



TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS  
SOD PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS  
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS  
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES  
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT CHÉADCHÉIME NA GCOMHPHOBAL EORPACH  
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU PIRMĀS INSTANCES TIESA

EUROPOS BENDRIŲ PIRMOSIOS INSTANCIJOS TEISMAS  
EURÓPAI KÖZÖSSÉGEK ELSŐFOKÚ 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  
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLEČENSTEV  
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

### PRESS RELEASE n° 54/04

8 July 2004

Order of the President of the Court of First Instance in Case T-37/04 R

*The Autonomous Region of the Azores v Council of the European Union*

#### **THE PRESIDENT OF THE COURT OF FIRST INSTANCE HAS REJECTED THE AZORES' REQUEST FOR INTERIM MEASURES TO SUSPEND THE NEWLY ESTABLISHED FISHERY REGIME FOR THE WATERS AROUND THE AZORES**

*The Azores has failed to prove that interim measures are necessary to avoid imminent serious and irreparable harm to the marine environment or to the economy of the Azores. It has not been shown that the new fishing regime will cause such harm and more proportionate measures, not pursued by the Azores, are available to protect the marine environment if necessary.*

When Portugal joined the European Economic Community in 1986, special transitional provisions in the Treaty of Accession and subsequent regulations adopted under those provisions governed access for foreign vessels to Portuguese waters including Azorean waters. In particular these regulations, which formed part of the Common Fisheries Policy (CFP) prohibited Spanish vessels from fishing for tuna and prohibited vessels from any Member State other than Portugal from fishing for deep-sea species within 200 nautical miles off the Azores. The regulations also had the effect of prohibiting the use of towed gear in Azorean waters.

Taking account of the fact that the transitional provisions in the Accession Treaty expired at the end of 2002 and in order to put an end to provisions which were discriminatory on grounds of nationality, in November 2003 the Council adopted a new regulation<sup>1</sup> governing fishing efforts in a large area of the North Atlantic which replaces the old regime. This regulation establishes an effort limitation regime which caps fishing effort for deep-sea species on the basis of average fishing effort for the years 1998-2002. The regulation also includes new provisions relating to Azorean waters. In particular the regulation establishes a protected zone extending to 100 nautical miles around the Azores from which foreign vessels will be excluded. The new regulation does not contain any provisions on the use of particular

<sup>1</sup> Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort related to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and No 2027/95.

fishing gear. However, the repeal of the old regime would have the effect of indirectly repealing the earlier prohibition on towed gear in Azorean waters. A specific proposal on trawling, which would impose a ban on the use of bottom trawl gear in the Azores, has been submitted by the Commission to the Council for adoption.

The Azores, an autonomous region within the Portuguese Republic with legal personality under Portuguese law and exclusive power to legislate on matters relating to fisheries, requested the Court of First Instance of the European Communities to annul the 2003 regulation insofar as it adversely affected Azorean waters. In addition the Azores requested the Court of First Instance to suspend the relevant parts of the contested regulation, or alternatively to prohibit Spanish vessels from fishing for tuna and any other State's vessels from fishing for demersal<sup>2</sup> and deep-sea species in Azorean waters. The Azores claimed that application of the contested regulation would lead to serious and irreparable harm to both the marine environment and the Azorean economy.

The President of the Court of First Instance has today delivered an order dismissing the request for interim measures.

The President observes that the adoption of interim measures would have significant negative effects on third parties as it would affect large numbers of fishermen from other Member States and would disrupt the operation of the CFP. These effects would need to be measured against the necessity of the requested interim measures, taking into account the alleged serious and irreparable damage. Given the wide discretion that the Council enjoys when legislating in the complex field of the CFP, interim measures suspending the operation of a measure that the Community legislator has put in place should only be ordered in cases where the urgency is manifest and the balance of interests leans clearly in favour of suspension.

The President notes that partial suspension of operation of the contested regulation **would not have the effect of protecting the environment** as desired by the Azores. Moreover such suspension would be **disproportionate and discriminatory** on grounds of nationality by excluding foreign vessels rather than putting in place measures to protect the environment. In addition, suspension of the provision repealing the previous regulations would result in legal uncertainty. Whilst it may have the effect of allowing continuation of the previous regime, this regime, being reliant on the transitional provisions of the Accession Treaty which expired at the end of 2002, could be considered inapplicable after that date.

As regards the requirement of **urgency** the President considers that, in relation to the alleged **damage caused by towed gear other than bottom trawling gear**, the alleged **damage to fish stocks**, and the alleged **harm to the Azorean economy**, **the Azores have failed to show that interim measures were necessary to prevent serious and irreparable damage from resulting imminently**, if at all, from the implementation of the contested regulation.

The President acknowledges that **bottom trawling** can have significant negative consequences by destroying sensitive marine ecosystems such as coral reefs. Suspension of the regulation would not result in a specific prohibition of bottom trawling but would rather exclude foreign vessels from fishing in Azorean waters. The President observes that **other more appropriate and proportionate avenues are open** to the Azores to prevent damage to the marine environment. These include, in particular, seeking emergency measures which can be adopted under the CFP by Member States - in this case Portugal - or by the Commission

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<sup>2</sup> Fish dwelling on or near the seabed.

where there is evidence of a serious threat to the marine ecosystem. The Commission confirmed at the hearing that it is aware of the situation, that it has tabled a proposal to ban trawling and that it would be prepared to adopt such measures. Similar measures have previously been adopted in other parts of the Community.

**As the Azores have failed to show that there is an urgent need for interim measures and given that there are other, more appropriate and proportionate, available remedies, the President has dismissed the request for interim measures.**

**NOTE: The Court of First Instance will give its final judgment on the substance of this case at a later date. An order on interim measures does not prejudice the outcome of the main action. An appeal, limited to questions of law, may be brought before the President of the Court of Justice of the European Communities against the Order of the President of the Court of First Instance, within two months from the date of its notification.**

*Unofficial document, for media use only, which does not bind the Court of First Instance.*

*Available languages : English*

*The full text of the Order can be found on the Internet site of the Court*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

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