



Press and Information

General Court of the European Union

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Judgment in Case T-312/14

Federazione nazionale delle cooperative della pesca (Federcoopesca) and
Others v Commission

Italian fishermen's associations cannot challenge before the General Court an action plan providing for national measures in the field, inter alia, of swordfish fishery

The General Court clarifies the scope of the condition requiring direct concern laid down in Article 263 TFEU

Until 1 December 2009, the date on which the Treaty of Lisbon entered into force, natural and legal persons (or 'individuals') could bring an action for annulment before the European Courts only in respect of acts addressed to them (Option 1), or acts which were of direct and individual concern to them (Option 2). The Treaty of Lisbon introduced a further possibility, allowing individuals to bring an action for annulment in respect of regulatory acts which are of direct concern to them and do not entail implementing measures (Option 3). Those three options are set out in Article 263 TFEU.

At the end of 2012, the Commission notified Italy that it had recorded some irregularities affecting compliance with certain rules of the Common Fisheries Policy, in particular those relating to species of Highly Migratory Fish in the Mediterranean. Notwithstanding the administrative enquiry carried out in that regard by Italy, the Commission took the view that the irregularities previously recorded persisted. Therefore, it drew up an action plan with the Italian authorities.

By decision of 6 December 2013,¹ the Commission adopted an action plan to rectify the shortcomings in the Italian fisheries control system. In particular, that plan consists of the following actions: adoption of new technical measures concerning the compatibility between the 'ferrettare' system, which consists of various traditional systems of small-mesh drift nets and other fishing gear; adoption of substitution measures in order to make up for the absence of satellite surveillance and a reporting requirement for certain vessels authorised to catch swordfish; implementation at national level of international provisions relating to the minimum catch size for swordfish and the technical characteristics of longlines; strengthening of the deterrent nature of the financial penalties applied in the case of serious and repeated infringements.

In order to protect the interests of their members (professionals in the fisheries sector and, in particular, fishermen authorised by the Italian authorities to catch swordfish), several Italian fishermen's associations brought an action before the General Court seeking annulment of the Commission's decision.

By its judgment today, the General court dismisses the action, holding that the conditions for bringing such an action are not met.

First of all, the General Court examines whether the associations may bring their action on the basis of the **new option introduced by the Treaty of Lisbon**. In that connection, the General Court observes, first, that **the concept of direct concern** is common to the second and third options set out in Article 263 TFEU. However, as regards Option 2, that concept may include the case in which the act concerned does not, in itself, change the legal position of the individual challenging it, but requires the addressee of that decision to adopt implementing measures which

¹ Commission Decision C(2013) 8635 final of 6 December 2013 introducing an action plan to rectify shortcomings in the Italian fisheries control system.

alter the legal position of that individual. However, that situation cannot exist under the third option, as the latter expressly provides that there should be no implementing measures involved. Therefore, **the third option only concerns acts which, by themselves, (that is to say independently of any implementing measures) change the individual's legal position.** It follows that where the act being challenged does not by itself alter the applicant's legal position, that finding is sufficient for it to be concluded that Option 3 is not applicable, without there being any need in that case to verify whether that act entails implementing measures with respect to the individual.

In the present case, the General Court declares that **the decision adopted by the Commission does not by itself alter the legal position of professionals in the fisheries sector,** since the Commission does not have any powers to adopt unilateral acts which are directly applicable to those professionals. The Commission may only draw up a binding action plan consisting of a set of measures which the Member State concerned (Italy) must implement. It is also clear from that action plan that the Italian authorities must take the appropriate measures for each action.

The General Court then ascertains whether the associations may bring their action on the basis of **Option 2** laid down in the TFEU. As regards that option, the Commission decision must concern the fishermen, not only directly, but also individually. In the present case, the General Court notes that **the Commission's decision does not concern the fishermen's associations individually** since, first, it applies to objectively determined situations (the fishermen represented by the associations are affected in the same way as any other economic operator actually or potentially in the same situation) and, second, it produces legal effects with respect to categories of persons generally and in the abstract (the current list of vessels flying the Italian flag authorised to fish for swordfish includes more than 7 300 vessels). Furthermore, in order to adopt its decision, the Commission was not required to follow a procedure in which fishermen are in a position to claim any rights.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355