by issue of a special fishing permit'
- ²¹ The Council, in pursuance of Article 20 of the Basic Regulation, adopted Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2007 L 15, p. 1) and Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2008 L 19, p. 1).
- ²² By those regulations, the Council adopted TACs by fisheries, and allocated fishing opportunities among Member States by quota.
- ²³ It is clear from Annexes ID to those regulations that for bluefin tuna in the Eastern Atlantic and Mediterranean the TAC was adopted within the framework of ICCAT. The TAC for that zone and that fish species was fixed at 29 500 tonnes for 2007 and 28 500 tonnes for 2008. Of that quantity, 9 397,70 tonnes for 2007 and 16 210,75 tonnes for 2008 were assigned to the Community and allocated almost completely among the Republic of Malta, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus and the Portuguese Republic, with the other Member States together having only a quota of 30 tonnes for 2007 and 60 tonnes for 2008.

- ²⁴ The allocation among Member States laid down by Regulation No 40/2008 was subsequently amended by Commission Regulation (EC) No 446/2008 of 22 May 2008 adapting certain bluefin tuna quotas in 2008 pursuant to Article 21(4) of Council Regulation (EEC) No 2847/93 establishing a control system applicable to the Common Fisheries Policy (OJ 2008 L 134, p. 11).

The Regulation

- ²⁵ The Commission adopted the Regulation on the basis of Article 7(1) of the Basic Regulation.

- ²⁶ Recitals 1 to 4, 6 to 8 and 10 in the preamble to the Regulation read as follows:

‘(1) [Regulation No 40/2008] fixes the amount of bluefin tuna which may be fished in 2008 in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by Community fishing vessels.

(2) [Regulation No 446/2008] modifies the amount of bluefin tuna which may be fished in 2008 in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by Community fishing vessels

(3) [Regulation No 1559/2007] requires Member States to inform the Commission of the individual quota allocated to their vessels over 24 metres

- (4) The Common Fisheries Policy is designed to ensure the long-term viability of the fisheries sector through sustainable exploitation of living aquatic resources based on the precautionary approach.

...

- (6) The data in its possession, as well as the information obtained by the Commission inspectors during their missions in the Member States concerned, show that the fishing opportunities for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea allocated to purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta will be deemed to be exhausted on 16 June 2008 and that the fishing opportunities for the same stock allocated to purse seiners flying the flag of or registered in Spain will be deemed to be exhausted on 23 June 2008.
- (7) Fleet overcapacity has been considered by the Scientific Committee of ... IC-CAT as the main factor which could lead to the collapse of the stock of Eastern Atlantic and Mediterranean bluefin tuna. Fleet overcapacity carries with it a high risk of fishing above the permissible level. Furthermore, the daily catch capacity of one single purse seiner is so high that the permissible catch level can be attained or exceeded very quickly. In these circumstances, any overfishing by this fleet would pose a serious threat to the conservation of the bluefin tuna stock.
- (8) The Commission has been monitoring closely compliance with all requirements of relevant Community rules by Member States during the 2008 bluefin tuna fishing campaign. The information in its possession, as well as the information obtained by Commission inspectors, shows that the Member States concerned

have not ensured full compliance with the requirements established in Regulation ... No 1559/2007.

...

- (10) In order to reinforce the effectiveness of these measures designed to forestall a serious threat to the conservation of the bluefin tuna stock, Community operators should also be enjoined not to accept landings, placing in cages for fattening or farming and transhipments of bluefin tuna caught by purse seiners in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean.'

27 Articles 1 to 3 of that regulation provide:

'Article 1

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean by purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta shall be prohibited as from 16 June 2008.

It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.

Article 2

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean by purse seiners flying the flag of or registered in Spain shall be prohibited as from 23 June 2008.

It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.

Article 3

1. Subject to paragraph 2, as from 16 June 2008, Community operators shall not accept landings, placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by purse seiners.

2. It shall be allowed to land, place in cages for fattening or farming and to tranship in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by purse seiners flying the flag of, or registered in Spain until 23 June 2008.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 28 AJD Tuna, a company established in Malta, has as its main activity the farming and fattening of bluefin tuna caught alive in the Mediterranean Sea with a view to reselling them to traders. It owns two fish farms for the breeding of tuna. One of these has a maximum fattening capacity of 2 500 tonnes while the other has a capacity of 800 tonnes.
- 29 Following the adoption of the Regulation, the Direttur tal-Agrikoltura u s-Sajd prohibited AJD Tuna from buying in or importing into Malta bluefin tuna for the purposes of its activities.
- 30 Claiming that it was impossible for it to acquire the quantities of tuna to which it considered it was entitled, AJD Tuna brought proceedings before the Prim'Awla tal-Qorti Ċivili seeking compensation for damage it claims to have suffered as a result of that prohibition, which it alleges is excessive, unlawful and unreasonable.
- 31 According to the referring court, AJD Tuna claims that, for the year 2008, it was authorised by ICCAT to acquire 3 200 tonnes of bluefin tuna for the purposes of its activities and that, consequently, it had bought that quantity from French and Italian fishermen before the opening of the fishing season. The prohibition on buying in or importing into Malta applied not only to bluefin tuna caught in European Union waters but also to catches outside those waters. As a result, AJD Tuna was unable to acquire the quantity of bluefin tuna it was entitled to keep on its fish farms.
- 32 The referring court therefore took the view that the outcome of the case was dependent on the validity of the Regulation.

33 In those circumstances, the *Prim'Awla tal-Qorti Ċivili* decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Is [the Regulation] invalid because it infringes Article 253 EC in so far as it does not state sufficiently the reasons for the adoption of the emergency measures established [in Articles 1, 2 and 3 of the said regulation], and in so far as it does not give a clear enough picture of the reasoning behind these measures?

- (2) Is [the Regulation] invalid because it infringes Article 7(1) of [the Basic Regulation] in so far as, in its recitals, it does not establish adequately (i) the existence of a serious threat to the conservation of living aquatic resources or to the marine eco-system caused by fishing activities and (ii) the need to take immediate action?

- (3) Is [the Regulation] invalid in so far as the adopted measures deprive Community operators, such as the applicant, of their legitimate expectations founded on Article 1 of ... Regulation No 446/2008 ... and on Article 2 of [the Basic Regulation]?

- (4) Is Article 3 of [the Regulation] invalid because it infringes the principle of proportionality in so far as it implies that (i) no Community operator can exercise an activity of landing or placing in cages tuna for fattening or farming, even for tuna caught previously and perfectly in conformity with [that] Regulation ...; and (ii) no Community operator can carry out these activities with regards to tuna caught by fishermen whose ships do not fly the flag of one of the Member States listed in

Article 1 of [the Regulation], even when this tuna was caught in conformity with the quotas laid down by [ICCAT]?

- (5) Is [the Regulation] invalid because it infringes the principle of proportionality in so far as the Commission failed to establish that the measure it was going to adopt was going to contribute towards the recovery of tuna stocks?
- (6) Is [the Regulation] invalid because the adopted measures are unreasonable and discriminatory on grounds of nationality, within the meaning of Article 12 EC, in so far as the said regulation makes a distinction between purse seiners flying the Spanish flag and those flying the flag of Greece, Italy, France, Cyprus and Malta, and in so far as it makes a distinction between these six Member States and the other Member States?
- (7) Is [the Regulation] invalid because the principles of justice as protected under Article 47 of the Charter of Fundamental Rights of the European Union were not respected in so far as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the decision?
- (8) Is [the Regulation] invalid because the adversarial principle (*audi alteram partem*), as a general principle of Community law, was not respected in so far as the interested parties and the Member States were not given any opportunity to submit their written comments prior to the adoption of the decision?

- (9) Is Article 7(2) of [the Basic Regulation] invalid because the adversarial principle (*audi alteram partem*), as a general principle of Community law, and/or the principles of justice as protected under Article 47 of the Charter of Fundamental Rights of the European Union were not respected, and consequently, is [the Regulation] invalid because it was based on [the Basic Regulation]?
- (10) In the eventuality that the Court of Justice decides that [the Regulation] is valid, should this regulation be interpreted as meaning that the measures adopted in Article 3 of the said regulation also preclude Community operators from accepting landings, the placing in cages for fattening or farming, or transshipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean Sea by purse seiners flying the flag of a third country?

The application for the organisation of measures of inquiry and/or for the oral procedure to be reopened

- ³⁴ By a document received at the Registry on 19 October 2010, the Commission requested the Court to order measures of inquiry and/or to reopen the oral procedure in accordance with Articles 60 and 61 of the Rules of Procedure of the Court of Justice.
- ³⁵ By a document received at the Registry on 27 October 2010, the Council indicated that it supported the Commission's request.
- ³⁶ In that regard, it should be noted that the Court may, of its own motion, on a proposal from the Advocate General or at the request of the parties, order the reopening of the

oral procedure in accordance with Article 61 of the Rules of Procedure, if it considers that it lacks sufficient information or that the case should be decided on the basis of an argument which has not been discussed between the parties (see, *inter alia*, Case C-284/06 *Burda* [2008] ECR I-4571, paragraph 37, and Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 31).

- 37 In support of its request, the Commission makes a number of complaints concerning the course of the oral procedure, which in its submission justify the Court conducting measures of inquiry and/or ordering the reopening of the oral procedure in order to clarify the facts underlying the Regulation.
- 38 First of all, although the language of the case was Maltese, AJD Tuna's representative spoke in Italian, which had been authorised by the Court without the Council or the Commission being informed.
- 39 On this point, it should be noted that the second subparagraph of Article 29(2)(c) of the Rules of Procedure provides that, at the duly substantiated request of one of the parties to the main proceedings, and after the opposite party and the Advocate General have been heard, the use of another of the languages mentioned in Article 29(1) may be authorised for the oral procedure.
- 40 By letter received at the Registry of the Court on 11 February 2010, AJD Tuna requested authorisation to plead either in English or in Italian. By decision of 14 April 2010, after hearing the other parties to the main proceedings, the President of the Second Chamber of the Court authorised AJD Tuna to plead in Italian. Since they were not parties to the main proceedings, the Council and the Commission did not have to be notified of that authorisation.

- 41 The Commission also states that at the hearing one of its Agents, Mr Depasquale, was prevented from answering the Court's questions in English, although the Commission had obtained authorisation for its Agents to answer questions from the Court in that language.
- 42 By letter signed by Ms Banks, Mr Depasquale and Mr Nardi, received at the Registry of the Court on 19 April 2010, the Commission requested the Court that Ms Banks and Mr Nardi should be authorised to answer questions from the Court in English. The President of the Second Chamber accepted that request on 26 April 2010.
- 43 As the Commission's request had been submitted only in respect of Ms Banks and Mr Nardi, the authorisation to answer questions from the Court in English did not cover Mr Depasquale, even though the authorisation was couched in general terms.
- 44 Moreover, as the Commission points out, as Maltese is Mr Depasquale's mother tongue, he did not have any difficulty in answering the Court's questions in that language.
- 45 So far as the criticisms of the content of the Advocate General's Opinion are concerned, it should be noted that, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In carrying out that task, the Advocate General may, where appropriate, analyse a reference for a preliminary ruling by placing it within a context which is broader than that strictly defined by the referring court or by the parties to the main proceedings. The Court is not bound either by the Advocate General's

Opinion or by the reasoning on which it is based (see Case C-229/09 *Hogan Lovells International* [2010] ECR I-11335, paragraph 26).

- ⁴⁶ The Court takes the view that in the present case it has all the material necessary to answer the questions referred by the referring court.
- ⁴⁷ The application for measures of inquiry and for the oral procedure to be reopened must therefore be rejected.

Consideration of the questions referred

The seventh to ninth questions

- ⁴⁸ By these questions, which should be examined together and before the other questions, the referring court enquires as to the validity of the Regulation and that of Article 7 of the Basic Regulation on the basis of which the Regulation was adopted. More specifically, that court seeks in essence a ruling from the Court as to whether Article 7(2) of the Basic Regulation is invalid for failure to afford Member States and interested parties the opportunity to submit comments to the Commission when the latter proposes, on its own initiative, to decide on emergency measures provided for in Article 7(1), thus constituting a breach of the adversarial principle and the principles set out in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

- 49 Article 41 of the Charter, which AJD Tuna claims has been infringed, proclaims, in particular, the right for every person to be heard, before any individual measure which would affect him or her adversely is taken. Consequently, that provision does not cover the process of enacting measures of general application.
- 50 It is clear from the definition given in Article 288 TFEU, that a regulation is an act having general application which is binding in its entirety and directly applicable in all Member States.
- 51 The criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the act in question (see, inter alia, the order of 12 July 1993 in Case C-168/93 *Gibraltar and Gibraltar Development v Council* [1993] ECR I-4009, paragraph 11). A measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in general and in the abstract (see, inter alia, Case 307/81 *Alusuisse Italia v Council and Commission* [1982] ECR 3463, paragraph 9).
- 52 Article 7(1) of the Basic Regulation empowers the Commission to decide on measures to put an end to serious threats to the conservation of living aquatic resources, or to the marine eco-system where such threats result from fishing activities. The measures adopted therefore affect economic operators in the fisheries sector in a given zone and in respect of a given living species. An emergency measure is not therefore adopted depending on the interests of economic operators but solely in order to conserve living aquatic resources and the marine eco-system. Regulations adopted on the basis of Article 7(1) apply to objectively determined situations and produce legal

effects with respect to categories of persons envisaged in general and in the abstract, within the meaning of the case-law cited in the preceding paragraph.

- 53 It is apparent from those considerations that Article 7(2) of the Basic Regulation is not invalid for failure to provide, during the process of adopting the emergency measures provided for in Article 7(1), for obtaining the observations of operators likely to be affected by those measures.
- 54 Moreover, Article 47 of the Charter, in that it provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal, is the reaffirmation of the principle of effective judicial protection, which is a general principle of Community law stemming from the constitutional traditions common to the Member States (see Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 335).
- 55 Since the referring court seeks a ruling from the Court, not on the possible failure to respect the right to an effective remedy before a tribunal but on the lack of opportunity for interested parties and the Member States to submit their written comments before the Commission adopts emergency measures under Article 7(1) of the Basic Regulation, Article 47 of the Charter is not applicable.
- 56 The answer to the seventh to ninth questions is therefore that examination of the questions referred has disclosed no factor of such a kind as to affect the validity of the Regulation or that of Article 7(2) of the Basic Regulation as regards the adversarial principle and the principle of effective judicial protection.

The first and second questions

- 57 By these questions, which should be examined together, the referring court seeks, in essence, to ascertain from the Court whether the Regulation satisfies the obligation to state reasons laid down in Article 296(2) TFEU and, in particular, whether the statement of reasons provides an adequate description of the circumstances in which the Commission may act on the basis of Article 7(1) of the Basic Regulation.
- 58 It should be noted that, according to settled case-law, the statement of reasons required by Article 296(2) TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296(2) TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, to that effect, *inter alia* Case C-5/01 *Belgium v Commission* [2002] ECR I-11991, paragraph 68; Case C-501/00 *Spain v Commission* [2004] ECR I-6717, paragraph 73; and judgment of 5 March 2009 in Case C-479/07 *France v Council*, paragraph 49).
- 59 It is also clear from settled case-law that the scope of the obligation to state reasons depends on the nature of the measure in question and that, in the case of measures of general application, the statement of reasons may be confined to indicating the general situation which led to its adoption and the general objectives which it is intended to achieve. In that context, the Court has ruled in particular that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, *inter alia*, Case C-168/98 *Luxembourg v Parliament and Council* [2000] ECR I-9131, paragraph 62; Case C-361/01 P *Kik v OHIM* [2003] ECR

I-8283, paragraph 102; and Case C-304/01 *Spain v Commission* [2004] ECR I-7655, paragraph 51).

- 60 The Court has also held that the obligation to state reasons laid down in Article 296(2) TFEU is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (see, to that effect, Case C-113/00 *Spain v Commission* [2002] ECR I-7601, paragraph 47, and *France v Council*, paragraph 50).
- 61 In accordance with the principles set out above, it must be determined whether the Regulation meets the requirements of Article 296(2) TFEU with regard to its reasoning.
- 62 The Regulation was adopted on the basis of Article 7(1) of the Basic Regulation. According to that provision, the Commission may, inter alia on its own initiative, take emergency measures under three conditions. There must, first of all, be a serious threat to the conservation of living aquatic resources or to the marine eco-system. Secondly, that threat must result from fishing activities. Thirdly, immediate action must be required in order to put an end to that threat.
- 63 As regards proof of the existence of a serious threat to conservation of bluefin tuna stocks, recitals 1 to 3 in the preamble to the Regulation note the importance of the TACs fixed for bluefin tuna under the multi-annual recovery plan for that fish stock. Moreover, recital 6 in the preamble to the Regulation states that the information obtained by Commission inspectors shows that the fishing opportunities allocated to purse seiners were likely to be exhausted before the normal end of the fishing season. Consequently, the Commission satisfied the obligation to state reasons in the

Regulation as regards the existence of a serious threat to the conservation of the bluefin tuna stock in the Eastern Atlantic Ocean and the Mediterranean.

- ⁶⁴ As regards evidence that the threat to conservation of that stock resulted from the fishing activities of purse seiners and the subsequent landing of those fish at the premises of Community operators, first, recital 7 in the preamble to the Regulation states that the Scientific Committee of ICCAT considers that the overcapacity of such vessels is the main factor which could lead to the collapse of the bluefin tuna stock in the Eastern Atlantic and the Mediterranean.
- ⁶⁵ Second, recital 8 in the preamble to the Regulation states that the information in the Commission's possession shows that the Member States have not ensured full compliance with the requirements established in Regulation No 1559/2007, the objective of which is the recovery of the bluefin tuna stock in the Eastern Atlantic and the Mediterranean.
- ⁶⁶ In that regard, it should be noted that it is imperative that the Member States fulfil the obligations incumbent on them under the European Union rules in order to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their exploitation on a sustainable basis in appropriate economic and social conditions (see, in relation to failure to comply with the quota system for the 1991 to 1996 fishing years, Joined Cases C-418/00 and C-419/00 *Commission v France* [2002] ECR I-3969, paragraph 57).
- ⁶⁷ In the light of those considerations, it is clear that the Regulation gives sufficient reasons to show that a serious threat to the conservation of the bluefin tuna stock in the Eastern Atlantic and the Mediterranean resulted from the fishing activities of purse seiners and the subsequent landing of those fish at the premises of Community operators.

⁶⁸ Lastly, as regards the urgency for taking measures, recital 4 in the preamble to the Regulation notes that the Common Fisheries Policy is designed to ensure the long-term viability of the fisheries sector through sustainable exploitation of living aquatic resources based on the precautionary approach. This reminder of the objective pursued by the Union and the finding that the fishing quotas allocated to purse seiners would be exceeded soon, and in any event before the normal end of the fishing season, provide sufficient reasons for the urgency with which the Commission had to act on the basis of the precautionary approach.

⁶⁹ The answer to the first and second questions is therefore that examination of the questions referred has disclosed no factor of such a kind as to affect the validity of the Regulation as regards the requirement to state reasons laid down in Article 296(2) TFEU.

The third question

⁷⁰ By this question, the referring court seeks, in essence, to ascertain from the Court whether the Regulation is invalid in so far as the measures for which it provides deprive Community operators of their legitimate expectations based on the fixing of bluefin tuna fishing quotas inter alia by Regulation No 446/2008.

⁷¹ It should be noted that the right to rely on the principle of the protection of legitimate expectations extends to any individual in a situation in which it appears that the Community administration has led him to entertain reasonable expectations (see, to that effect, Case 265/85 *Van den Bergh en Jurgens and Van Dijk Food Products (Lopik) v EEC* [1987] ECR 1155, paragraph 44, and Joined Cases C-37/02 and C-38/02 *Di Leonardo and Dilexport* [2004] ECR I-6911, paragraph 70).

- ⁷² In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources constitutes such assurances (see Case C-537/08 P *Kahla Thüringen Porzellan v Commission* [2010] ECR I-12917, paragraph 63). However, a person may not plead breach of that principle unless he has been given precise assurances by the administration (see Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187 v Commission* [2006] ECR I-5479, paragraph 147, and judgment of 25 October 2007 in Case C-167/06 P *Komninou and Others v Commission*, paragraph 63).
- ⁷³ Similarly, if a prudent and alert economic operator can foresee the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted (see *Van den Bergh en Jurgens and Van Dijk Food Products (Lopik) v EEC*, paragraph 44, and *Belgium and Forum 187 v Commission*, paragraph 147).
- ⁷⁴ As the Commission rightly stated, Community operators did not receive any assurance from the Commission that they would receive delivery of the full quantity of bluefin tuna for which they had concluded contracts with fishermen.
- ⁷⁵ Moreover, the possibility that measures may be taken that result in fishing seasons being ended before the normal date is provided for inter alia in Article 7(1) and Article 26(4) of the Basic Regulation. Community operators whose activity consists in buying bluefin tuna for farming and fattening cannot rely on the principle of the protection of legitimate expectations since they are in a position to foresee that such measures may be taken.

- ⁷⁶ The answer to the third question is therefore that examination of the questions referred has disclosed no factor of such a kind as to affect the validity of the Regulation as regards the principle of the protection of legitimate expectations.

The fourth and fifth questions

- ⁷⁷ By these questions, the referring court seeks, in essence, to ascertain from the Court whether the Regulation infringes the principle of proportionality in that it prohibits Community operators, with effect from a certain date, from accepting landings of bluefin tuna or placing them in cages for fattening or farming even where they were caught before that date or were caught by ships flying the flag of a third country. The referring court also questions whether the measures adopted by the Regulation were appropriate for attaining the objective of recovery of the bluefin tuna stock.
- ⁷⁸ As regards the date on which the bluefin tuna covered by the prohibition on landing were caught, it is apparent from recital 10 in the preamble to the Regulation that the prohibition on Community operators accepting landings, placing in cages for fattening or farming and transshipments in Community waters or ports of bluefin tuna caught by purse seiners in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean was imposed in order to reinforce the effectiveness of the measures prohibiting fishing and are therefore merely ancillary to it. Accordingly, Article 3 of the Regulation must be interpreted, in the light of Articles 1 and 2 of that regulation, as meaning that the prohibition imposed on operators does not concern bluefin tuna caught before 16 June 2008 or 23 June 2008, depending on the flag of the seiner, irrespective of the date on which they were landed.

- 79 For the rest, the principle of proportionality, which is one of the general principles of European Union law, requires that measures implemented through a provision of European Union law be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, to that effect, Case C-210/03 *Swedish Match* [2004] ECR I-11839, paragraph 47, and Case C-558/07 *S.P.C.M. and Others* [2009] ECR I-5783, paragraph 41).
- 80 According to settled case-law, the European Union legislature enjoys a wide discretionary power in matters concerning agriculture, including fisheries, corresponding to the political responsibilities given to it by Articles 40 TFEU to 43 TFEU. Consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretionary power (see, to that effect, Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80; Case C-304/01 *Spain v Commission*, paragraph 23; and Case C-535/03 *Unitymark and North Sea Fishermen's Organisation* [2006] ECR I-2689, paragraph 55).
- 81 As regards judicial review of the conditions for implementing this principle, bearing in mind the wide discretion enjoyed by the European Union legislature in matters concerning the common agricultural policy, including fisheries, the legality of a measure adopted in that field can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see, to that effect, *Unitymark and North Sea Fishermen's Organisation*, paragraph 57 and the case-law cited).
- 82 It is therefore necessary for the Court to determine whether the prohibition on Community operators accepting landings, placing in cages for fattening or farming and transhipments in Community waters or ports of bluefin tuna caught from 16 or

23 June 2008 by purse seiners in the Atlantic Ocean, east of longitude 45°W, and the Mediterranean was not manifestly inappropriate.

⁸³ The Council's objective in adopting Regulation No 1559/2007 was to implement the recovery plan for bluefin tuna recommended by ICCAT. Recovery was to be achieved, as stated in recital 3 in the preamble to that regulation, through a progressive reduction in the TACs. The latter, the figures for which are given in Article 3 of that regulation, are allocated among the European Union and the other Contracting Parties to ICCAT. Compliance with the quotas allocated to the Member States is therefore necessary in order to attain the objective of recovery of the bluefin tuna stock. Therefore the measures prohibiting fishing adopted by the Commission in the Regulation on the ground that exhaustion of the quotas was imminent are not manifestly inappropriate.

⁸⁴ Similarly, the prohibition on Community operators accepting landings, placing in cages for fattening or farming and transshipments in Community waters or ports of bluefin tuna caught from 16 or 23 June 2008, irrespective of the flag of the purse seiner which caught them, is not manifestly inappropriate since it also permits the achievement of the objective of compliance with the TACs, the reduction of which will, in the long term, bring about recovery of bluefin tuna.

⁸⁵ The answer to the fourth and fifth questions is therefore that examination of the questions referred has disclosed no factor of such a kind as to affect the validity of the Regulation as regards the principle of proportionality.

The sixth question

- ⁸⁶ By this question, the referring court seeks, in essence, to ascertain from the Court whether the Regulation is invalid on the ground that it makes a distinction between, on the one hand, purse seiners flying the flag of or registered in Spain ('Spanish seiners') and those flying the flag of or registered in Malta, Greece, France, Italy or Cyprus ('other seiners') and, on the other hand, between those six Member States and the other Member States, and therefore introduces discrimination on grounds of nationality, in breach of Article 12 EC.
- ⁸⁷ It should be noted that the Regulation related only to purse seiners fishing for bluefin tuna and not bluefin tuna fishing by other methods, in particular non-industrial methods.
- ⁸⁸ Compliance with the principle of non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, *inter alia*, Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 46; Joined Cases C-87/03 and C-100/03 *Spain v Council* [2006] ECR I-2915, paragraph 48; and Case C-141/05 *Spain v Council* [2007] ECR I-9485, paragraph 40).
- ⁸⁹ It is clear from the outset that Member States not covered by the Regulation were in a different situation from the other Member States. In 2008, no purse seiner flying the flag of a Member State not covered by the Regulation had been authorised, in accordance with Article 12(1) of Regulation No 1559/2007, to fish for bluefin tuna in the Eastern Atlantic and the Mediterranean Sea.

- ⁹⁰ With regard to the Member States covered by the Regulation, the Commission authorised Spanish seiners to fish for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and in the Mediterranean Sea, to retain them on board, place them in cages for fattening or farming, tranship them, transfer them or land them until 23 June 2008, whilst such activities were prohibited for other seiners from 16 June 2008.
- ⁹¹ By the same regulation, the Commission authorised Community operators to accept the landing, placing in cages for fattening or farming and transhipment of bluefin tuna caught in that zone by Spanish seiners until 23 June 2008, whilst such activities were prohibited in respect of bluefin tuna caught by other seiners from 16 June 2008.
- ⁹² The Regulation thus treated those two categories of vessel differently on grounds of their flag or their State of registration, and Community operators differently depending on whether they had or had not dealt with Spanish seiners. It is necessary to ascertain whether there were objective grounds justifying that difference in treatment.
- ⁹³ It should be noted that the elements which characterise different situations, and 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 (see, by analogy, Case C-127/07 *Arcelor Atlantique et Lorraine and Others* [2008] ECR I-9895, paragraph 26, and Case C-356/09 *Kleist* [2010] ECR I-11939, paragraph 34).

- ⁹⁴ The Regulation was adopted on the basis of Article 7(1) of the Basic Regulation. According to that provision, as was noted in paragraph 62 above, the Commission may, *inter alia* on its own initiative, decide on emergency measures under three conditions. There must, first of all, be a serious threat to the conservation of living aquatic resources, or to the marine eco-system. Secondly, that threat must result from fishing activities. Thirdly, emergency action must be required in order to put an end to that threat. On the latter point, Article 7(3) of the Basic Regulation provides that the emergency measures are to have immediate effect.
- ⁹⁵ It is therefore apparent that when it acts on the basis of Article 7(1) of the Basic Regulation the Commission must, in accordance with Article 2(1) of that regulation, apply ‘the precautionary approach in taking measures designed to protect and conserve living aquatic resources’, which, according to that provision, constitutes an appropriate means by which to attain the objectives pursued by the common fisheries policy.
- ⁹⁶ Thus, in the implementation of measures adopted on the basis of Article 7 of the Basic Regulation, a difference in treatment may be justified if it would enable the objectives of conservation of living aquatic resources, or protection of the marine eco-system, to be better achieved.
- ⁹⁷ With regard to the Regulation, the Commission maintained that there was a serious threat to the conservation of the bluefin tuna stock in the maritime zone covered by that regulation and that that threat resulted from fishing by purse seiners. It is clear from recital 7 in the preamble to that regulation that, first, there is overcapacity

among fleets of purse seiners and, secondly, the ability of each seiner to catch fish is so great that the TAC could quickly be reached, or even exceeded.

- ⁹⁸ In order to justify the difference with regard to the date of entry into force of the prohibition on Spanish seiners, the Commission maintained that, owing to their small number, those vessels were not likely to exceed the catch quota allocated to them before 23 June 2008, whereas that likelihood existed from 16 June 2008 as regards the other seiners, in view of their significant number.
- ⁹⁹ As the Commission rightly pointed out, it did not stop bluefin tuna fishing on the basis of Article 26(4) of the Basic Regulation because such a measure requires the quota allocated to a Member State to have been used up, which was not so in the present case. The objective sought was merely to stop one type of fishing, namely fishing by means of purse seiners, while the quota allocated to the Member States had not yet been reached.
- ¹⁰⁰ In the light of the explanations given to the Court, it does not appear that objective differences exist between purse seiners according to their flag or the Member State in which they are registered, as regards their capacity to catch or as regards their impact on the exhaustion of bluefin tuna stocks. It has not been shown or even claimed that, in that regard, Spanish seiners were different from the other seiners covered by the Regulation.
- ¹⁰¹ Therefore, although the Commission states that it did not impose the prohibition because there was a likelihood of the quotas allocated to Member States being used up, the fact remains that deferring the entry into force of the prohibition in respect of

Spanish seiners until 23 June 2008 was based solely on the likelihood of the quotas, albeit only those allocated to such seiners, being used up. The difference in treatment which results from such deferment appears therefore to be based only on the ratio between the number of such seiners and the catch quota of bluefin tuna which had been allocated to them.

¹⁰² It follows that, whilst the Commission's action sought to prevent the collapse of the stock of Eastern Atlantic and Mediterranean bluefin tuna and whilst it treated purse seiners differently from other fishing vessels or fishing gear on the basis, as stated in paragraph 97 above, of their capacity to exhaust the bluefin tuna stock, it deferred the entry into force of the prohibition in respect of Spanish seiners until 23 June 2008 solely on the basis of their theoretical capacity to reach their catch quota and not on their actual capacity to catch bluefin tuna.

¹⁰³ As the Advocate General noted in point 125 of her Opinion, it can be seen from the Commission's written observations that each Member State's quota is divided by the number of vessels flying the flag of or registered in that State. During 2008, the 131 purse seiners authorised to fish for bluefin tuna in the Eastern Atlantic and the Mediterranean were as follows: 1 Cypriot, 4 Maltese, 6 Spanish, 16 Greek, 36 French and 68 Italian. The individual quota for seiners more than 24 meters long was 110 to 120 tonnes for French seiners, 52 tonnes for Italian seiners and 251 to 352 tonnes for Spanish seiners.

¹⁰⁴ The Commission also explained at the hearing that Spanish seiners fish mainly in the Balearic zone and begin their fishing season a week later than other seiners. However, the only evidence adduced by the Commission in support of its assertion is the document contained in Annex 6 to its written observations. That document shows, first, that Spanish seiners were catching bluefin tuna in the Balearic zone at least from

27 May 2008 and, second, that French seiners were fishing in the same zone and over the same period and, therefore, the situation of Spanish seiners was not unique.

- 105 In that regard, it should be noted that Article 5(2) of Regulation No 1559/2007 prohibits bluefin tuna fishing by purse seiners in the Eastern Atlantic and the Mediterranean between 1 July and 31 December, with no exception being made for Spanish seiners on grounds of the late start to their fishing season.
- 106 It follows from all the foregoing that it has not been established that Spanish seiners were in a situation which was objectively different from that of other seiners covered by the Regulation which would have justified in their case deferring until 23 June 2008 the entry into force of the prohibition in order to provide better protection for bluefin tuna stocks in the Eastern Atlantic and the Mediterranean.
- 107 Consequently, whilst it was acting on the basis of Article 7(1) of the Basic Regulation in order to end the threat of collapse of the stock of Eastern Atlantic and Mediterranean bluefin tuna as a result of the activity of purse seiners, the Commission deferred until 23 June 2008 the entry into force of the prohibition on fishing solely for Spanish seiners, although that additional time was not objectively justified in view of the objective pursued.
- 108 By acting in that way, the Commission treated Spanish seiners differently from other seiners without such differentiation being objectively justified. It follows that that infringement of the principle of non-discrimination affects the validity of the Regulation in so far as Spanish seiners were authorised to fish for bluefin tuna after 16 June

2008, and to retain on board, place in cages for fattening or farming, tranship, transfer and land such tuna after that date.

- 109 So far as Community operators are concerned, those covered by Article 3(2) of the Regulation had concluded contracts with Spanish seiners to buy bluefin tuna and were able to accept landings, placing in cages for fattening or farming and transhipments of bluefin tuna caught by such seiners between 16 June 2008 and 23 June 2008.
- 110 However, the operators referred to in Article 3(1) of that regulation, who, like AJD Tuna, had concluded such contracts with other seiners, were unable to accept operations in relation to bluefin tuna caught by such seiners from 16 June 2008. Those two categories of Community operators were treated differently and that difference in treatment is the direct consequence of the unjustified difference in treatment afforded to Spanish seiners.
- 111 The possibility for Community operators who had concluded contracts with Spanish seiners to accept landings, placing in cages for fattening or farming and transhipments of bluefin tuna caught by such seiners between 16 June 2008 and 23 June 2008 is not justified since those operators are in a situation that is objectively equivalent to that of other operators.
- 112 That infringement of the principle of non-discrimination affects the validity of the Regulation in so far as Community operators who had concluded contracts with Spanish seiners to buy bluefin tuna were able to continue with their operations in relation to bluefin tuna caught from 16 June 2008 as a result of the authorisation granted to such seiners to catch fish after that date.

- 113 The answer to the sixth question is therefore that the Regulation is invalid in so far as, having been adopted on the basis of Article 7(1) of the Basic Regulation, the prohibitions it contains took effect from 23 June 2008 for Spanish seiners and Community operators who had concluded contracts with them, whereas those prohibitions took effect from 16 June 2008 for other seiners and Community operators who had concluded contracts with them, without such difference in treatment being objectively justified.
- 114 Having regard to the answer given to the sixth question, there is no need to answer the tenth question separately.

Costs

- 115 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

- 1. Examination of the questions referred has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and in the Mediterranean Sea or of Article 7(2) of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of**

fisheries resources under the Common Fisheries Policy as regards the adversarial principle and the principle of effective judicial protection.

- 2. Examination of the questions referred has disclosed no factor of such a kind as to affect the validity of Regulation No 530/2008 as regards the requirement to state reasons laid down in Article 296(2) TFEU, the principle of the protection of legitimate expectations and the principle of proportionality.**

- 3. Regulation No 530/2008 is invalid in so far as, having been adopted on the basis of Article 7(1) of Regulation No 2371/2002, the prohibitions it contains took effect from 23 June 2008 for purse seiners flying the flag of or registered in Spain and Community operators who had concluded contracts with them, whereas those prohibitions took effect from 16 June 2008 for purse seiners flying the flag of or registered in Malta, Greece, France, Italy and Cyprus and Community operators who had concluded contracts with them, without such difference in treatment being objectively justified.**

[Signatures]