



LUXEMBOURG

ΠΡΩΤΟΒΑΘΜΙΑΚΟ ΕΠΙΣΤΗΜΟΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΚΟΙΝΩΝΙΑΣ
TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SUD PRVNHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPAÏSKÉ PÄLLESSKABERS RET I FÖRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMENE ASTME KOHUS
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT CHÉADCHÉIME NA GCOMHPHOBAI EORPACH
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU PIRMAS INSTANCES TIESA

EUROPOS BENDRIŲ PIRMOSIOS INSTANCIOS TEISMAS
EURÓPAI KÖZÖSSÉGEK ELŐPÖKÜ BÍRÓSÁGA
IL-QORTI TAL-PRIMĪSTANZA TAL-KOMUNITAJIET EWROPEJ
GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN
SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
TRIBUNALUL DE PRIMĂ INSTANȚĂ AL COMUNITĂȚILOR EUROPENE
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLEČENSTEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTIÖSÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

REGISTERED

- 360715 -

Luxembourg, 05/06/2008

T-91/07-51

Mr Richard Stein
Mr Philippe Sands
Ms Jessica Simor
Leigh Day & Co
Priory House
25 St. John's Lane
London EC1M 4LB
United Kingdom

Case: T-91/07

WWF-UK

v

**Council of the European Union
Commission of the European Communities, intervener**

The Registrar of the Court of First Instance encloses herewith:

– a certified copy of the Court's order of inadmissibility of 02/06/2008 (Reg. No 360689).




E. COULON
Registrar



LUXEMBOURG

ΠΡΩΤΟΒΑΘΜΙΑΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΟΙΚΟΝΟΜΙΚΗΣ
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ORDER OF THE COURT OF FIRST INSTANCE (Eighth Chamber)

- 360689 -

2 June 2008 *

(Action for annulment – Regulation (EC) No 41/2007 – Recovery of cod stocks –
Setting of the TACs for 2007 – Measure of general application – Not affected
individually – Inadmissibility)

In Case T-91/07,

WWF-UK Ltd, established in Godalming, Surrey (United Kingdom), represented
by M.R. Stein, solicitor, P. Sands and J. Simor, barristers,

applicant,

v

Council of the European Union, represented by A. De Gregorio Merino and
M. Moore, acting as Agents,

defendant,

supported by

Commission of the European Communities, represented by P. Oliver and
M. van Heezik, acting as Agents,

intervener,

ACTION for annulment in part of Council 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), to the extent that it sets the total allowable
catches (TACs) for the year 2007 in respect of the fishing of cod in the areas

* Language of the case: English.

CERTIFIED A TRUE COPY,

LUXEMBOURG, 5.06.08

REGISTRAR :

EN

covered by Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks (OJ 2004 L 70, p. 8),

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Eighth Chamber),

composed of E. Martins Ribeiro (Rapporteur), President, S. Papasavvas and A. Dittrich, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal context

The protection of fisheries resources

- 1 Article 2(1) 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) provides that '[t]he Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions'.
- 2 Article 4(1) of Regulation (EC) No 2371/2002 states that '[t]o achieve the objectives mentioned in Article 2(1), the Council shall establish Community measures governing access to waters and resources and the sustainable pursuit of fishing activities'.
- 3 Under Article 4(2) of that regulation:

'The measures referred to in paragraph 1 shall be established taking into account available scientific, technical and economic advice and in particular [of] the reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF) ... as well as in the light of any advice received from Regional Advisory Councils established under Article 31. They may, in particular, include measures for each stock or group of stocks to limit fishing mortality and the environmental impact of fishing activities by:

- (a) adopting recovery plans under Article 5;
- (b) adopting management plans under Article 6;
- (c) establishing targets for the sustainable exploitation of stocks;

- (d) limiting catches;
- (e) fixing the number and type of fishing vessels authorised to fish;
- (f) limiting fishing effort;
- (g) adopting technical measures ... ;
- (h) establishing incentives ... ;

....'

4 Article 5(2) to (4) of Regulation (EC) No 2371/2002 provides:

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

...

4. Recovery plans may include any measure referred to in points (c) to (h) of Article 4(2) as well as harvesting rules which consist of a predetermined set of biological parameters to govern catch limits.

....'

5 Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks (OJ 2004 L 70, p. 8) establishes, in Articles 1 and 2, a recovery plan for cod stocks in the following areas as delineated by the International Council for the Exploration of the Sea (ICES): cod in the Kattegat (part of ICES division III a); cod in the North Sea (ICES sub area IV, part of ICES division III a, not covered by the Skagerrak, and part of ICES division II a, lying within Community waters); cod in the Skagerrak (part of ICES division III a); cod in the eastern Channel (ICES division VII d); cod to the west of Scotland (ICES division VI a and part of ICES division V b, lying within Community waters); cod in the Irish Sea (ICES division VII a).

6 In accordance with Article 6(1) of Regulation No 423/2004, the Council is to decide each year the total allowable catches (TACs) for each of the cod stocks referred to in the preceding paragraph.

7. Council 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, the 'contested regulation'), sets, inter alia, TACs for cod within the areas defined by Regulation No 423/2004. Those TACs are set out in Annex I A to the contested regulation' (p. 43; first and second tables; p. 44, first table; p. 45, first and second tables, and p. 46, first table).

The Regional Advisory Councils

- 8 Article 31(1) of Regulation No 2371/2002 provides that Regional Advisory Councils ('RACs') 'shall be established to contribute to the achievement of the objectives of Article 2(1) and in particular to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones'.
- 9 Article 31(4) and (5) of Regulation No 2371/2002 provide:
- '4. [RACs] may be consulted by the Commission in respect of proposals for measures, such as multi-annual recovery or management plans, to be adopted on the basis of Article 37 [EC] that it intends to present and that relate specifically to fisheries in the area concerned. They may also be consulted by the Commission and by the Member States in respect of other measures. These consultations shall be without prejudice to the consultation of the [Scientific, Technical and Economic Committee for Fisheries] and of the Committee for Fisheries and Aquaculture.
5. [RACs] may:
- (a) submit recommendations and suggestions, of their own accord or at the request of the Commission or a Member State, on matters relating to fisheries management to the Commission or the Member State concerned;
- ...'
- 10 The RACs are governed by Council Decision 2004/585/EC of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy (OJ 2004 L 256, p. 17).
- 11 Article 2(1) of Decision 2004/585 lists the areas and fisheries for which RACs are established, namely: the Baltic Sea, the Mediterranean Sea, the North Sea, north-western waters, south-western waters, pelagic stocks, and the high seas/long distance fleet.
- 12 In accordance with Article 4(1) of Decision 2004/585 each RAC is to consist of a general assembly and an executive committee, which, under Article 4(3) of the decision, is to have up to 24 members.
- 13 Article 5(1) of Decision 2004/585 provides that the RACs 'shall be composed of representatives from the fisheries sector and other interest groups affected by the Common Fisheries Policy'. Article 5(3) of Decision 2004/585 provides that '[i]n the general assembly and executive committee, two thirds of the seats shall be allotted to representatives of the fisheries sector and one third to representatives of the other interest groups affected by the Common Fisheries Policy'.

The Aarhus Convention and its implementation in Community law

- 14 The Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention) was approved on behalf of the Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).
- 15 In accordance with Article 2(5) of the Aarhus Convention, '[t]he "public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest'.
- 16 Article 6(2) of the Aarhus Convention provides:
 'The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner ...'
- 17 On 6 September 2006 the European Parliament and the Council adopted Regulation No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).
- 18 Recital 4 of the preamble to Regulation No 1367/2006 states:
 'The Community has already adopted a body of legislation, which is evolving and contributes to the achievement of the objectives of the Aarhus Convention. Provision should be made to apply the requirements of the Convention to Community institutions and bodies.'
- 19 Article 2(1)(b) of Regulation No 1367/2006 defines 'public' as meaning 'one or more natural or legal persons, and associations, organisations or groups of such persons' and Article 2(1)(c) of that regulation defines 'Community institution or body' as meaning 'any public institution, body, office or agency established by, or on the basis of, the Treaty, except when acting in a judicial or legislative capacity'.
- 20 Under Article 9 of Regulation No 1367/2006:
 '1. Community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted

to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

...

5. In taking a decision on a plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation.'

- 21 Under the second paragraph of Article 14, Regulation No 1367/2006 is to apply from 28 June 2007.

Background to the dispute

- 22 The applicant, WWF-UK Ltd, was set up on 23 November 1961. In accordance with Article 3 of its Memorandum of Association, the charitable objects of the applicant include 'the promotion of ... the sustainable use of natural resources and ecological processes, by ... the conservation for the public benefit of fauna and flora water soils and other natural resources'.

- 23 The applicant is a member of the Executive Committee of the North Sea RAC.

- 24 On 12 December 2006 the North Sea RAC sent to the Council and the Commission a report on the latter's proposal which resulted in the adoption of the contested regulation. That report, relating to the TACs for 2007 and associated measures, referred to a minority viewpoint which was summarised as follows:

'A minority viewpoint was held by the environmental NGOs [non-governmental organisations] (WWF, Birdlife International and Seas at Risk) who noted that as the ICES advice for North Sea cod had been, for the fifth year in a row, a zero catch they could not support [the] proposal ... Indeed, WWF has noted that the only credible lawful and scientific valid approach at this time is for the Council to follow ICES advice and agree a zero targeted cod fishery in the cod recovery zone for 2006.'

- 25 The contested regulation set the TACs for cod at around 30 000 tonnes for all of the areas covered by it ('the disputed TACs').

Procedure and forms of order sought

- 26 By application lodged at the Registry of the Court of First Instance on 19 March 2007 the applicant brought this action.

- 27 By document lodged at the Registry of the Court on 10 July 2007 the Commission sought leave to intervene in support of the form of order sought by the Council.

- 28 By document lodged at the Registry of the Court on 30 July 2007 the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.
- 29 By order of 14 September 2007 of the President of the Fifth Chamber of the Court the application for leave to intervene was allowed and the Commission lodged a statement in intervention within the time permitted.
- 30 After the composition of the Chambers of the Court was altered, the Judge Rapporteur was assigned, as its President, to the Eighth Chamber, to which consequently this case was allocated.
- 31 In the application, the applicant claims that the Court should:
- annul the disputed TACs;
 - hold that the provisions in question should nevertheless continue to have effect until replaced by a new measure;
 - order the Council to pay the costs.
- 32 In the objection of inadmissibility, the Council contends that the Court should:
- dismiss the action as manifestly inadmissible;
 - order the applicant to pay the costs.
- 33 In the statement in intervention, the Commission contends that the Court should dismiss the action as manifestly inadmissible.
- 34 In its observations on the objection of inadmissibility, the applicant, without formulating an actual form of order, claims that the action is admissible.

Law

- 35 Under Article 114(1) of the Rules of Procedure, if a party so requests, the Court of First Instance may decide on an objection of inadmissibility without going to the substance of the case. In accordance with Article 114(3), the remainder of the proceedings is to be oral, unless the Court of First Instance otherwise decides. The Court considers in the present case that there is sufficient information in the court documents and that it is unnecessary to open the oral procedure.
- 36 The Council and the Commission contend that the applicant has no standing to bring proceedings under the fourth paragraph of Article 230 EC. According to the Council, the applicant also has no legal interest in bringing proceedings.

- 37 It is appropriate to consider first whether the applicant has standing to bring proceedings under the fourth paragraph of Article 230 EC.
- 38 As set out in the fourth paragraph of Article 230 EC, '[a]ny natural or legal person may... institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.
- 39 The Council and the Commission consider that the applicant is neither directly nor individually concerned by the disputed TACs.
- 40 Since both of the two conditions of the fourth paragraph of Article 230 EC must be fulfilled, the Court considers it appropriate first to examine whether the disputed TACs are of individual concern to the applicant since, if that is not the case, it would be otiose to investigate whether those TACs directly affect the applicant (see, to that effect, order of 9 January 2007 in Case T-127/05 *Lootus Teine Osatühing v Council*, not published in the ECR, paragraph 24).

Arguments of the parties

- 41 The Council and the Commission contend that the disputed TACs do not individually concern the applicant within the meaning of Case 25/62 *Plaumann v Commission* [1963] ECR 95. The fact that the applicant is a member of the North Sea RAC and the claim that the applicant has a particular status because of the Aarhus Convention are not such as to distinguish the applicant individually for the purposes of the fourth paragraph of Article 230 EC. The Court of First Instance cannot depart from the conditions of the fourth paragraph of Article 230 EC, not even by interpreting them in the light of the principle of effective judicial protection.
- 42 The applicant's response is that legislative measures of general application and effect may be of direct and individual concern to individuals (Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501, paragraphs 13 to 17, and Opinion of Advocate General Jacobs in that case [1991] ECR I-2507, points 63 to 68). The applicant makes the point that, when a person is entitled to submit observations and does lodge observations in order to attempt to influence the relevant decision, that entitlement and action may be sufficient to establish that there is an individual interest for the purposes of the fourth paragraph of Article 230 EC (Case 75/84 *Metro v Commission* [1986] ECR 3021, paragraphs 22 and 23).
- 43 In the present case, the question whether the applicant is individually concerned must be answered in the light of the system for the setting of TACs established by Regulation No 2371/2002 and by the Cod Recovery Plan, and of the role played by the applicant in their adoption by the Council (Case 264/82 *Timex v Council and Commission* [1985] ECR 849, paragraph 11). The effect of a combination of circumstances is that the applicant can be differentiated from other persons

affected by the contested regulation and distinguished individually in the same way as an addressee (Case C-263/02 P *Commission v Jégo-Quéré* [2004] ECR I-3425). Community law accords to the applicant a particular status as regards the adoption of the disputed TACs, with the result that it is individually concerned by those TACs (Case 191/82 *FEDIOL v Commission* [1983] ECR 2913, paragraph 31, and *Commission v Jégo-Quéré*, cited above, paragraph 47).

- 44 Firstly, the applicant refers to its membership of the North Sea RAC, and in particular of its Executive Committee. In that capacity, the applicant was entitled, in accordance with Article 4(2)(d) and (f), Article 5(4) and Article 31(5) of Regulation No 2371/2002, to be involved in the procedure of adopting the disputed TACs. The applicant acted on that entitlement and set out its point of view in the report of the North Sea RAC relating to the TACs for 2007 and associated measures, which was sent to the Commission and the Council on 12 December 2006. On that occasion, the applicant stated that the only legal approach in respect of cod was for the Council to adopt a zero TAC. The applicant also sent a paper to the Commission on 8 December 2006 proposing TACs and quotas for selected fish stocks and fisheries in 2007.
- 45 The applicant was entitled to expect that the Commission, when it presented its proposal to the Council, would take account of its position. Indeed, the Commission stated that it would take account of advice and recommendations put forward by RACs although, in accordance with Article 31(4) of Regulation No 2371/2002, it was not bound to ask for their advice. On several occasions, the Commission emphasised the importance of the RACs in the decision-making procedure leading up to the adoption of TACs, *inter alia*, in the Communication from the Commission to the Council and the European Parliament dated 24 May 2006 on improving consultation on Communities fisheries management (COM (2006) 246 final) and in the Communication from the Commission to the Council dated 15 September 2006 on fishing opportunities for 2007 – Policy Statement from the European Commission (COM (2006) 499 final). In addition, at a seminar on 28 September 2006 organised by the Directorate-General for Fisheries and Maritime Affairs on the theme ‘Taking stock of RACs functioning and contributing to the Common Fisheries Policy’, the Commissioner concerned highlighted the important contribution of the RACs to the Common Fisheries Policy.
- 46 The Commission does appear to have had regard to the views of the North Sea RAC, since reference was made to them in the Explanatory Memorandum to its proposal of 5 December 2006, which resulted in the adoption of the contested regulation (COM (2006) 774 final, p. 3).
- 47 In accordance with Article 4(2) of Regulation No 2371/2002, the Council was obliged to take account of the views referred to above in paragraph 44 prior to the adoption of the relevant TACs. The Council acknowledged in a letter dated 8 March 2007 addressed to the applicant that Article 4(2) of Regulation

No 2371/2002 requires it to take account of the advice of the Scientific, Technical and Economic Committee for Fisheries (STECF). It thereby also acknowledged that it must take account of the advice of the RACs, which are referred to in the same sentence of Article 4(2) of the regulation. In the same letter, the Council stated that the RACs are a source of information for its decision-making.

- 48 The applicant observes that recital 1 of the preamble to Decision 2004/585 refers to the RACs as ‘new forms of participation by stakeholders in the Common Fisheries Policy’. Recitals 4 to 6 of the preamble to Council Decision 2007/409/EC of 11 June 2007 amending Decision 2004/585 (OJ L 155, p. 68) also emphasise the important consultative role of RACs.
- 49 The applicant therefore not only had an entitlement, as a member of the North Sea RAC, to have its views taken into account by the Council in the adoption of the contested TACs, but also took up that entitlement and clearly set out its position as to the law and as to the facts. The applicant explained in the report of the North Sea RAC that the latter’s majority approach was contrary to the law and that the Council would be acting unlawfully if it followed it. The applicant’s view was not accepted. As a legally entitled participant, actively involved in the decision-making procedure which resulted in the Council adopting the disputed TACs, the applicant is entitled to challenge the contested regulation, which was adopted notwithstanding its opposition and contrary to its direct interests, as expressed in the advice which it had given to the Commission, the Council and to Member States in the context of its membership of the North Sea RAC.
- 50 The necessary corollary of the fact that the Community institutions are obliged to consult and take account of the views of the North Sea RAC in the adoption of the disputed TACs is that the applicant is entitled to challenge those measures in the Court of First Instance. Its membership of the North Sea RAC, which gives to the applicant the right to take part in the decision-making procedure which resulted in adoption of the disputed TACs, also distinguishes its position from that of the applicants at first instance in the cases which resulted in the judgments in Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, and in *Commission v Jégo-Quéré*, paragraph 43 above.
- 51 The applicant further maintains that the members of the North Sea RAC are a closed and identifiable group of individuals recognised by the Member States as having a personal and identifiable interest in a measure such as the contested regulation. The members of the Executive Committee are an even smaller closed group chosen by the General Assembly.
- 52 In its observations on the objection of inadmissibility, the applicant states that whether there is a closed group must be assessed as at the time of the adoption of the contested regulation (order of the President of the Court of Justice in Case C-300/00 P(R) *Federación de Cofradías de Pescadores de Guipúzcoa and Others v Council* [2000] ECR I-8797 paragraph 45). It considers that, as a member of the

Executive Committee of the North Sea RAC, it was itself entitled to be involved in the process which resulted in adoption of the disputed TACs. Further, it set out its minority point of view in that RAC's report. Therefore the disputed TACs are of individual concern to the applicant. If the North Sea RAC alone were regarded as individually concerned, the role of a third of the members of that RAC would become redundant and the statutory provision allowing for the expression of minority and dissenting views meaningless.

- 53 Secondly, the applicant claims that it has a particular status in relation to the adoption of the contested regulation as a result of the entitlements it derives from the Aarhus Convention. The applicant states that that Convention, as an international agreement entered into by the Community, is an integral part of the Community legal order (Case 181/73 *Haegeman* [1974] ECR 449, paragraphs 2 to 6, and Case T-115/94 *Opel Austria v Council* [1997] ECR II-39, paragraphs 101 and 102), and was binding on the Community even before the entry into force of Regulation No 1367/2006.
- 54 Since the applicant belongs to the public affected by and having an interest in the measures adopted in the contested regulation, in accordance with Article 9(3) of Regulation No 1367/2006, the Council and the Commission should have taken into account its contribution to the decision-making procedure. The participation of the RACs or of non-governmental organisations (NGOs) in the decision-making procedure contributes, in accordance with recital 4 of the preamble to Regulation No 1367/2006, to the achievement of the objectives of the Aarhus Convention.
- 55 Referring to Article 2(5) and Article 6(2) of the Aarhus Convention, the applicant maintains that it was entitled to be informed early in the decision-making procedure and to be involved in the adoption of the contested regulation. That entitlement gives to the applicant a particular status with regard to the adoption of the contested regulation, with the result that the disputed TACs are of direct and individual concern to it within the meaning of Article 230 EC.
- 56 Thirdly, the applicant claims that the Commission and the Council have misused their powers by setting the disputed TACs. They have taken a political decision in order to avoid the unacceptable social and economic consequences linked to complete closure of cod fishing (Commission document on review of the Cod Recovery Plan (2007); Communication from the Commission to the Council dated 15 September 2006). The Community legislation does not allow for political reasons to determine fishing levels.
- 57 The Commission explicitly acknowledged that neither it nor the Council had acted in accordance with the Cod Recovery Plan (Commission document on review of the Cod Recovery Plan (2007)). The Council's letter dated 8 March 2007 to the applicant seems to suggest that the Council was not even aware of the Cod Recovery Plan as the legal basis for the adoption of the contested TACs. The

Council appears to have thought that the contested TACs were to be adopted under Article 20 of Regulation No 2371/2002.

- 58 Throughout its involvement in the procedure which resulted in the adoption of the contested TACs, the applicant sought to ensure that the Council acted in accordance with the law and did not misuse its powers. If the applicant is not able to challenge the lawfulness of the disputed TACs, no body or individual will do so. The Commission's stance has been politically pragmatic and it will not bring an action since its proposals in respect of the disputed TACs contravened the Cod Recovery Plan. Member States are unlikely to bring an action since they were involved in the political negotiations in the Council which resulted in adoption of the disputed TACs. Nor is there any potential for an action in the national courts (Opinion of Advocate General Jacobs in *Extramet Industrie v Council*, paragraph 42 above, points 69 to 74).
- 59 In the opinion of the applicant, it would be abhorrent to the rule of law for there to be no person, body, institution or government able or willing in practice to take steps to ensure that emergency measures to ensure the survival of an environmental resource, whose destruction will be likely to have ecological and environmental ramifications for many individuals across the Community, are properly implemented by the Council in accordance with the law.
- 60 The applicant refers to Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, paragraphs 19 to 25, 35 and 36, and to the Opinion of Advocate General Jacobs in *Unión de Pequeños Agricultores v Council*, paragraph 50 above, paragraph 77, and submits that, in the context of potentially irreparable environmental damage caused or contributed to by the unlawful acts of the Commission and Council, which may amount to a misuse of power, it is even more essential that Article 230 EC be interpreted in such a way as to grant the applicant standing.

Findings of the Court

- 61 In accordance with settled case-law, the fourth paragraph of Article 230 EC allows individuals to challenge, inter alia, any decision which, although in the form of a regulation, is of direct and individual concern to them. One of the objectives of that provision is to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually and thus to make it clear that the nature of a measure cannot be changed by the form chosen (Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta v Commission* [1980] ECR 1949, paragraph 7; orders in Case T-12/96 *Area Cova and Others v Council and Commission* [1999] ECR II-2301, paragraph 24; in Case T-287/04 *Lorte and Others v Council* [2005] ECR II-3125, paragraph 36, and in Case T-447/05 *SPM v Commission* [2007] ECR II-0000, paragraph 61).

- 62 The criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the act in question (order of the Court of Justice in Case C-168/93 *Gibraltar and Gibraltar Development v Council* [1993] ECR I-4009, paragraph 11; see order in Case T-35/06 *Honig-Verband v Commission* [2007] ECR II-0000, paragraph 39, and case-law there cited). An act is of general application if it applies to objectively determined situations and produces its legal effects with respect to categories of persons viewed generally and in the abstract (Case T-13/99 *Pfizer Animal Health v Council* [2002] ECR II-3305, paragraph 82, and Case T-70/99 *Alpharma v Council* [2002] ECR II-3495, paragraph 74; see also to that effect Case 307/81 *Alusuisse Italia v Council and Commission* [1982] ECR 3463, paragraph 9).
- 63 In the present case, the contested regulation restricts the fishing opportunities, for the year 2007, in respect of certain fish stocks and groups of fish stocks in Community waters and, for Community vessels, in waters where catch limitations are required. It applies therefore to objectively determined situations and produces its legal effects with respect to categories of persons viewed generally and in the abstract. It is therefore general in character.
- 64 The disputed TACs, in that they restrict the fishing opportunities in respect of cod in geographically determined areas, share the general character of the contested regulation.
- 65 However, it remains a possibility that, in certain circumstances, the provisions of a legislative act applying to the traders concerned in general may be of individual concern to some of them (*Unión de Pequeños Agricultores v Council*, paragraph 50 above, paragraph 36; see also, to that effect, *Extramet Industrie v Council*, paragraph 42 above, paragraph 13, and Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 19). In such circumstances, a Community act could be of a legislative nature and, at the same time, vis-à-vis some of the traders concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others v Commission* [1995] ECR II-2941, paragraph 50; Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrika and Dole Fresh Fruit Europe v Commission* [2001] ECR II-1975, paragraph 101; Case T-139/01 *Comafrika and Dole Fresh Fruit Europe v Commission* [2005] ECR II-409, paragraph 107, and order in *SPM v Commission*, paragraph 61 above, paragraph 66).
- 66 In accordance with settled case-law, a natural or legal person other than the addressee of a measure can claim to be individually concerned by it within the meaning of the fourth paragraph of Article 230 EC only if that person is affected, by the measure in question, by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (*Plaumann v Commission*, paragraph 41 above, p. 107; *Codorniu v Council*, paragraph 65 above, paragraph 20; *Unión de Pequeños Agricultores v Council*, paragraph 50

above, paragraph 36; *Commission v Jégo-Quééré*, paragraph 43 above, paragraph 45, and T-139/01 *Comafrika and Dole Fresh Fruit Europe v Commission*, paragraph 65 above, paragraph 107). If that condition is not fulfilled, a natural or legal person does not, under any circumstances, have standing to bring an action for annulment of a regulation (*Unión de Pequeños Agricultores v Council*, paragraph 50 above, paragraph 37, and order in *SPM v Commission*, paragraph 61 above, paragraph 67).

- 67 In the light of that case-law, what must be determined is whether, in the present case, the disputed TACs are of individual concern to the applicant.
- 68 Firstly, the applicant considers that it is individually concerned by the disputed TACs, since, because of its membership of the North Sea RAC, it was involved in the procedure which resulted in adoption of the disputed TACs and should therefore be recognised as a party to the decision-making procedure which led to their adoption.
- 69 On that point, it must be borne in mind that the fact that a person is involved in the procedure leading to the adoption of a Community measure is capable of distinguishing that person individually in relation to the measure in question only if the applicable Community legislation grants him certain procedural guarantees (order of 16 September 2005 in Case C-342/04 P *Schmoldt and Others v Commission*, not published in the ECR, paragraph 39; Joined Cases T-38/99 to T-50/99 *Sociedade Agrícola dos Arinhos and Others v Commission* [2001] ECR II-585, paragraph 46; Case T-47/00 *Rica Foods v Commission* [2002] ECR II-113, paragraph 55, and order of 25 May 2004 in Case T-264/03 *Schmoldt and Others v Commission* [2004] ECR II-515, paragraph 100).
- 70 In the present case, it must be noted, first, that the North Sea RAC of which the applicant is a member was involved in the procedure which led to the adoption of the disputed TACs. On 12 December 2006 it sent to the Council and the Commission the report relating to the TACs for 2007 and associated measures.
- 71 The applicant claims that that involvement by the North Sea RAC is a component of the procedural guarantees provided by Regulation No 2371/2002. It refers for that purpose to Article 31(1) (4) and (5) of the regulation, according to which the RACs not only may be consulted by the Commission, but also may submit of their own accord recommendations and suggestions to the Commission on matters relating to fisheries management. The applicant further refers to Article 4(2)(d) and (f) of Regulation No 2371/2002 according to which the Council is required to take into account, inter alia, any advice received from the RACs when it sets the TACs.
- 72 Even assuming that the provisions referred to concern procedural guarantees within the meaning of the case-law referred to in paragraph 69 above, those guarantees would exist for the benefit of the RACs and not for the benefit of their

members. Accordingly, only the RACs would be entitled to claim that those supposed procedural guarantees are capable of distinguishing them individually for the purposes of the fourth paragraph of Article 230 EC; the applicant cannot, either as a member of the North Sea RAC or of its Executive Committee, profit from those same guarantees (see, to that effect, order of 16 September 2005 in *Schmoldt and Others v Commission*, paragraph 69 above, paragraph 42).

- 73 The involvement of the applicant as a member of the North Sea RAC or of its Executive Committee, in the course of the procedure which led to the adoption of the contested regulation, cannot therefore establish that the disputed TACs are of individual concern to it within the meaning of the fourth paragraph of Article 230 EC.
- 74 That conclusion is not invalidated by the fact that the report of the North Sea RAC dated 12 December 2006, relating to the TACs for 2007 and associated measures, referred to the minority view expressed by the applicant.
- 75 Even though Article 7(3) of Decision 2004/585 provides that, '[i]f no consensus can be reached, dissenting opinions expressed by members shall be recorded in the recommendations adopted by the majority of the members present and voting', it remains the case that any possible procedural guarantees accorded by the relevant Community legislation would exist solely for the benefit of the RACs and not for the benefit of their members. Neither the provisions of Regulation No 2371/2002 nor those of Decision 2004/585 grant to the applicant personally the right to be involved in the procedure for adoption of the contested regulation. In the absence of procedural rights explicitly guaranteed to the applicant by the Community legislation, it would be contrary to the letter and to the spirit of Article 230 EC to permit the applicant, on the basis of a point of view that it formulated in the course of the procedure which led to the adoption of the contested regulation, to bring an action against that measure (see, to that effect, order in *Honig-Verband v Commission*, paragraph 62 above, paragraph 45, and the case-law there cited; see, also, to that effect, order in *Federación de Cofradías de Pescadores de Guipúzcoa and Others v Council*, paragraph 52 above, paragraph 39).
- 76 Further, it must be remembered that, in the present case, the North Sea RAC submitted, on 12 December 2006, the report relating to the TACs for 2007 and associated measures, which, in accordance with Article 7(3) of Decision 2004/585, recorded the dissenting position of the applicant. As the applicant states in the application, the Commission, in the proposal for the contested regulation, took account of consultation with the RACs.
- 77 It follows that, even supposing that the applicant enjoyed procedural guarantees within the meaning of the case-law referred to in paragraph 69 above, which is not the case, this action would not be aimed at safeguarding those guarantees. Even were that to be the case, judicial protection of the applicant's interests would not

require that the contested regulation be regarded as being of individual concern to the applicant (see, to that effect, Case C-70/97 P *Kruidvat v Commission* [1998] ECR I-7183, paragraph 43; Case C-176/06 P *Stadtwerke Schwäbisch Hall and Others v Commission*, [2007] ECR I-0000, paragraph 22; and Case T-12/93 *CCE de Vittel and Others v Commission* [1995] ECR II-1247, paragraph 59).

- 78 Lastly, the Court must reject the applicant's argument that the members of the North Sea RAC form a closed and identifiable group of persons recognised by Member States as having a personal and identifiable interest in measures such as the disputed TACs and that the members of the Executive Committee constitute an even smaller closed group.
- 79 That fact, even were it to be established, is not sufficient to differentiate the members of the North Sea RAC or the members of its Executive Committee from any other person and to distinguish them individually in the same way as an addressee. The contested regulation is to apply by virtue of an objectively determined situation in the context of which possible membership of a RAC or a RAC's Executive Committee is irrelevant.
- 80 Secondly, the applicant claims that the Aarhus Convention and Regulation No 1367/2006 entitle it to be informed early in the decision-making procedure leading to the adoption of TACs and that that entitlement to be involved in the adoption of such measures thereby confers on it a particular status with regard to the adoption of the contested regulation.
- 81 On that point, it should be noted that Article 6(2) of the Aarhus Convention provides that the public concerned is to be informed early in an environmental decision-making procedure. In accordance with Article 9(1) of Regulation No 1367/2006, which transposes the provisions of the Aarhus Convention into the Community legal order, Community institutions or bodies are to provide early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment, when all options are still open.
- 82 It must be pointed out that any entitlements which the applicant may derive from the Aarhus Convention and from Regulation No 1367/2006 are granted to it in its capacity as a member of the public. Such entitlements cannot therefore be such as to differentiate the applicant from all other persons within the meaning of the case-law referred to in paragraph 66 above.
- 83 Further, and in any event, it must be observed that, in accordance with the second paragraph of Article 14 of Regulation No 1367/2006, that regulation was applicable only from 28 June 2007 and therefore after adoption of the contested regulation on 21 December 2006. Having regard to the fact that the question whether an act is of individual concern to a person can be assessed only in the light of the circumstances existing when the contested measure is adopted (order

in *Federación de Cofradías de Pescadores de Guipúzcoa and Others v Council*, paragraph 52 above, paragraph 45), the particular status to which the applicant refers would not enable the contested regulation to be considered to have been of individual concern to the applicant at the time of its adoption.

- 84 Thirdly, the applicant claims that the Council misused its powers by adopting the disputed TACs. In that context, it refers also to the irreparable environmental damage caused by the disputed TACs and to the right to effective judicial protection.
- 85 The arguments of the applicant on those matters cannot be accepted. Neither the alleged unlawfulness of the contested regulation nor the seriousness of the alleged infringement on the part of the Council relate to whether the applicant has attributes peculiar to it or to a factual situation which differentiates it from all other persons within the meaning of the case-law cited in paragraph 66 above. The circumstances are not therefore such as to distinguish the applicant individually for the purposes of the fourth paragraph of Article 230 EC. Nor, in any event, can they render inapplicable the rules on admissibility expressly laid down by the Treaty (see, to that effect, orders in Case C-345/00 P *FNAB and Others v Council* [2001] ECR I-3811, paragraph 40, and in Case C-341/00 P *Conseil national des professions de l'automobile and Others v Commission* [2001] ECR I-5263, paragraph 32).
- 86 As regards, first, environmental damage caused by the contested regulation, the disputed TACs affect the applicant in its objective capacity as an entity whose purpose is to protect the environment, in the same manner as any other person in the same situation. As is apparent from the case-law, that capacity is not by itself sufficient to establish that the applicant is individually concerned by the contested regulation (see, to that effect, order in Joined Cases T-236/04 and T-241/04 *EEB and Stichting Natuur en Milieu v Commission* [2005] ECR II-4945, paragraph 56, and the case-law cited).
- 87 As regards, secondly, the argument based on the right to effective judicial protection since there is no possibility of any action before the national courts and since the Community institutions and the Member States are not prepared to challenge the contested regulation, it must be recalled that, in accordance with settled case-law, the conditions governing the admissibility of an action for annulment cannot be set aside on the basis of the applicant's interpretation of the right to effective judicial protection (see Case C-260/05 P *Sniace v Commission* [2007] ECR I-0000, paragraph 64, and the case-law cited).
- 88 As regards the specific subject-area of this action, the Court of Justice has already had occasion to state that, although the condition in the fourth paragraph of Article 230 EC must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting

aside the condition in question, expressly laid down in the Treaty. The Community Courts would otherwise go beyond the jurisdiction conferred by the Treaty (*Commission v Jégo-Quéré*, paragraph 43 above, paragraph 36). As it is, the applicant has not established that it was individually concerned by the disputed TACs.

- 89 It is evident from the foregoing that the disputed TACs are not of individual concern to the applicant. Since the applicant does not meet one of the conditions governing admissibility laid down by the fourth paragraph of Article 230 EC, it is unnecessary to consider whether those TACs are of direct concern to the applicant, and whether it has any legal interest in bringing proceedings.
- 90 It follows that the action must be dismissed as being inadmissible.

Costs

- 91 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, the Court must order the applicant to bear, in addition to its own costs, those of the Council, as applied for by the latter.
- 92 In accordance with the first paragraph of Article 87(4) of the Rules of Procedure, institutions which intervene in the proceedings are to bear their own costs.

On those grounds,

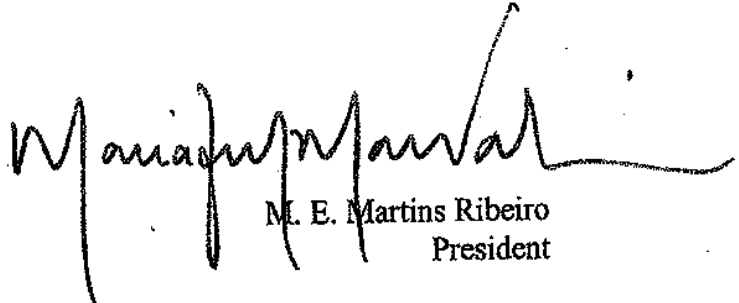
THE COURT OF FIRST INSTANCE (Eighth Chamber)

hereby orders:

1. **The action is dismissed as being inadmissible.**
2. **WWF-UK Ltd shall bear its own costs and pay those incurred by the Council.**
3. **The Commission shall bear its own costs.**

Luxembourg, 2 June 2008


E. Coulon
Registrar


M. E. Martins Ribeiro
President