



## **The regulation prohibiting purse seiners from fishing for bluefin tuna from mid-June 2008 is partially invalid**

*The regulation breaches the principle of non-discrimination in so far as the prohibition took effect from 23 June 2008 for Spanish purse seiners whereas it took effect from 16 June 2008 for Maltese, Greek, French, Italian and Cypriot purse seiners*

Purse seiners are normally permitted to fish for bluefin tuna in the Eastern Atlantic and the Mediterranean between 1 January and 30 June. However, under the basic regulation of the common fisheries policy<sup>1</sup>, the Commission may adopt emergency measures in order to conserve fish stocks.

Accordingly, on 12 June 2008, the Commission adopted a regulation<sup>2</sup> which prohibited purse seiners flying the flag of Greece, France, Italy, Cyprus or Malta from fishing for bluefin tuna in the Eastern Atlantic and the Mediterranean from 16 June 2008, and purse seiners flying the Spanish flag from 23 June 2008. The regulation also prohibited Community operators from accepting landings, the placing in cages for fattening or farming, or transshipments in Community waters or ports of bluefin tuna caught by seiners in those zones from the same dates.

AJD Tuna is a Maltese company which owns two fish farms for the farming and fattening of bluefin tuna. Following the adoption of that regulation, the Direttur tal-Agricoltura u s-Sajd (Maltese Director for Agriculture and Fisheries) prohibited AJD Tuna from buying bluefin tuna in, or importing it into, Malta. AJD Tuna brought proceedings before the Prim'Awla tal-Qorti Ċivili (Civil Court, Malta) seeking compensation for damage it claims to have suffered as a result of that prohibition, which it alleges is excessive, unlawful and unreasonable. AJD Tuna claims that it was unable to acquire the quantity of bluefin tuna which it had agreed to buy from French and Italian fishermen before the opening of the fishing season. Taking the view that the outcome of the case is dependent on the validity of the regulation, the Prim'Awla tal-Qorti Ċivili seeks a ruling from the Court of Justice on this question.

In today's judgment the Court finds, first of all, that the basic regulation is not invalid for failing to allow, during the process of adopting the emergency measures, operators likely to be affected by those measures to submit their observations. The Court notes that the right for every person to be heard before any individual measure which would affect him or her adversely is taken applies only to individual acts and not to acts having general application, such as the basic regulation.

The Court also declares that **the regulation does not infringe the obligation to state reasons, the principle of the protection of legitimate expectations nor the principle of proportionality.**

The Court finds, however, that **the regulation infringes the principle of non-discrimination** in so far as the prohibitions it contains took effect from 23 June 2008 for Spanish purse seiners, whereas they took effect from 16 June 2008 for Maltese, Greek, French, Italian and Cypriot purse

<sup>1</sup> 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).

<sup>2</sup> 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).

seiners. The Court finds in that regard that it has not been established that Spanish purse seiners were in a situation which was objectively different from that of other purse seiners covered by the regulation which would have justified, as regards the Spanish vessels, deferring by one week the entry into force of the prohibition on fishing in order to provide better protection for bluefin tuna stocks in the Eastern Atlantic and the Mediterranean.

In that context, the Court notes that the prohibition on fishing for bluefin tuna was not imposed because the quota allocated to a Member State had been used up but because of the likelihood of exhaustion of bluefin tuna stocks and the impact of purse seiner fishing on those stocks. It has not been shown or even claimed that Spanish purse seiners were different from other purse seiners as regards their capacity to catch bluefin tuna or their impact on the exhaustion of bluefin tuna stocks.

**The Court concludes that the regulation is invalid in so far as it treats Spanish purse seiners differently from other purse seiners without such difference in treatment being objectively justified in view of the objective pursued, which was the protection of the bluefin tuna stock.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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