I — Introduction

1. The present case concerns an action brought by the Kingdom of Spain for the annulment of Commission Regulation (EC) No 1162/2001 of 14 June 2001 2 (hereinafter: 'the contested regulation' or 'Regulation No 1162/2001'). The contested regulation contains measures for the recovery of the stock of hake in ICES 3 sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d and e and associated conditions for the control of activities of fishing vessels in those areas.

2. The Kingdom of Spain takes the view that the contested regulation is founded on an incorrect legal basis and that its adoption does not fall within the competence of the Commission, but within that of the Council. Furthermore Article 2(2) of Regulation No 1162/2001 infringes the principle of non-discrimination, by creating a derogation in favour of certain vessels. Additionally there is an infringement of the requirement to state reasons, since the Commission fails to explain why that derogation was introduced.

II — Legislative background and facts of the case

3. The basis for Community policy relating to the conservation and management of fishery resources is the annual determination of total allowable catches (= TAC, also from the French 'Totaux Admissibles de Capture'). These are set according to species and to fishery zones in the light of scientific analyses. The TAC are divided up between the Member States in the form of quotas.

4. This policy continues the tradition for the management of fisheries which prevailed at that time when the Community fisheries

1 — Original language: German.
2 — OJ 2001 L 159, p. 4.
policy was adopted by means of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources.\(^4\) Regulation No 170/83 was later replaced by Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture.\(^5\)

5. Regulation No 3760/92 lays down the basic framework for the fisheries industry in the Community. It provides inter alia for each fishery or group of fisheries for measures to: establish zones in which fishing activities are prohibited or restricted, limit exploitation rates, set quantitative limits on catches, limit time spent at sea, taking account, where appropriate, of the remoteness of the fishing waters, fix the number and type of fishing vessels authorised to fish, lay down technical measures regarding fishing gear and its method of use, set a minimum size or weight of fish that may be caught, and establish incentives, including those of an economic nature, to promote selective fishing. Regulation No 3760/92 was replaced by Council Regulation (EC) No 2371/2002 of 20 December 2002,\(^6\) which took effect from 1 January 2003.

6. After ICES had indicated in November 2000 a reduction in the stock of hake the Council and the Commission noted at the Fisheries Council meeting of 14 and 15 December 2000 the urgent need to establish a conservation plan for this stock. On 14 June 2001 the Commission adopted the contested regulation on the basis of Article 15 of Regulation No 3760/92, which provides:

1. In the event of serious and unexpected upheaval liable to jeopardise conservation of resources, the Commission, at the request of a Member State or on its own initiative, shall decide on appropriate measures which shall last no more than six months, and which shall be communicated to the Member States and the European Parliament and which shall have immediate effect.

2. Where the Commission receives a request from a Member State, it shall take a decision on the matter within 10 working days.

3. Member States may refer the decision taken by the Commission in accordance with paragraph 1 to the Council within 10 working days of notification of the decision.

4. The Council may take a different decision, by qualified majority, within one month.'
7. The fourth recital in the preamble to Regulation No 1162/2001 reads:

'(4) The immediate requirement is to reduce catches of juvenile hake by:

— establishing a general increase in the mesh size of towed nets used to catch hake to which end it is necessary to derogate from conditions regarding mesh sizes of towed gears laid down in Annexes I and II to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms as last amended by Regulation 973/2001.

— establishing geographical areas in which juvenile hake occur in high abundance and specifying that fishing with towed nets may take place in these areas only if these nets are of high mesh size,

— establishing additional conditions to ensure that capture of juvenile hake by beam trawls is reduced.'

8. Article 1 of Regulation No 1162/2001 provides that it shall apply to fishing vessels operating within ICES sub-areas V and VI and ICES divisions VII b, c, f, g, h, j, k and ICES divisions VIII a, b, d and e.

9. Article 2 provides:

'1. Notwithstanding the conditions laid down in Article 4(4) and Article 15 of Regulation (EC) No 850/98, catches of hake (Merluccius merluccius) retained on board any vessel carrying any towed gear of mesh size 55 mm to 99 mm may not be in excess of 20% of the weight of the total catch of marine organisms retained on board.

2. The conditions of paragraph 1 shall not apply to any vessel of length less than 12 metres overall which returns to port within 24 hours of its most recent departure from port.'


9 — Thus the definition of the geographical scope of application of the regulation differs from that contained in its title, which creates the impression that it also applies to ICES sub-areas III and IV (North Sea and Baltic Sea).
10. Articles 3 and 4 of the contested regulation prohibit the use of certain types of net and netting material. Article 5 defines certain geographical areas and the conditions under which fishing is permitted there. In addition the regulation contains provisions governing implementation and control.

11. The Kingdom of Spain took advantage of the possibility provided for in Article 15(3) of Regulation No 3760/92 and presented the Council on 22 June 2001 with a proposal for amendment of Regulation No 1162/2001 by which Article 2(2) would be deleted. The proposal was rejected by the Council at its meeting of 20 July 2001.

12. Thereupon the Kingdom of Spain lodged an action on 2 August 2001 for the annulment of Regulation No 1162/2001.

III — Forms of order sought

13. The Kingdom of Spain claims that the Court should:

1. annul Regulation No 1162/2001 containing measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d and e and associated conditions for the control of activities of fishing vessels;

2. order the Commission to pay the costs.

14. The Commission claims that the Court should:

1. dismiss the action as unfounded;

2. order the applicant to pay the costs.

IV — Submissions of the parties and appraisal

A — Incorrect legal basis and Commission’s lack of competence

15. The Spanish Government contends that the regulation is founded on an incorrect legal basis. According to the wording of Article 15(1) of Regulation No 3760/92, for
the Commission to adopt the measures in question the following cumulative conditions must be fulfilled. There must be serious and unexpected upheaval liable to jeopardise conservation of resources. The measures adopted by the Commission must be appropriate and last for no more than six months. They must be communicated to the Member States and the European Parliament and have immediate effect. Not all of those conditions have been fulfilled in the present case.

16. Even if the stocks of hake were in a critical situation, as noted by the Fisheries Council at its meeting of 14 and 15 December 2000, it does not simply follow that the measures adopted were necessary. The powers granted to the Commission by Article 15 of Regulation No 3760/92 permit the adoption of urgent and extraordinary measures to counteract serious upheaval. The measures adopted by the Commission in the contested regulation were, in its view, neither urgent nor extraordinary.

17. Regulation No 1162/2001 was not adopted by the Commission until 14 June 2001, although the Fisheries Council had already called for its adoption on 15 December 2000. The Commission therefore allowed six months to elapse before adopting a measure which in theory was to be adopted as a matter of urgency. According to the Spanish Government this demonstrates that in reality it did not concern an urgent measure and that during this time the Council could have acted. It must be recalled in this connection that under Article 37 EC legislative competence in fishery matters lies as a rule with the Council and that Article 15 of Regulation 3760/92 constitutes an exception thereto, justified by reasons of urgency. If there is no such urgency the Council must adopt measures under the general rule of Article 4 of Regulation No 3760/92. Furthermore, in order to actually protect the jeopardised resources the Commission would have had to adopt other measures, for example, a complete closure of fisheries in specific zones. The measures adopted are not appropriate for achieving their stated aim.

18. Article 15 of Regulation No 3760/92 provides that measures shall have a maximum duration of six months. The contested regulation contains no restriction as to time and is therefore applicable indefinitely. This is in conflict with Article 15 of Regulation No 3760/92 and therefore, according to the Spanish Government, it may be concluded that it does not constitute an adequate legal basis for the adoption of the contested measure.

2. The Commission

19. The Commission replies in its defence that from a biological point of view the optimum means for a recovery of stocks is
the complete closure of all fisheries. However, the fact must be taken into account that cod and hake are taken in mixed fisheries and that complete closure of those fisheries inevitably also implies closure of fisheries for many other species. A complete closure of fisheries would engender serious social and economic consequences. Therefore alternatives must be sought which on the one hand reduce the fishing pressure on cod and hake stocks but on the other hand maintain, to the extent possible, the fisheries for other stocks.

20. Article 15 of Regulation No 3760/92 grants the Commission a broad discretion and power to act. It must consider whether a serious and unexpected upheaval has arisen which is liable to jeopardise conservation of resources, a task requiring the evaluation of an economically and scientifically complex situation. According to the wording of that provision the Commission shall take the necessary measures, which means that it may provide for all types of measures, which in the circumstances appear to be necessary. Article 15 does not refer to urgent and extraordinary measures, as the Kingdom of Spain would have it. In the Commission’s view the measures adopted were necessary in order to counteract the critical situation concerning the stocks of hake.

21. In the Commission’s view the time which elapsed prior to the adoption of the regulation can be easily explained and justified. In November 2000 it became known that the stocks of hake in the relevant zones were in a critical situation. In order to be able to adopt a regulation containing appropriate measures in response, the Commission organised two scientific conferences on that topic, one in January 2001 in Spain and one in February 2001 in Brussels. Subsequently it held further informal meetings with the scientists and the parties concerned.

22. In respect of the period of validity of the contested regulation the Commission argues that it was adopted on the basis of Article 15 of Regulation No 3760/92, which provides for a maximum period of validity of six months. No provision of the contested regulation breaches that rule. On the contrary, the Commission has repeatedly emphasised the temporal limitation of the measures, for example in its Communication to the Council and the European Parliament of 12 June 2001 on rebuilding stocks of cod and hake in Community and adjacent waters.  

3. Appraisal

23. Under the third sub-paragraph of Article 37(2) EC legislative competence in agricul-
tural matters, which includes fisheries, is enjoyed by the Council. By Article 15 of Regulation No 3760/92 the Council grants the Commission power to take appropriate measures in the event of serious and unexpected upheaval liable to jeopardise conservation of resources.

24. For the Commission to take action under Article 15 the following conditions must be satisfied. Firstly, serious and unexpected upheaval must arise which is liable to jeopardise conservation of resources. Secondly, the measures which the Commission adopts must be appropriate, and thirdly their maximum period of validity must not exceed six months. The measures must also be communicated to the Member States and to the European Parliament. I will now consider whether the contested regulation meets those prescribed conditions.

25. As stated in the first two recitals in the preamble to Regulation No 1162/2001, the International Council for the Exploration of the Sea indicated in November 2000 that the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d and e was at serious risk of collapse and that the majority of this stock of hake inhabits ICES sub-areas V, VI and VII and ICES divisions VIII a, b, d and e. The Commission and Council responded by noting at the Council meeting of 14 and 15 December 2000 the urgent need to establish a recovery plan for that stock of hake.

26. As the Commission explains in its Communication to the Council and European Parliament of 12 June 2001, recovery plans, however, consist of longer-term measures. 'The[ir] objective ... is to restore spawning stock biomass to levels considered by science to provide a high probability that replenishment of the stocks is not threatened.' On page 6 of the communication the Commission indicates that 'even in this situation of crisis the Member States were not able to agree measures more closely in line with the scientific advice. Using emergency powers available to it under Council Regulations (EC) 3760/92 and 850/98 the Commission will shortly take additional measures towards rebuilding the stocks of cod and hake'.

27. It is clear from these observations that the first condition for the adoption of the contested regulation is fulfilled, that is to say

11 — Cited in footnote 10.
12 — Cited in footnote 10, p. 4.
serious and unexpected upheaval liable to jeopardise conservation of resources existed.

28. The upheaval was serious, since the International Council for the Exploration of the Sea had concluded that the stocks of hake were at risk of collapse. If a stock is at risk of collapse, it generally does not have a chance of regenerating itself alone. Rather, drastic measures must be adopted as a matter of urgency. Standard conservation measures are no longer sufficient, since any delay risks causing irreparable damage.

29. The fact that approximately six months elapsed between the first warnings and the adoption of the contested regulation does not preclude the existence of a serious upheaval. On the contrary, it is in fact probable that the situation became even more critical during this period.

30. Even if evidence of a serious upheaval already exists the Commission cannot be criticised if through expert consultations it first obtains further information before adopting protective measures which impose restrictions on a large number of economic agents. This applies at least where — as here — the time taken for this is not disproportionate.

31. Under Article 15 of Regulation No 3760/92 the power of the Commission to intervene is made further conditional on the unexpected nature of the upheaval. The point of this provision is that where upheaval is predictable the Council usually has sufficient time to take account of the upheaval by adopting appropriate provisions in management strategies or when determining the volume of catches under Article 8 of Regulation No 3760/92. Only if there is no time for such measures is the Commission to take action.

32. The expression ‘unexpected’ may not in any event be narrowly construed when there is a risk of irreparable damage occurring. The special powers conferred on the Commission in Article 15 of Regulation No 3760/92 provide protection for endangered stocks, thus protecting the environment, as is also required in the scope of fisheries policy under Article 6 EC. Consequently, in the light of Article 6 EC an upheaval is always to be regarded as unexpected when despite the need to take action the Council is unable to respond in time with its own measures. In those circumstances the reason why the Council could not act in time is not decisive. It may be that the situation deteriorated very quickly or that the Council was unable to reach a decision because of political disagreement.
33. In the present case the Council took no action although itself acknowledging the need to intervene. The Commission was therefore able to make use of its powers under Article 15 of Regulation No 3760/92 to take temporary measures in response to the risk of a collapse in the stock of hake.

34. The Kingdom of Spain complains further that the Commission placed no restriction on the period of validity of the regulation. It is true that the contested regulation contains no express provision stipulating that the regulation shall cease to have effect at the latest six months after coming into force.

35. It is however apparent from Article 15(1) of Regulation No 3760/92 that measures based upon that legislative power are to last for no more than six months. If the contested regulation is interpreted in the light of the legislative power on which it is based, its validity is already limited as a result to six months.

36. The Commission could also have satisfied the requirements laid down in the legal basis regarding the period of validity of measures based thereon by adopting a subsequent measure within the six-month period which expressly revoked the earlier one.

37. Whilst the Commission did not formally revoke the contested regulation, it was however once again active within the six-month period, initially adopting Regulation (EC) No 2602/2001. Before that regulation came into force on 1 March 2002, however, the Commission declared it to be void. It was replaced by Regulation (EC) No 494/2002. It contains substantially the same restrictions as the contested regulation, but was based upon Article 45 of Regulation No 850/98, which unlike Article 15 of Regulation No 3760/92 imposes no restriction on the period of validity of protective measures. Regulation (EC) No 494/2002 entered into force on 1 March 2002, that is to say directly after the period of validity of the relevant provisions of the contested regulation (six months from 1 September 2001 to 28 February 2002).


14 — In a communication published on 19 February 2002 the Commission states: 'Since the abovementioned Regulation [No 2602/2001] was adopted without the required opinion of the Management Committee [for Fisheries and Aquaculture] (contrary to what was stated at recital 7) and is therefore unlawful by reason of infringement of an essential procedural requirement, the text entitled "Regulation (EC) No 2602/2001 of 27 December 2001 establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e" cannot produce any effect whatsoever and the said publication should be deemed never to have taken place.' (OJ 2002 L 47, p. 21).


16 — Cited in footnote 7, above.
38. In the third, fourth and fifth recitals in the preamble to Regulation No 494/2002 the Commission points out that the technical measures contained in Regulation No 1162/2001 will only remain in force until 1 March 2002 and that therefore further temporary measures are necessary until measures are adopted by the Council.

39. As a result it must be concluded that Regulation No 1162/2001 does not infringe Article 15(1) of Regulation No 3760/92 for lack of an express limitation of its period of validity. Rather, the Commission took the limitation on the period of validity contained in the empowering provision into account by replacing the contested regulation on expiry of the six-month period with new provisions.

40. The Spanish Government takes the view that Article 2(2) of the contested regulation infringes the principle of non-discrimination. It provides that the conditions set out in Article 2(1) 'shall not apply to any vessel of length less than 12 metres overall which returns to port within 24 hours of its most recent departure from port'. Those vessels are therefore not subject to the restrictions set out in paragraph 1 relating to mesh size and the volume of catch which may be retained on board.

41. It argues that this differential treatment discriminates against Spanish fishermen when compared with those of other Member States. The derogation disadvantages almost exclusively or at least to a much greater extent the Spanish fleet. Only those Spanish vessels which have a length of more than 12m and which engage in voyages lasting more than one day fish in the areas concerned by the regulation, because the fisheries are located at a considerable distance from the Spanish coast. The fleets of other Member States, however, also consist of vessels less than 12m in length and so are able to take advantage of the derogation.

B — Infringement of the principle of non-discrimination

1. The Kingdom of Spain

42. The Spanish Government contends that the discriminatory treatment of the Spanish fleet is not objectively justified, since there is no connection between the mesh size of nets and the length of a vessel. Moreover, small vessels engaged in voyages of short duration operate close to the coast, where the concentration of juvenile fish is particularly...
high. This affects the conservation of stocks at risk in a more serious and more direct fashion. Consequently, it is for the Commission to demonstrate that the differential treatment is objectively justified.

2. The Commission

43. The Commission observes in the reply that during the preliminary phase prior to adopting the contested regulation it was informed of the special situation concerning small vessels. Those vessels engage in craft-trade fishing activities and are unable to move away from the coastal zones in which as a rule they operate. Furthermore, it is not possible to predict the composition of their catch. If Article 2(1) were to apply to them, those vessels would have to be equipped with nets of mesh size greater than 100mm. That would involve additional costs and also significant losses in the taking of other species.

44. Those characteristics are completely different to those of the Spanish fleet, since the latter consists mainly of large vessels with an average weight of 250 tonnes and a length greater than 30m. In the Commission's view such vessels cannot be compared with the small vessels for whose benefit the contested regulation contains a derogation. The derogation does not discriminate against the Spanish fleet. It has not been demonstrated that the Spanish fleet is the only Member State fleet which has no vessels with a length of under 12 metres. The French, Irish, Dutch and Belgian fleets are also in a similar situation.

45. Furthermore, the Commission contends, the share of the total catch attributable to the small vessels is not significant for the purpose of stock conservation. This also applies to the catch of juvenile fish since these are caught in considerably greater proportion by the larger vessels. The Spanish claim that the highest concentration of juvenile fish is to be found in the coastal zones is completely unfounded. The distribution of juvenile fish varies; they are to be found increasingly both in coastal zones and in those which are further from the coast. All vessels are therefore equally concerned with the taking of juvenile fish.

3. Appraisal

46. According to the Court's settled case-law discrimination consists in the application of
different rules to comparable situations or in the application of the same rule to different situations. In those circumstances the question therefore arises as to whether the Spanish complaint relates in fact to comparable situations.

47. The essence of the Spanish Government's claim is that the Spanish fleet is disadvantaged because the larger Spanish fishing vessels are subject to the restrictions and the smaller boats do not qualify for the derogation in favour of craft-trade fishery. The areas concerned lie so far away from the Spanish coast that they cannot be reached by the Spanish craft-trade fishermen.

48. In order to assess the merits of this claim the geographical situation of the areas concerned by the contested regulation must first be clarified. Article 1 provides that it applies to ICES sub-areas V and VI, ICES divisions VII b, c, f, g, h, j and k and ICES divisions VIII a, b, d and e. The scope of its application is therefore the waters off the Icelandic, Irish, British and French Atlantic coasts. The regulation does not apply to ICES division VIII c, nor to ICES divisions IX a and b, which lie off the coasts of Spain and Portugal, so that in those areas fishing for hake may continue without restriction. Roughly half the hake quota allocated to Spain for 2001 must have been accounted for by catches outside the areas included in the regulation.

49. If the situation of vessels with a length in excess of 12m belonging to the Spanish fleet is compared with that applying to similarly sized vessels from other Member States it becomes clear that Spanish vessels are not disadvantaged. In the areas included in the regulation they are subject to the same restrictions on mesh size, type of nets and composition of the catch as are vessels flying the flag of other States. When looked at as a whole it could even be argued that that class of Spanish vessels is in a better position since the ICES divisions close to the Spanish coast do not fall within the scope of the contested regulation.

50. Considering, next, the position of the Spanish craft-trade fishermen, that is, fish-

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ermen operating vessels of a length of less than 12m, they too are not disadvantaged when compared with craft-trade fishermen from other Member States. It is certainly clear that Spanish fishermen are scarcely able to benefit from the derogation under Article 2(2) of Regulation No 1162/2001, since their home ports lie too far away from the fishing grounds concerned. However, this does not place them at a disadvantage, since the only stretches of Spanish coast which come into question for the craft-trade fishermen, those along the Atlantic Ocean, are completely unaffected by Regulation No 1162/2001. Since there is no prohibition, therefore, there cannot be any derogation (for boats under 12m). As it is, Spanish fishermen can operate in their traditional fishing grounds without restriction. Without the benefit of the derogation French, British or Irish craft-trade fishermen would not be able to do so, however, because the regulation applies in the coastal waters of their home States.

51. The Commission inserted the derogation contested by Spain for social reasons to exempt the craft-trade fishermen, who would ordinarily have been subject to the restrictions, from the application of the measure. If the regulation were also to apply to them, they would have to make further investments and suffer reduced catches which for craft-trade fishermen would constitute a particular economic hardship. In contrast Spanish craft-trade fishing has from the outset been unaffected by the restrictions.

52. The derogation leads nevertheless to selective better treatment, irrespective of the flag under which they sail, of craft-trade fishermen over those operating larger fishing vessels, in so far as they engage in fishing activities within the geographical scope of the contested regulation. To that extent it concerns different situations, however, which may therefore be subject to different rules. Firstly, the catch restrictions would, according to the Commission's information, which has not been contested by the Spanish Government, have a considerably more serious impact on craft-trade fishermen than on 'industrial' fisheries. Secondly, the share of the total catch taken by craft-trade fisheries is minor.

53. Finally, there is the fact that it is in the own interest of craft-trade fishermen to protect the stocks in their fishing grounds and that therefore they will themselves be concerned about conservation. In the event of a stock collapse, they cannot, owing to their limited radius of operation and unlike the operators of larger fishing vessels, switch to other areas.

54. The only point which might be considered is whether improper criteria determine the scope of the derogation or indirectly disadvantage Spanish fishermen.
55. The data provided by the Commission in response to a request made by the Court show that the total number of vessels the length of which is less than 12m are distributed as follows: 33.8% sail under the Spanish flag, 28.8% under the French, 11.2% under the Irish and 26.2% under the British flag. The Spanish craft-trade fishermen, however, have only a 15.8% share of the total tonnage caught by craft-trade fishermen compared with a French share of 44.7%, an Irish share of 12.8% and a British share of 26.7%. This shows that Spanish fishing vessels with a length of less than 12m are on average smaller and are also, as shown in further replies provided by the Commission, less motorised than the fishing vessels from the other Member States concerned. The Spanish Government has not explained however how the Commission has improperly exercised its discretion in setting the parameters of the derogation and how it has thereby discriminated against the Spanish fishing fleet.

56. The derogation set out in Article 2(2) of the contested regulation does not therefore constitute differential treatment of comparable situations and therefore does not discriminate against Spanish fishermen.

58. Article 15 of Regulation No 3760/92 grants the Commission the power to take 'appropriate' measures, that is to say the contested regulation must satisfy the principle of proportionality, as is required under Article 5(3) EC for all acts of Community institutions. This means that measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question. When there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. 19

59. In considering those principles it must be borne in mind, however, that according to settled case-law the Community legislator enjoys a wide discretion in those cases in which it has to evaluate a complex economic situation, as is the case with the common agricultural and fisheries policy. In reviewing the exercise of such a power, the Court must therefore confine itself to considering whether there has been a manifest error or misuse of power or whether the authority in question has clearly exceeded the bounds of its discretion. 20


60. The Kingdom of Spain contests firstly the appropriateness of the measure, arguing that there is no relevant connection between the size of fishing vessels and mesh size. Moreover, juvenile fish inhabit above all the coastal waters in which the craft-trade fishermen are permitted to operate under the contested regulation.

61. The Commission enjoys a wide discretion in determining the appropriateness of the measure. It is for the Spanish Government to demonstrate that the Commission has adopted a manifestly inappropriate measure.

62. In reply to the Spanish Government the Commission argues that the derogation in favour of the craft-trade fishermen does not seriously jeopardise the aim of protecting the stock at risk. From a purely biological point of view the complete closure of all fisheries is the best way to achieve the recovery of stocks. Given the small quantity of catch (approximately 4% of the total) attributable to the craft-trade fisheries which are favoured, however, stock protection is, notwithstanding the derogation, sufficiently ensured.

63. The Spanish Government has rejected out of hand the figures put forward by the Commission concerning the share of hake catch attributable to craft-trade fishermen. Since the burden however lies with it to prove the inappropriateness of the measure, however, that is not sufficient: it should rather have demonstrated that the Commission proceeded on an incorrect factual basis.

64. Furthermore, the Commission has demonstrated convincingly that the size of the vessels constitutes an appropriate and customary criterion for delimiting the scope of craft-trade fishery.

65. Finally, it has contradicted the Spanish contention that the stocks of juvenile fish particularly in need of protection are to be found primarily in coastal waters. In support of its contention the Spanish Government produced in its reply various maps for the years 1997 to 2000 which illustrate the stocks of juvenile fish, but it has not demonstrated conclusively the extent to which these stocks are put at risk by the provisions of the contested regulation and why therefore the regulation is wholly inappropriate to achieve the objective of stock protection. The absence of that evidence is particularly clear given that only a minor share of the total catch is attributable to the craft-trade fishermen.
66. It is therefore not obvious that the Commission made a manifest error in its assessment of the appropriateness of the measure.

67. The Commission restricted net size and the share of hake in the total catch and exempted craft-trade fishermen from those provisions. It thus chose a more moderate measure than a total closure of fisheries, restricting its intervention to that which was necessary to achieve the objective.

68. Finally, the contested regulation is also proportionate in a more narrow sense. In adopting the measure the Commission had to reconcile several aims. The measure primarily provides for conservation of fish stocks in the interest of their further sustainable exploitation and for environmental protection, which under Article 6 EC must also be taken into account in the area of fisheries policy. This aim would have been best achieved by a total closure of fisheries.

69. On the other hand, under Article 33(1) (b) EC one of the aims of the common agricultural policy is to ensure a fair standard of living for the agricultural community. In order to take account, alongside conservation and environmental protection, of the interests of the community which is particularly dependent on fishery the Commission chose a more moderate intervention, which although a less effective protection for hake stocks than a total closure would be, also takes into account the interest in fishing other species. It weighed up the serious social and financial consequences of a complete closure of hake fisheries, against the necessity of protecting hake stocks. In so doing it took into account the particular situation of craft-trade fisheries striking an appropriate balance between the two concerns. The Spanish Government has not demonstrated that by means of the derogating provision the concern of environmental protection was blatantly ignored. Moreover, if, as requested by Spain, the regulation were annulled in its entirety all protection of hake would disappear.

70. Consequently the plea of breach of the principle of proportionality entirely fails.
C — Failure to state reasons

1. The Kingdom of Spain

71. The Kingdom of Spain alleges that the contested regulation contains no grounds for differentiating between vessels of length of more than 12m and vessels of length of less than 12m. The recitals in the preamble make no reference to the derogation, nor do they provide any grounds for its adoption. It is not possible, so it argues, to follow the reasoning adopted by the Commission.

2. The Commission

72. On this point the Commission argues that the regulation and the reasons on which it is based must be considered as a whole. It follows from the Court’s case-law that the Commission must state reasons for its decisions, setting out the facts on which the legality of the measure rests. Moreover, the duty to state reasons varies according to the nature of the measure. In the case of a regulation, the preamble may be confined to indicating the general situation which led to its adoption. It is not possible to require the Commission to set out all the various facts, which are often very numerous and complex, on the basis of which the regulation was adopted. The Commission therefore takes the view that the preamble of the contested regulation satisfies these requirements. In addition it points to the fact that representatives of the Spanish administration and the fisheries sector also participated in the consultations which took place prior to the adoption of Regulation No 1162/2001.

3. Appraisal

73. Under Article 253 EC regulations adopted by the Commission are to state the reasons on which they are based. The statement of reasons must show the most important legal and factual considerations on which a measure is based, but it is not necessary to go into every relevant point of fact and law. The question whether a statement of reasons satisfies those requirements must be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question.

74. It has been the Court’s consistent case-law since the decision in Bens that the

24 — Cited in footnote 23, above, paragraph 29.
25 — Bens, cited in footnote 22, above.
extent of the requirement to state reasons depends on the nature of the measure in question. The requirements are thus less onerous in respect of measures of general application which apply in many situations than in respect of decisions applicable in individual cases. The Court thus held in Case C-284/94 that for normative measures it suffices to indicate the general situation which led to the adoption of the measure and the objectives which are thereby to be achieved. 26

75. The contested regulation states the reasons for which it is necessary to adopt measures swiftly and what is necessary in this connection. Moreover, Recital 3 points out that in the long run a recovery plan needs to be established.

76. The regulation itself contains no explanation as to the reasons for the derogation in Article 2(2). Nor does the Commission explain in its communication of 12 June 2001 27 the introduction of the derogation.

77. The question arises however as to whether a statement of reasons for the derogation is at all necessary. In so far as the contested regulation restricts fishing in the areas concerned, the Commission has set out the general circumstances and has defined the objectives which are to be achieved by the contested regulation. It has thus satisfied the requirement to state reasons.

78. The Commission was not required to state why particular vessels were not subject to restrictions, however. It is the Commission's duty to state reasons in respect of measures imposing a burden on individuals, since they restrict their legal rights. The derogation contained in Article 2(2) of the contested regulation does not, however, provide for any restriction on fishery rights: on the contrary, it lifts the restrictions in respect of particular vessels. Only if the privileging of certain individuals were to disadvantage others who are in a comparable situation would a particular statement of reasons be necessary. As I have already shown, however, the derogation does not constitute discrimination against the Spanish craft-trade fishery.

79. According to the Court's consistent case-law the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the Community institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for it and the Court to exercise its power of review. If therefore the contested measure clearly discloses the essential objective pursued by the institution, it would be unnecessary to require a specific statement of reasons for each of the choices made by the institution. 28 The contested regulation satisfies

27 — Cited in footnote 10.
those requirements and therefore the third plea of the Kingdom of Spain must also be rejected.

ordered to pay the costs if they have been applied for in the successful party's pleadings. The Commission claims that the Kingdom of Spain should be ordered to pay the costs. As the Kingdom of Spain has been unsuccessful, it is to pay the costs.

V — Costs

80. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be

VI — Conclusion

81. In the light of all the foregoing considerations, I propose that the Court should:

(1) dismiss the action;

(2) order the Kingdom of Spain to pay the costs.