

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

13 June 2006 *

In Joined Cases T-218/03 to T-240/03,

Cathal Boyle, residing in Killybegs (Ireland), and the other 22 applicants whose names are set out in the annex, represented by P. Gallagher SC, A. Collins SC and D. Barry, Solicitor,

applicants,

supported by

Ireland, represented by D. O'Hagan and C. O'Toole, acting as Agents, and by D. Conlan Smyth, Barrister, with an address for service in Luxembourg,

intervener,

* Language of the case: English.

Commission of the European Communities, represented by G. Braun and B. Doherty, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATIONS for annulment of Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall (OJ 2003 L 90, p. 48), in so far as it rejects the applicants' requests to increase the capacity of their vessels,

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

composed of J.D. Cooke, President, R. García-Valdecasas and I. Labucka, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 23 November 2005,

gives the following

Judgment

Legal context

- 1 Article 4(2) of Council Decision 97/413/EC of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with a view to achieving a balance on a sustainable basis between resources and their exploitation (OJ 1997 L 175, p. 27) is worded as follows:

‘In the multiannual guidance programmes for Member States, increases in capacity resulting exclusively from safety improvements shall justify, on a case-by-case basis, an increase by the same amount of the objectives for fleet segments where they do not increase the fishing effort of the vessels concerned.’

- 2 According to point 3.3 of the annex to Commission Decision 98/125/EC of 16 December 1997 approving the multiannual guidance programme for the fishing fleet of Ireland for the period from 1 January 1997 to 31 December 2001 (OJ 1998 L 39, p. 41; hereinafter ‘MAGP IV’):

‘Member States may at any time submit to the Commission a programme of safety improvements. In accordance with Articles 3 and 4 of Decision 97/413 ... the

Commission will decide whether any capacity increase foreseen by such a programme justifies a corresponding increase in the objectives of the MAGP IV.

...'

- 3 Article 6 of Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ 1999 L 337, p. 10) reads as follows:

'1. Fleet renewal and the modernisation of fishing vessels shall be organised in accordance with this title.

Each Member State shall submit to the Commission, for approval in accordance with the procedure laid down in Article 23(2), permanent arrangements for monitoring fleet renewal and modernisation. Within the framework of these arrangements Member States shall demonstrate that entries and exits from the fleet will be managed in such a way that the capacity does not exceed the annual objectives fixed in the multiannual guidance programme, overall and for the segments concerned, or where appropriate that fishing capacity is gradually reduced to attain these objectives.

These arrangements shall, in particular, take into account that capacity, other than that of vessels of less than 12 metres overall length excluding trawlers, which has been withdrawn with public aid, cannot be replaced.

2. Member States can submit a request for a clearly identified and quantified increase in the capacity objectives for measures to improve safety, navigation at sea, hygiene, product quality and working conditions provided that these measures do not result in an increase in the exploitation rate of the resources concerned.

Such a request shall be examined by the Commission and approved in accordance with the procedure laid down in Article 23(2). Any capacity increase shall be managed by the Member States under the permanent arrangements referred to in paragraph 1.'

- 4 Article 4(2) of Decision 97/413 was repealed with effect from 1 January 2002 by Council Decision 2002/70/EC of 28 January 2002 amending Decision 97/413 (OJ 2002 L 31, p. 77).
- 5 Article 11(5) 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) reads as follows:

'On fishing vessels of five years of age or more, modernisation over the main deck to improve safety on board, working conditions, hygiene and product quality may increase the tonnage of the vessel, provided that such modernisation does not increase the ability of the vessel to catch fish ...'

Facts

- 6 The applicants are owners of vessels forming part of the Irish fishing fleet.

- 7 Between 1999 and 2001 correspondence relating to Article 4(2) of Decision 97/413 was exchanged between the Department of the Marine ('the Department') and the Commission.

- 8 During that period, and especially in November and December 2001, each of the applicants requested the Department to approve an increase in capacity for safety improvements, in application of Article 4(2) of Decision 97/413 and of point 3.3 of the annex to Decision 98/125.

- 9 By letter of 14 December 2001, the Department requested the Commission to increase the polyvalent segment of the Irish fleet by 1 304 gross tonnes ('GT') and the pelagic segment by 5 335 GT under Article 4(2) of Decision 97/413. That letter supplemented a previous request submitted by the Department concerning two ships, which was sent to the Commission as a 'test case'.

- 10 The letter of 14 December 2001 stated that it was prompted by the requests of 38 owners of vessels who had altered or replaced their vessels or who intended to do so. It was accompanied by detailed documentation relating to the 38 vessels concerned. It is apparent from a table enclosed with the letter that 18 of the applicants were among those 38 owners.

- 11 By letters of 19 and 21 December 2001, the Department provided the Commission with information concerning the vessels owned by the other applicants.
- 12 On 4 April 2003 the Commission adopted Decision 2003/245/EC on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length (OJ 2003 L 90, p. 48; 'the contested decision').
- 13 The operative part of the contested decision reads as follows:

'Article 1

Eligibility of requests

The requests to increase MAGP IV tonnage objectives will be considered eligible subject to the following conditions:

1. the requests have been forwarded on a case-by-case basis by the Member State before 31 December 2001;
2. the vessel must be properly registered in the Fleet Register of the Community;

3. the vessel concerned has an overall length of 15 m or more;

4. the increase in tonnage is the result of modernisation works over the main deck performed or to be performed on an existing registered vessel at least five years old on the starting date of the works. In the case where a vessel has been lost at sea, the increase in tonnage is the result of a greater volume over the main deck of the replacement vessel with respect to the vessel that was lost;

5. the increase in tonnage is justified in order to improve safety, navigation at sea, hygiene, product quality and working conditions;

6. the volume under the main deck of the modified vessel or the replacement vessel is not increased.

Requests to increase the MAGP IV power objectives will not be eligible.

Article 2

The requests that are accepted according to the criteria fixed in Article 1 are those listed in Annex I.

The requests that are rejected according to the criteria fixed in Article 1 are those listed in Annex II.

Article 3

This Decision is addressed to the Kingdom of Belgium, Ireland, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.’

- ¹⁴ The applicants’ vessels are all on the list of ‘rejected requests’ in Annex II to the contested decision.

Procedure and forms of order sought by the parties

- ¹⁵ By applications lodged at the Registry of the Court of First Instance on 13 June 2003 and registered as numbers T-218/03 to T-240/03, the applicants brought the present actions. On a proposal by the Court, they agreed that the actions should be dealt with as a single case.
- ¹⁶ By order of 20 January 2004, the President of the Fifth Chamber of the Court of First Instance granted Ireland leave to intervene in support of the form of order sought by the applicants. Ireland’s statement in intervention was lodged on 10 March 2004. The Commission lodged observations on that statement on 16 June 2004.

17 By decision of 8 December 2004, the Court (First Chamber), by way of measure of organisation of procedure, requested the applicants to produce any documents confirming that they were the owners of the vessels in question. The applicants complied with that request.

18 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure and, by way of measures of organisation of procedure, requested the parties to produce certain documents and to answer certain written questions. The parties complied with those requests.

19 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 23 November 2005.

20 After hearing the parties' views on the matter at the hearing, the Court decided to join the present cases for the purposes of the judgment, in application of Article 50 of the Rules of Procedure.

21 The applicants and Ireland claim that the Court should:

- annul the contested decision in so far as it rejects their requests for an increase in the capacity of their vessels;

- order the Commission to pay the costs.

22 The Commission contends that the Court should:

- dismiss the applications as inadmissible;
- in the alternative, dismiss the applications as unfounded;
- order the applicants to pay the costs.

Admissibility

23 The Commission submits that the present actions are inadmissible on the ground that the applicants are not directly and individually concerned by the contested decision for the purposes of the fourth paragraph of Article 230 EC.

24 It also claims that a number of the applicants have not shown that they are the owners of the vessels in question. However, it withdrew that objection at the hearing.

Arguments of the parties

25 The Commission submits, by way of preliminary observation, that the contested decision is addressed to the Member States concerned. The applicants are not the addressees of the decision, they are not mentioned by name in the decision and they had no direct dialogue with the Commission.

- 26 The contested decision was, in the Commission's submission, adopted following a request by Ireland for an increase in the capacity of its entire fleet. Although the Irish authorities based their request on facts relating to specific vessels, the contested decision cannot be regarded as having in reality been addressed to the applicants.
- 27 The Commission claims that the applicants are not individually concerned by the contested decision. They are affected by the decision only inasmuch as they own vessels in Ireland. The contested decision does not adversely affect their property rights in the vessels and they can continue to fish with their present vessels (Case 11/82 *Piraiki-Patraiki and Others v Commission* [1985] ECR 207, paragraph 13). Furthermore, even on the assumption that the category of owners of fishing vessels in Ireland is entirely closed, the applicants are not affected by the decision any more than any other owner of a fishing vessel in Ireland.
- 28 As regards the fact that the contested decision mentions the applicants' vessels in Annex II, the Commission asserts that such a reference is solely the consequence of the factual context of the decision (Case T-482/93 *Weber v Commission* [1996] ECR II-609).
- 29 The Commission rejects the parallel which the applicants draw with the judgment in *Piraiki-Patraiki and Others v Commission*, paragraph 27 above, which in its contention is based on the legally and factually inaccurate assertion that they 'forwarded individual requests for additional capacity to the Commission'.
- 30 The case-law shows that an act does not lose its general scope and hence its legislative nature simply because it is possible to ascertain more or less precisely the number or even the identity of the persons to whom it applies at any given time as long as there is no doubt that it is applicable as the result of an objective situation of

law or of fact which the act specifies and which is in harmony with its ultimate objective. It is not sufficient to demonstrate that the measure in issue applies only to a 'closed group' of traders (Case T-298/94 *Roquette Frères v Council* [1996] ECR II-1531, paragraphs 41 and 42). In any event, in the present case the group of persons connected with specific vessels is not established, since a vessel may change owner.

- 31 Nor are the applicants directly concerned for the purposes of the case-law (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 96). The sole legal effect of the contested decision is to grant an increase in capacity of 203 GT to the Irish fleet (see Article 4(2) of Decision 97/413). Although they bear the burden of proof, the applicants do not explain how the contested decision produces effects in regard to them. Nor do they claim that the decision altered their legal position.
- 32 The issue as to a direct effect may be reduced in this case to a simple question, namely, what has the Commission done to the applicants? The Commission also observes that if the contested decision was in fact to have automatic effects, those effects would have already been apparent.
- 33 It is for the Irish authorities to decide how to use the increase in capacity and how to deal with requests for capacity in excess of the level authorised by the Commission (see Article 6(2) of Regulation No 2792/1999). Thus, any decision in relation to specific vessels requires the application of other intermediate rules by the Irish authorities and is not purely automatic.

34 The Commission disputes the applicants' argument that it adopted a decision concerning individual vessels. It disputes the relevance of the example which they give of the reallocation to another vessel of an increase in capacity intended for a vessel in Annex I. First of all, requests addressed to the Commission and those addressed to a Member State do not have the same content. Next, although the owner of a vessel mentioned in Annex I may maintain that he has a legitimate expectation that the requests which he has submitted at national level concerning the licence of his vessel will be accepted, that legitimate expectation has no equivalent in the case of a negative decision. Even if the Commission rejects the request to increase the objectives of capacity for an entire fleet, the size of individual vessels might still be increased, since a Member State might grant requests for increased capacity within the limits of the ceiling set in the context of MAGP IV. Furthermore, there is a market for capacities in Ireland, so that an owner may still obtain additional capacity for a new vessel. Contrary to the applicants' contention, the existence of such a market is relevant in that it shows that a negative decision by the Commission does not necessarily lead to a negative decision in respect of the requests addressed to the Irish authorities by individual operators.

35 The Commission further submits that a large number of applicants were able to fish before the date of adoption of the contested decision. In other words, a number of the applicants benefited, long before the contested decision, from the economic advantage conferred by the additional capacity. In addition, a number of the applicants were able to continue to fish after the contested decision was adopted. The Irish Minister for Fisheries stated in October 2003 that five of the applicants' vessels had licences. Other vessels belonging to the applicants obtained licences in 2004.

36 Furthermore, in reply to the applicants' argument that it could simply have granted Ireland an increase in capacity of 203 GT without designating individual vessels, the Commission contends that that does not alter the legal effect of the decision, which is defined by its legislative framework and not by the form of the contested decision (Joined Cases 789/79 and 790/79 *Calpak and Società emiliana lavorazione frutta v Commission* [1980] ECR 1949, paragraph 7).

37 As for Ireland's argument that as a result of the policy of entering and leaving applicable to the Irish fleet, the applicants would have to bear an enormous cost (see paragraph 41 below), the Commission states that this was not raised by the applicants and that it is out of time. Furthermore, that argument would counter the applicants' submission by showing that any negative consequence that the decision might have for them would be the result of the national legislation and not of the contested decision. The Irish legislation might reflect certain rules of Community law, but it is not legislation enacted to implement the contested decision.

38 That is confirmed by the fact that Ireland adopted a new policy for the grant of licences to fishing vessels in November 2003 (Policy Directive 2/2003). That policy is not an automatic consequence of the contested decision and shows that the Irish authorities have a certain discretion in applying the national rules on licences.

39 The applicants claim that they are individually and directly concerned by the contested decision.

40 They maintain, in particular, as regards direct concern, that Article 6(2) of Regulation No 2792/1999 (see paragraph 33 above) was not in force on the date of the contested decision. In any event, the fact that that article provides that increases in capacity are to be managed by the Member States must be regarded solely as a mere requirement imposed on the Member States to take the necessary measures to implement any positive decision adopted.

41 Ireland maintains that the legal effect of the contested decision is to reject expressly the applicants' requests for an increase in capacity in terms of tonnage for reasons of safety on the basis of the criteria set out in Article 1 of that decision. It follows that

the applicants must bear an enormous cost, as they will be obliged to obtain capacity in place of the tonnage expended on safety forming the subject-matter of the requests.

Findings of the Court

- 42 The fourth paragraph of Article 230 EC provides that any 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 decision addressed to another person, is of direct and individual concern to the former.
- 43 As the contested decision was addressed to Ireland and to the other Member States concerned, the Court must decide whether it is of direct and individual concern to the applicants.
- 44 As to whether the applicants are individually concerned by the contested decision, it must be borne in mind that it is settled case-law that persons other than the addressees of a decision can claim to be individually concerned only if the decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed (Case 25/62 *Plaumann v Commission* [1963] ECR 95, 107; *Piraiki-Patraiki and Others v Commission*, paragraph 27 above, paragraph 11; and Case T-435/93 *ASPEC and Others v Commission* [1995] ECR II-1281, paragraph 62).

- 45 It is to be noted in this regard that in the contested decision the Commission ruled on a number of requests by Member States for an overall increase in their MAGP IV objectives. However, the request to the Commission for an increase in respect of the Irish national fleet was made up of all of the individual requests of owners of vessels, including the applicants' requests.
- 46 It should also be noted that the Commission was required to consider those individual requests 'case by case' under Article 4(2) of Decision 97/413 (see also recital 2 of the contested decision). The Commission maintained in its written submissions that it had examined 'case by case' the situation of each vessel mentioned in Ireland's request and confirmed at the hearing that the expression 'case by case' meant 'vessel by vessel'. In that regard, the Court would point out that the Netherlands' 'global request' was rejected by the Commission on the ground that it had not been 'detailed case by case' (Annex II).
- 47 Furthermore, the Commission lists the vessels concerned in Annex I ('accepted requests') and Annex II ('rejected requests') to the contested decision. Thus, the names of the applicants' vessels are all set out in Annex II.
- 48 Although the contested decision was addressed to the Member States concerned, it clearly applies to a series of identified vessels. The contested decision must therefore be considered to be a series of individual decisions, each affecting the legal situation of the owners of those vessels, including the legal situation of the applicants (see, by analogy, Joined Cases 41/70 to 44/70 *International Fruit Company and Others v Commission* [1971] ECR 411, paragraphs 17 to 22).
- 49 The Court considers that the number and identity of the vessel-owners in question were fixed and ascertainable even before the date of the contested decision and that the Commission was in a position to know that its decision affected solely the

interests and positions of those owners. The contested decision concerns a closed group of identified persons at the time of its adoption, whose rights the Commission intended to regulate. It follows that the factual situation thus created characterises the applicants by reference to all other persons and distinguishes them individually in the same way as an addressee of the decision (Joined Cases 106/63 and 107/63 *Toepfer and Getreide-Import v Commission* [1965] ECR 405, 411).

50 As to whether the applicants are directly concerned by the contested decision within the meaning of the fourth paragraph of Article 230 EC, the two cumulative criteria are identified in settled case-law.

51 First, the measure at issue must directly affect the legal situation of the person concerned. Second, that measure must leave no discretion to the addressees entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (Case C-386/96 P *Dreyfus v Commission* [1998] ECR I-2309, paragraph 43, and Case T-69/99 *DSTV v Commission* [2000] ECR II-4039, paragraph 24). The condition required by the second criterion is also satisfied where the possibility for addressees not to give effect to the Community measure is purely theoretical and their intention to act in conformity with it is not in doubt (*Dreyfus v Commission*, cited above, paragraph 44; see also, to that effect, *Piraiiki-Patraiki and Others v Commission*, paragraph 27 above, paragraphs 8 to 10).

52 In the present case, it is common ground that the Commission was the only authority authorised to adopt a decision in application of Article 4(2) of Decision 97/413. No other administrative entity, the Irish authorities included, could allocate increases in capacity for reasons of safety on the basis of that provision.

53 Furthermore, as pointed out in paragraph 46 above, the Commission did actually take decisions on a 'case by case' basis concerning the eligibility of the requests for increase in capacity of the vessels in question. Each request presented by the owners of vessels is given an express reply in the annexes to the contested decision, which provides for specific increases in tonnage for the vessels in Annex I and which awards no increase in tonnage to the vessels listed in Annex II. Thus, the contested decision gives an explicit answer to the question whether the vessels designated in the annexes may or may not benefit from the application of Article 4(2) of Decision 97/413.

54 In the contested decision, the Commission, as the only authority with competence in the matter, rules definitively on the eligibility for an increase in capacity of certain particular vessels by reference to the conditions of the application of the derogation referred to in Article 4(2) of Decision 97/413. In finding that the applicants' vessels are not eligible, the contested decision has the direct and definitive effect of precluding the applicants from the possibility of benefiting from a measure of Community law. It follows that such a decision is of direct concern to the applicants.

55 Furthermore, in accordance with their obligation to implement Community law, the Member States were obliged to grant the increases mentioned in Annex I to the corresponding vessels. In particular, they could not grant additional capacity agreed by the Commission for a vessel in Annex I to a vessel in Annex II. The vessels in Annex II, including the applicants' vessels, are therefore not entitled to an increase in capacity on the ground of improvements in safety. Since only the Commission could allocate such an increase in capacity, the vessels' definitive fate was fixed by the Commission.

56 That effect of the contested decision follows solely from the Community rules, because the Commission is the only authority competent to apply Article 4(2) of Decision 97/413. The national authorities have no discretion as regards their

obligation to implement that decision. They have no choice or scope for manoeuvre when allocating increased capacity for safety and must implement the decision in a purely automatic way, no other intermediate rules being applicable.

57 The parties' arguments concerning the practical or other effects of the contested decision on the vessels in question are irrelevant in that regard. The Court considers that the applicants are directly concerned in that the contested decision excluded the eligibility of the vessels in question for an increase in capacity in application of Article 4(2) of Decision 97/413, irrespective of the practical situation of the vessels and, in particular, of whether they fished before and after the contested decision.

58 The findings set out in paragraphs 52 to 56 above are not called in question by the Commission's argument that Ireland may in theory decide to grant the additional capacity to the applicants' vessels. A national decision of that nature would not mean that the Commission's decision ceased to apply automatically. Legally speaking, the national decision would remain extraneous to the application in Community law of the contested decision. Its effect would be to alter the applicants' situation once again, in particular by removing the need for them to purchase capacity. That second alteration of their legal situation would be the consequence of the national decision alone and not of the implementation of the contested decision.

59 As regards the Commission's argument that the applicants could avoid negative consequences by purchasing additional capacity on the market, far from excluding the direct effect of the contested decision, this shows that the decision had made it necessary for the applicants to take measures to deal with the situation created by the contested decision.

60 It follows that the plea of inadmissibility raised by the Commission must be rejected.

61 However, in view of Ireland's answers to the questions put to it by way of measure of organisation of procedure, the Court has raised of its own motion the question whether four of the applicants had an interest in acting in the present case (see paragraph 17 above). The applicants in question are Thomas Faherty (T-224/03), Ocean Trawlers Ltd (T-226/03), Larry Murphy (T-236/03) and O'Neill Fishing Co. Ltd (T-239/03).

62 It follows from those answers that the requests submitted by those four applicants were based on their intention at the material time to have vessels built and given the names set out in Annex II to the contested decision. It transpired, however, that those applicants did not have those vessels built, so that at the date of the contested decision they were not in fact owners of the vessels in question. It follows that those applicants had no interest in bringing an action. In any event, they are not individually concerned by the contested decision since the vessels in question are fictitious.

Substance

63 The applicants put forward three pleas in law in support of their action. The first alleges lack of competence on the part of the Commission, the second lack of reasoning and the third breach of the principle of equal treatment. The Court will examine the first plea first.

Arguments of the parties

64 The applicants state *in limine* that their requests concerned safety improvements made in accordance with Council Directive 93/103/EC of 23 November 1993

concerning the minimum safety and health requirements for work on board fishing vessels (OJ 1993 L 307, p. 1) and the Torremolinos Convention. Most of the applicants simply replaced their existing vessels with new vessels. In Cases T-220/03 *Cavankee Fishing v Commission* and T-227/03 *Brendan Gill v Commission*, the applicants initially altered their vessels and requested additional tonnage in that regard. They then replaced their vessels and also sought increased tonnage for the new vessels.

65 The applicants maintain that, in so far as the Commission exercised competence under Articles 3 and 4 of Decision 97/413 and point 3.3 of the annex to Decision 98/125, that competence was limited by the provisions of Decision 97/413. It follows from that decision that the only questions which the Commission could examine when determining each of the requests were, first, whether the proposed increase in capacity resulted exclusively from safety improvements and, second, whether the increase in capacity resulted in an increase in the fishing effort of the vessels concerned. It follows that Article 4 of Decision 97/413 did not authorise the Commission to apply certain of the criteria mentioned in Article 1 of the contested decision.

66 The applicants do not dispute the criteria set out in Article 1(1) and (3) of the contested decision.

67 As regards the criterion set out in Article 1(2) of the contested decision, on the other hand, namely the criterion that the vessel must be properly registered in the Fleet Register of the Community ('the second criterion'), they claim that that criterion is not found in either Decision 97/413 or in Decision 98/125. In so far as it seeks to restrict the possibility of requesting increased capacity resulting from safety alterations for replacement vessels, the second criterion is wholly unjustified, as

Decision 97/413 and Decision 98/125 do not preclude requests relating to replacement vessels from being favourably received.

68 Nor is the criterion set out in Article 1(4) of the contested decision, namely that the increase in tonnage must be the result of modernisation works over the main deck performed or to be performed on an existing registered vessel at least five years old on the starting date of the works ('the fourth criterion'), justified under Decision 97/413 or Decision 98/125.

69 In the first place, the applicants observe that those provisions do not limit safety improvements to existing registered vessels. The age of a vessel is a concept wholly alien to the definition of 'fishing effort' provided by the Council. The Commission is therefore not competent to take the age of vessels into account when it adopts decisions in the context of the competences conferred on it by Decision 97/413.

70 In the second place, Decision 97/413 does not require that vessels be at least five years old on the starting date of the works. That requirement appears to have been inspired by Article 11(5) of Regulation No 2371/2002, which clearly cannot govern the management of MAGP IV.

71 In the third place, the improvements on grounds of safety are not limited to modernisation works over the main deck. The Commission is not competent to exclude any category of work. In particular, increases in capacity linked to works below the main deck might result exclusively from safety improvements when, for example, they increase the size of freeboard and buoyancy of the vessel.

- 72 The applicants further submit that the Commission reasoned in general terms without reference to the specific conditions of each request. They contend that work below the main deck may perfectly well constitute an increase in capacity resulting exclusively from safety improvements. By not giving a response to each individual request, the Commission was clearly in breach of its duty to examine the requests case by case.
- 73 In the fourth place, as regards the exception relating to vessels lost at sea, that exception applies only to the decision taken *ultra vires* by the Commission to restrict the benefit of Article 4(2) of Decision 97/413 to existing registered vessels at least five years old when work commences. Furthermore, that exception is in contradiction to the Commission's reasoning that new vessels which replace vessels lost at sea increase the fishing effort.
- 74 As regards the criterion referred to in Article 1(6) of the contested decision, namely that the volume under the main deck of the modified vessel or the replacement vessel is not increased ('the sixth criterion'), the applicants submit that it has no direct connection with the question whether a specific proposal to increase capacity, submitted under Article 4(2) of Decision 97/413, satisfies the requirements of that provision.
- 75 Ireland supports the applicants' argument. It maintains that certain criteria referred to in paragraphs 2 to 5 of Article 1 of the contested decision (see paragraph 13 above) have no legal basis and were adopted *ultra vires* by reference to Decision 97/413.

76 As regards the Commission's argument that Ireland requested a much higher increase in the tonnage of the fleet than that requested by the other Member States, the applicants maintain that it is wholly irrelevant in the present case.

77 The Commission claims, by way of preliminary observation, that in all cases the new vessels are larger than those which they are to replace. In certain cases it was proposed that a number of old vessels be withdrawn and new vessels introduced. However, that capacity is shared between different vessels in such a way that it is not always easy to make a direct comparison between the vessels. Furthermore, where an increase in size can be defined as a percentage, it is large, that is to say, rarely below 30% and most often between 70 and 90%. The increase in capacity requested by Ireland would have entailed an increase of approximately 11% in the tonnage of the Irish fleet.

78 The Commission confirms that the Council left open the possibility that the capacity of a Member State's fleet could be increased on safety grounds. However, in view of the objective of Decision 97/413 to freeze or reduce the fishing fleets, that possibility is an exception to the general principle and should be interpreted restrictively.

79 Next, the Commission claims that the disputed criteria result explicitly or implicitly from the provisions of the relevant regulations. It denies that it exceeded its powers in adopting the criteria in the contested decision.

80 It observes that, in agricultural matters, including fishing, the Community institutions have a wide discretion (Joined Cases C-133/93, C-300/93 and

C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 42, and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80).

81 As regards the second criterion, the Commission contends that the applicants do not clearly explain in what way it is open to criticism. Although the criterion is not found expressly in Decision 97/413 or Decision 98/125, it is implicit in those decisions. Ireland's application sought to increase its fishing fleet. It follows from Article 1 of Commission Regulation (EC) No 2090/98 of 30 September 1998 concerning the fishing vessel register of the Community (OJ 1998 L 266, p. 27) that that register is simply a list of the fishing vessels defined in Article 3 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1).

82 It would be strange if the capacity of the Irish fishing fleet could be increased by taking account of ships which were not fishing vessels, or not registered in Ireland. For that reason, Article 6 of Decision 98/125 provides that Ireland must inform the Commission of any change concerning the situation of its fleet and of the fishing effort, in accordance with the procedures laid down in the regulation which at the time defined the Fleet Register.

83 The Commission observes that the applicants' objection in respect of the second criterion relates to the requirement that vessels should not be new, which is justified on the grounds set out below (paragraphs 87 to 94).

84 As regards the fourth criterion (see paragraph 13 above), the Commission contends that it did not exceed its powers in defining it.

85 In the first place, as regards the exclusion of new vessels, the Commission observes that Article 4(2) of Decision 97/413 provided that increases in capacity on grounds of safety were acceptable only if they did not entail an increase in the fishing effort of the vessels concerned. That limitation, which is systematically ignored by the applicants in the reply, is in keeping with the general objective of Decision 97/413, which is to reduce the amount of fish caught by each Member State's fleet.

86 The Commission maintains that it is generally accepted that new vessels are more efficient than the vessels which they replace, so that even if tonnage or power remains constant, the real capacity of a new vessel is higher. Thus, introducing a new vessel would inevitably 'increase the fishing effort of the vessels concerned' and therefore not be covered by the exception referred to in Article 4(2) of Decision 97/413.

87 The applicants extend the meaning of 'improvement' in Article 4(2) of Decision 97/413 to cover the entire replacement of a vessel. The capacity of a new vessel is greater than that of the vessel which it replaces owing not only to the safety improvements but also to its general technical superiority. It is therefore impossible to take the view that the increase in the capacity of the applicants' vessels resulted 'exclusively' from safety improvements, as required by that provision.

88 In the Commission's submission, even with the same tonnage and power, a new vessel is superior to an old vessel because of the following elements:

- the use of electronic equipment to find fish and to control precisely trawl depth and speed;

- the increased efficiency in the use of fuel;

- the increased efficiency of the propeller and the improvement of the hydrodynamic performance of the net, allowing the vessel to trawl a bigger net with the same engine power;

- the use of more powerful deck equipment, making it possible to haul the net more times per day (on the larger vessels the deck equipment is operated by auxiliary engines which are not taken into account when calculating the power of the vessel);

- the use of mechanised systems for deploying long lines, allowing more hooks to be deployed and recovered at the same time.

⁸⁹ The Commission further submits that Article 4(2) of Decision 97/413 was not designed as a procedure for the entry of new fishing vessels. These are governed by the entry and exit system referred to in Article 6 of Regulation No 2792/1999 and Article 6 of Decision 97/413. The applicants' interpretation would mean that every vessel, no matter how new, could be replaced at any time by another vessel (for example, the *Mark Amay*, the vessel concerned in Case T-222/03, which was built in 2000 and which was replaced after only two years by a vessel almost 50% bigger). Such a logic would give carte blanche for fleet increases and might even threaten safety at sea. Shipbuilders and shipowners would be tempted to build vessels to the maximum possible tonnage and power but to skimp on safety equipment.

- 90 Furthermore, the purpose of Article 4(2) of Decision 97/413 is to allow increased capacity based on 'safety improvements'. The age of a vessel was taken into account by the Commission not in the abstract but as a parameter in assessing whether the vessel required safety improvements. A new vessel meets recent safety standards. Consequently, the safety equipment of new vessels does not need significant improvements.
- 91 The correspondence between Ireland and the Commission to which the applicants refer merely constitutes a request for information. In that correspondence, the Commission did not recite all the applicable criteria and had no reason to do so.
- 92 In the second place, as regards the five-year criterion, the Commission submits that an age-limit must be fixed in order to determine in an objective way the concepts of 'new vessel' and 'existing vessel'. The Commission took a period of five years because a fishing vessel has an average life of 20 to 25 years and does not normally require modernisation during the first five years. The Commission does not contend that Article 11(5) of Regulation No 2371/2002 is the legal basis for the five-year period. However, that provision reflects the Commission's philosophy in that regard. The Commission maintains that the five-year limit was implicit in the legislation.
- 93 In the third place, as regards the criterion that the works must be above the main deck, the Commission observes that according to Archimedes' principle, the weight carried by the vessel is equal to the amount of water displaced by the submerged part of the hull. Any increase in the size of the hull inevitably increases the quantity of water displaced and therefore the weight which the vessel can carry. Thus, increasing the size of the hull corresponds to an increase in the size of the vessel and therefore in the fishing effort. The Commission explains that it therefore took the view that an increase in volume below the main deck inevitably meant an increase in fishing effort and was thus contrary to Article 4(2) of Decision 97/413.

94 Conversely, improvements over the main deck do not usually increase the capacity of the vessel and are more closely linked with safety. The Commission maintains that it is not possible to add significant weight over the main deck, as that has negative effects on stability. Fish holds cannot be situated over the main deck, which is generally used for work and accommodation.

95 The applicants' contention that safety works above the main deck always make a vessel unstable is too general. The effect of such works on stability depends on the vessel. The Commission maintains that it is possible in certain cases to add a small amount of weight above the main deck.

96 In its reply, the Commission adds that, contrary to the applicants' submissions, it did carry out a case-by-case assessment. It observes, in that regard, that it found an error in the documents concerning the vessel which was to replace the *Aine* (Case T-223/03). It also observes that as its defence concerned 23 cases it had to express itself in general terms.

97 In the fourth place, the Commission points out that although a vessel of under five years of age should not need to be modernised or replaced, it might be lost at sea. Its owner would then be obliged to replace it in order to be able to continue to fish. In that case, the replacement vessel would not necessarily be identical to its predecessor and the safety equipment might be improved when the vessel was replaced. Contrary to the applicants' contention, that is not inconsistent with the Commission's argument that new vessels are more efficient. As the old vessel which

was lost at sea is no longer available for comparison purposes, it is not possible to calculate the increase in efficiency. There is thus no basis on which to oblige the owners concerned to buy vessels with a lower capacity. Furthermore, a vessel which replaces a vessel lost at sea must not have an increased carrying capacity.

98 As regards the criterion referred to in Article 1(5) of the contested decision ('the fifth criterion'), the Commission is unable to understand what conclusion the applicants draw from the assertion that that criterion goes further than the concept of 'safety'. If the Commission had interpreted that concept too broadly, that would have been favourable to the applicants, as a wider range of works could be covered. The Commission therefore contends that the wording of the fifth criterion was justified in the light of Article 6 of Regulation No 2792/1999. In any event, it is apparent from the foregoing analysis that the proposals concerning the applicants' vessels were all rejected on the basis of the fourth criterion, so that annulment of the contested decision, in so far as it is based on the fifth criterion, would make no difference to the applicants' situation.

99 As regards the sixth criterion, the Commission contends that it is justified for the reasons set out above (paragraph 93).

Findings of the Court

100 In Article 1 of the contested decision, the Commission sets out six criteria for eligibility of requests for increased capacity (see paragraph 13 above). The applicants

claim that the Commission was not competent to adopt the second, fourth, fifth and sixth criteria. They contend, in particular, that the Commission exceeded its powers by limiting the concept of safety improvements to alterations to existing registered vessels at least five years old on the starting date of the works (the second and fourth criteria).

101 The Court of Justice has held that the Commission is authorised to adopt all the implementing measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council (Case 121/83 *Zuckerfabrik Franken* [1984] ECR 2039, paragraph 13; Case C-478/93 *Netherlands v Commission* [1995] ECR I-3081, paragraph 31; and Case C-239/01 *Germany v Commission* [2003] ECR I-10333, paragraph 55).

102 In the present case, it follows from Article 9 of Decision 97/413 (and from the legislation cited there) that the Commission was authorised to implement the objectives and procedures referred to in that decision under the so-called 'management committee' procedure (see also recital 9 of the contested decision). According to the case-law, the Commission may have a particularly significant power of implementation in the context of such a procedure (see, to that effect, Case 23/75 *Rey Soda* [1975] ECR 1279, paragraphs 13 and 14).

103 However, the Commission does not contend that it was authorised to add entirely new criteria in the contested decision. In accepting that the second and fourth criteria had the effect of rendering the new vessels ineligible for an increase in capacity under Article 4(2) of Decision 97/413, however, the Commission claims

that those criteria followed expressly or by implication from that provision (see paragraph 79 above).

104 As the applicants' actions all concern requests relating to wholly new vessels, the Court must consider whether the exclusion of new vessels is an implementation of the main criterion set out in Article 4(2) of Decision 97/413 or whether it is contrary to that provision.

105 It must be pointed out that Article 4(2) of Decision 97/413 (see paragraph 1 above) imposes no limit as regards the age of a vessel eligible for an increase in capacity on safety grounds. At first sight, the wording of that provision permits any increase in capacity resulting from safety improvements, provided that those increases do not lead to an increase in the fishing effort. If the Council had intended to exclude new vessels it would in all likelihood have made its intention clear (see, in that regard, paragraph 117 below).

106 It should also be noted that the other provisions which make reference to Article 4(2) of Decision 97/413, namely point 3.3 of the annex to Decision 98/125 (see paragraph 2 above) and Article 6(2) of Regulation No 2792/1999 (see paragraph 3 above), give no indication that that exception concerns solely vessels more than five years old (see also the 12th recital of Decision 97/413).

107 It should be noted, in that regard, that Article 6 of Regulation No 2792/1999 is entitled 'Fleet renewal and the modernisation of fishing vessels'. The Commission acknowledged at the hearing that Article 6(2) of that regulation reflected Article 4(2)

of Decision 97/413. The Court considers, particularly in the light of that title, that if paragraph 2 of Article 6 applied only to old vessels, the regulation would say so.

108 Contrary to the Commission's contention, the concept of improvements referred to in Article 4(2) of Decision 97/413 must be understood not as referring to improvements to a particular vessel but as referring to the national fleet. In that regard, it should be noted, in particular, that point 3.3 of the annex to Decision 98/125 refers to a 'programme of safety improvements' of the national fleet in general.

109 It is also appropriate to bear in mind the objectives of Decision 97/413. The objective of that decision is to conserve the fishing stocks in Community waters. However, the Council took into account 'the need to ensure the highest safety standards in the Community' (12th recital). Accordingly, it included Article 3 (which concerns fishing vessels of less than 12 metres overall) and Article 4(2) in the decision.

110 Contrary to the impression given by the Commission, it is not necessary, in order to ensure the abovementioned objective of Decision 97/413, that new vessels be excluded from the regime established by Article 4(2) of that decision. The Court emphasises, in that regard, that Article 4(2) is consistent with that objective in that it prohibits any increase in the fishing effort. The Commission, which puts forward very considerable arguments which are not based on safety grounds, could have examined the vessels, case by case, in order to establish whether or not there was an increase in the fishing effort. In fact, it states itself that the prohibition of such an increase seeks to satisfy the general objective of Decision 97/413, which is to reduce the quantity of fish caught in the Community (see paragraph 85 above).

- 111 The Commission contends that Article 4(2) of Decision 97/413 was not intended to put in place a procedure for the entry of new fishing vessels. That procedure is, it says, governed by the system of entry and exit referred to in Article 6 of Regulation No 2792/1999 and Article 6 of Decision 97/413.
- 112 Those assertions of the Commission are not disputed by the applicants. The applicants recognise that all new vessels must comply with the entry procedure laid down in those provisions. However, there is nothing to prevent a vessel which has entered the fleet in accordance with the entry and exit system referred to in Article 6 of Regulation No 2792/1999 and Article 6 of Decision 97/413 from benefiting from the derogation provided for in Article 4(2) of Decision 97/413. In effect, the final sentence of Article 6(2) of Regulation No 2792/1999 provides that any capacity increase is to be managed by the Member States under the permanent arrangements for monitoring fleet renewal and modernisation referred to in Article 6(1) of that regulation.
- 113 It should further be noted that the entry and exit system referred to in Article 6 of Decision 97/413 is not confined to new vessels. In order to introduce a used vessel (which previously formed part, for example, of a different national fleet), it is necessary, in that system, to remove capacity. The Commission does not dispute that used vessels are able to benefit from an increase in capacity under Article 4(2) of that decision.
- 114 Furthermore, the Court observes that the Commission itself has interpreted Article 4(2) of Decision 97/413 as permitting requests for increased capacity connected with the introduction of new vessels.

115 The Court would point out in that regard that the preparatory documents relating to Decision 2002/70, which repealed Article 4(2) of Decision 97/413 with effect from 1 January 2002, show that the Commission considered that that provision also applied to new vessels. Decision 2002/70 extended the period of application of Decision 97/413 until 31 December 2002. In the words of the grounds of the proposal for the Council decision amending Decision 97/413 (COM(2001) 322 final), drafted by the Commission:

‘... any prolongation [of Decision 97/413] should at least be associated with measures to make [the MAGP IV objectives] more effective. The attached proposal therefore removes the possibilities that currently exist under Articles 3 and 4 of ... Decision 97/413 to increase the MAGP objectives on the grounds of safety. All new vessels should be constructed to a certain minimum standard of safety, and the capacity to build these new vessels could be found from within the existing capacity objectives.’

116 It is clear from that passage that the Commission itself considered that Article 4(2) of Decision 97/413 allowed requests to increase capacity linked with the introduction of new vessels and that it therefore intended to remove that provision because, in the Commission’s view, it allowed an excessive increase in the MAGP IV objectives.

117 It should further be noted that, one year after adopting Decision 2002/70, the Council adopted Regulation No 2371/2002, Article 11(5) of which expressly provides, unlike Article 4(2) of Decision 97/413, that an increase in capacity, in particular on safety grounds, is possible only for fishing vessels of five years of age or

more (see paragraph 5 above). The wording of that provision is precise and restrictive, in contrast to that of Article 4(2) of Decision 97/413.

118 The Commission, which accepts that Article 11(5) of Regulation No 2371/2002, which entered into force on 1 January 2003, did not apply in the present case and that it was required to adopt the contested decision on the basis of the provisions applicable at the time when it received the requests, that is to say, Article 4(2) of Decision 97/413, none the less claims that Regulation No 2371/2002 ‘reflected its philosophy’ in the matter. The Court holds in that regard, that the similarities between Article 11(5) of Regulation No 2371/2002 and the criteria set out in the contested decision are quite clear. However, those criteria are not found in Decision 97/413 and have the effect of altering the scope of that decision. If the Commission had any objections to Article 4(2) of Decision 97/413 (see paragraph 115 above), it was not entitled to alter its scope (see paragraph 101 above).

119 In addition, it must be noted that, as the applicants and Ireland correctly observe, the correspondence between Ireland and the Commission concerning the requests to increase capacity shows that the Commission considered that the new vessels could indeed benefit from Article 4(2) of Decision 97/413.

120 By letter of 28 October 1999, Ireland for the first time requested the Commission to grant an increase in capacity under Article 4(2) of Decision 97/413. That request was based on the requests of seven owners of new vessels under construction. In its reply of 10 December 1999, the Commission raised no objection in respect of the fact that the request concerned new vessels. It merely indicated that ‘[t]he volume of the

spaces related to safety in the vessels that are removed must also be known before the additional volumes devoted to safety in the new vessels can be calculated’.

121 In that correspondence, the Commission persisted with its demand that comparisons be drawn between the new vessels and the old ones which were intended to be replaced. Thus, it stated in a letter of 23 January 2001 that it was aware that the volumes that could be classified as devoted to safety would be greater in the new vessels than in the vessels they replaced but that unless that could be quantified it would not be possible to increase the MAGP objectives to take that into account. In spite of the correspondence between Ireland and the Commission, including the letters sent late in 2001 concerning the requests in issue, which related explicitly to the new vessels, it was only in the contested decision that the Commission stated for the first time that new vessels were excluded from the regime established by Article 4(2) of Decision 97/413.

122 The Court further notes that the position adopted by the Commission in the present case is contradictory. On the one hand, the Commission maintains that Article 4(2) of Decision 97/413 did not apply to new vessels; yet, on the other hand, it allowed increases in capacity for new vessels on the basis of that provision if they replaced vessels lost at sea (the fourth criterion). If Article 4(2) of Decision 97/413 excluded new vessels, the same provision could not serve as the basis for increases in capacity for new vessels which replaced vessels lost at sea.

123 The Commission’s argument that the owners of vessels lost at sea were obliged to replace them cannot be accepted. Even if that were the case, the fact remains that the Commission thus allowed new vessels to benefit from Article 4(2) of Decision 97/413 while asserting that that provision excluded new vessels. It should further be observed that even though the owner of an old vessel was also obliged to replace it

when it had become unserviceable and unreliable, he was excluded by the Commission from the benefit of Article 4(2) of Decision 97/413.

124 As regards the Commission's argument that it was not possible to calculate the gain in efficiency of the new vessels which replaced those lost at sea, it must be borne in mind that the Commission claimed that new vessels automatically increased the fishing effort (see paragraph 126 below). The Commission cannot claim that new vessels are more efficient than those they replace and at the same time allow vessels lost at sea to be replaced by new vessels on the ground that it was unable to calculate the gain in efficiency of the new vessels.

125 It should be added that the Commission accepts, in the context of the plea alleging breach of the principle of equal treatment, that 'an owner wishing to purchase a new vessel [may] sell the old one and possibly transfer part of his equipment to the new vessel'. It follows that the factors which make a new vessel more efficient are not automatically present on such a vessel.

126 The Commission claims that it is generally accepted that new vessels are more efficient than those which they replace, so that, even if their tonnage or their power remain the same, the 'real capacity' of a new vessel is greater. Thus, the introduction of a new vessel inevitably 'increase[s] the fishing effort of the vessels concerned' and is therefore not covered by the exception referred to in Article 4(2) of Decision 97/413.

127 The Court finds that the Commission has not proved to the requisite legal standard that the introduction of a new vessel necessarily leads to an increase in the fishing effort.

128 It is common ground that, as regards the present case, the fishing effort of a vessel is defined as the product of its activity and its capacity expressed in GT (see Article 1(2) of Decision 97/413 and Article 3(1)(iii) of Decision 98/125). It follows from Article 4(2) of Decision 97/413, moreover, that increases in capacity are not permitted if they entail an increase in the fishing effort. However, although there may be a presumption that new vessels are generally more efficient than old vessels, it cannot be inferred that all new vessels are necessarily and systematically more efficient from the point of view of the fishing effort than those which they replace. Thus, the technological improvements invoked by the Commission (see paragraph 88 above) do not necessarily affect all vessels. The same logic prompts the observation that the owner of a relatively recent vessel equipped with modern technology may replace his vessel by a new vessel which is safer and more stable, while taking care not to increase the fishing effort.

129 There was nothing to prevent the Commission from determining case by case whether the new vessels did in fact lead to an increase in the fishing effort by comparison with the previous vessels.

130 As regards the Commission's argument that a new vessel ought already to meet recent safety standards and would not require significant improvements, that argument relates in reality to a political position adopted by the Commission which is now enshrined in the relevant rules (see paragraphs 117 and 118 above). However, that position of the Commission cannot be relied upon in order to alter *ex post facto* the terms of Article 4(2) of Decision 97/413. It may be presumed that at the time when that decision was adopted the legislature considered that the replacement of an old fishing vessel by a new vessel might be desirable from the point of view of safety.

131 Furthermore, the Commission maintains that in the case of a new vessel capacity increases not only because of safety improvements but also because of the general superiority of the new vessel and that it is therefore impossible to determine whether the increase in capacity is ‘exclusively’ due to safety improvements, as required by Article 4(2) of Decision 97/413.

132 That argument cannot be accepted. Apart from the fact that the Commission reasons in general terms concerning the superiority of new vessels, without reference to the circumstances of each request (see paragraph 128 above), the comparative examination necessary for the purpose of determining increases in capacity of new vessels resulting either from safety improvements or from other types of improvement formed the subject-matter of the correspondence between the Commission and Ireland. At the Commission’s request, the requests were redrafted in order to enable it to make the necessary comparisons. It cannot therefore now maintain that it was impossible to establish whether the increases were due to safety improvements.

133 Last, the fourth criterion limits the concept of safety improvements to ‘modernisation works over the main deck’ (see also the sixth criterion, paragraph 13 above). It is common ground that a number of the applicants’ requests concerned an increase in the volume below the main deck. It is sufficient to observe, in that regard, that changes below the deck were prohibited under Article 4(2) of Decision 97/413 if they led to an increase in the fishing effort. However, the Commission has not established that that type of modifications systematically led to such an increase. Once again, the Commission ought to have examined the vessels case by case in deciding that issue.

134 In the light of all of the foregoing, the Court finds that in adopting in the contested decision criteria not provided for in the rules applicable in the present case, the

Commission exceeded its powers. The first plea must therefore be upheld and the contested decision must be annulled and it is therefore unnecessary to examine the remaining pleas.

Costs

¹³⁵ 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. As the Commission has been unsuccessful, it must be ordered, in addition to bearing its own costs, to pay the applicants' costs, in accordance with the forms of order sought by them. Ireland is ordered to bear its own costs, in accordance with Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

- 1. Dismisses the applications lodged by Thomas Faherty (T-224/03), Ocean Trawlers Ltd (T-226/03), Larry Murphy (T-236/03) and O'Neill Fishing Co. Ltd (T-239/03);**

- 2. Annuls Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall in so far as it applies to the vessels of the other applicants;**

- 3. Orders the Commission to bear its own costs and to pay those incurred by the applicants referred to in paragraph 2;**

- 4. Order the applicants referred to in paragraph 1 to bear their own costs;**

- 5. Orders Ireland to bear its own costs.**

Cooke

García-Valdecasas

Labucka

Delivered in open court in Luxembourg on 13 June 2006.

E. Coulon

García-Valdecasas

Registrar

President

ANNEX

T-219/03 **Mullglen Ltd**, established in Killybegs (Ireland)

T-220/03 **Cavankee Fishing Co. Ltd**, established in Greencastle (Ireland)

T-221/03 **Padraigh Coneely**, residing in Claregalway (Ireland)

T-222/03 **Island Trawlers Ltd**, established in Killybegs

T-223/03 **Joseph Doherty**, residing in Burtonport (Ireland)

T-224/03 **Thomas Faherty**, residing in Kilronan, Aran Islands (Ireland)

T-225/03 **Pat Fitzpatrick**, residing in Inishmore, Aran Islands (Ireland)

T-226/03 **Ocean Trawlers Ltd**, established in Killybegs

T-227/03 **Brendan Gill**, residing in Lifford (Ireland)

T-228/03 **Eugene Hannigan**, residing in Killybegs

T-229/03 **Edward Kelly**, residing in Greencastle

T-230/03 **Peter McBride**, residing in Downings (Ireland)

T-231/03 **Hugh McBride**, residing in Downings

T-232/03 **Adrian McClennaghan**, residing in Greencastle

T-233/03 **Noel McGing**, residing in Killybegs

T-234/03 **Eamon McHugh**, residing in Killybegs

T-235/03 **Gerard Minihane**, residing in Skibbereen (Ireland)

T-236/03 **Larry Murphy**, residing in Castletownbere (Ireland)

T-237/03 **Eileen Oglesby**, residing in Kincasslagh (Ireland)

T-238/03 **Patrick O'Malley**, residing in Galway (Ireland)

T-239/03 **O'Neill Fishing Co. Ltd**, established in Killybegs

T-240/03 **Cecil Sharkey**, residing in Clogherhead (Ireland)