



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

30 April 2019*

(Actions for annulment — Common fisheries policy — Conservation of resources — International Convention for the Conservation of Atlantic Tunas — Total allowable catch (TAC) for Mediterranean swordfish — Regulation (EU) 2017/1398 — Fixing of fishing opportunities for 2017 — Exclusive competence of the European Union — Determination of the reference period — Reliability of the basic facts — Scope of judicial review — Article 17 TEU — Management of the EU's interests within international bodies — Principle of relative stability — Conditions under which applicable — Principles of non-retroactivity, legal certainty, legitimate expectation and non-discrimination)

In Case C-611/17

ACTION for annulment under Article 263 TFEU, brought on 23 October 2017,

Italian Republic, represented by G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato,

applicant,

v

Council of the European Union, represented by F. Naert and E. Moro, acting as Agents,

defendant,

supported by:

Kingdom of Spain, represented initially by V. Ester Casas and subsequently by M.J. García-Valdecasas Dorrego, acting as Agents,

European Commission, represented by F. Moro and A. Stobiecka-Kuik, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, E. Regan, C. Toader (Rapporteur) and C. Lycourgos, Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský, E. Levits, L. Bay Larsen, P.G. Xuereb, N. Piçarra and L.S. Rossi, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

* Language of the case: Italian.

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without a hearing and without an Opinion,

gives the following

Judgment

- 1 By its application, the Italian Republic seeks the annulment of Council Regulation (EU) 2017/1398 of 25 July 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities (OJ 2017 L 199, p. 2 and corrigendum OJ 2017 L 238, p. 55, ‘the contested regulation’).

Legal context

The ICCAT Convention

- 2 By Council Decision 86/238/EEC of 9 June 1986 (OJ 1986, L 162, p. 33), the European Union acceded to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984 (‘the ICCAT Convention’).

The CFP Regulation

- 3 Recitals 35 to 37 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22) (‘the CFP Regulation’) state:

‘(35) In view of the precarious economic state of the fishing industry and the dependence of certain coastal communities on fishing activities, it is necessary to ensure the relative stability of fishing activities by allocating fishing opportunities among Member States, based on a predictable share of stocks for each Member State.

(36) Such relative stability of fishing activities, given the temporary biological situation of stocks, should safeguard the particular needs of regions where local communities are especially dependent on fisheries and related activities as decided by the Council in its Resolution of 3 November 1976 [, on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977, (OJ 1981 C 105, p. 1)] and in particular Annex VII thereto.

(37) Therefore, it is in this sense that the concept of relative stability should be understood.’

- 4 Entitled, ‘Objectives’, Article 2, paragraphs (1) and (2), of the CFP Regulation provide:

‘1. The [Common Fisheries Policy (CFP)] shall ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.

2. The CFP shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.'

5 Article 16 of the regulation, entitled 'Fishing opportunities', provides in paragraph (1):

'Fishing opportunities allocated to Member States shall ensure relative stability of fishing activities of each Member State for each fish stock or fishery. The interests of each Member State shall be taken into account when new fishing opportunities are allocated.'

Regulation 2371/2002

6 Pursuant to Article 48 of the CFP Regulation, Council Regulation (EC) 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) was repealed. Article 20 of the latter regulation, headed 'Allocation of fishing opportunities' provided:

'1. The Council, acting by qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery.

2. When the Community establishes new fishing opportunities the Council shall decide on the allocation for those opportunities, taking into account the interests of each Member State.

...'

Regulation 2017/127

7 Annex ID, entitled 'ICCAT Convention Area', of Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ 2017 L 24, p. 1), before its amendment by the contested regulation, clarified, as regards the fishing of Mediterranean swordfish, that 'the [total allowable catches (TAC) adopted in the framework of [International Commission for the Conservation of Atlantic Tunas] for Mediterranean swordfish, ... are not allocated to the [contracting parties and cooperating non-contracting parties, entities or fishing entities] of ICCAT and hence their Union's share is undetermined'. That annex also stated that the TAC relating to that species, as established by the ICCAT, was fixed at 10 500 tonnes per annum.

The contested regulation

8 Recitals 9 to 12 of the contested regulation read as follows:

'(9) At its 2016 Annual Meeting, the [ICCAT] adopted Recommendation 16-05 ("Recommendation 16-05") setting the TAC for Mediterranean swordfish (*Xiphias gladius*) at 10 500 tonnes, and establishing a Working Group in order to define a fair and equitable allocation scheme of the TAC for Mediterranean swordfish, to fix the quota allocated to Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities for 2017 and to define the mechanism for managing the TAC.

- (10) The Union, by letter addressed to the ICCAT Secretariat on 23 December 2016, confirmed that it would implement Recommendation 16-05 as of 1 January 2017. In particular, the Union confirmed that it would implement the closure period for Mediterranean swordfish referred to in paragraph 11 of Recommendation 16-05 during the period from 1 January to 31 March, starting in 2017. It is therefore appropriate to introduce such closure as a condition functionally linked to the fixing and allocation of fishing opportunities for Mediterranean swordfish.
- (11) The Working Group established by Recommendation 16-05 met on 20-22 February 2017 and proposed an allocation key [allocation formula] as well as a compromise for managing the quota uptake for 2017. As part of that compromise, the Union's share was fixed at 70.756% of the ICCAT TAC, amounting to 7 410.48 tonnes in 2017. It is therefore appropriate to implement into Union law the Union's share and to define the quotas for Member States. The allocation should be based on historic catches during a reference period of 2012-2015.
- (12) The catch limits provided for in Regulation (EU) 2017/127 apply from 1 January 2017. The provisions introduced by this amending Regulation concerning catch limits should therefore also apply from that date. Such retroactive application is without prejudice to the principles of legal certainty and protection of legitimate expectations as the fishing opportunities concerned have not yet been exhausted.'
- 9 Pursuant to Article 1(2) of that regulation, Annex ID of Regulation 2017/127 was modified to the effect that, in particular, the fishing opportunities table for Mediterranean swordfish set out in that annex was replaced by a table that provided, in particular, that the share of the TAC relating to that species reserved to the EU for the year 2017 is 7 410.48 tonnes, and the quota for Italy is 3 736.26 tonnes.

Background to the dispute

- 10 Until the end of the 2016, the ICCAT recommendations in force as regards Mediterranean swordfish provided only technical protection measures, without ever establishing a TAC.
- 11 Upon the conclusion of the work of the annual meeting of the ICCAT, which took place in November 2016, the ICCAT contracting parties and cooperating non-contracting parties, entities or fishing entities ('the CPC'), taking into account the most recent scientific assessments carried out by the Standing Committee on Research and Statistics, which is a body of the ICCAT, decided to adopt, by Recommendation 16-05, a new multi-annual plan for the management and conservation of Mediterranean swordfish stock, by the introduction, with effect from 2017, of a TAC fixed at 10 500 tonnes, calculated on the basis of historic catches for the years 2010-2015.
- 12 On 20 February 2017, international negotiations began in Madrid (Spain), in which the European Union was represented by the Directorate-General for Fisheries and Maritime Affairs of the European Commission. Those negotiations concluded with the decision to lay down a scheme for the allocation of TAC, taking as the basis of the calculation the average catch levels of Mediterranean swordfish in the years 2010-2014. Following those negotiations, the European Union obtained a quota of 70.756% of a TAC of 10 500 tonnes for 2017.
- 13 On 18 April 2017, the written procedure, conducted electronically, by which the CPC formally approved the distribution of that TAC, was closed, which formalised the allocation to the European Union of a quota of 7 410.48 tonnes of catches of Mediterranean swordfish for 2017.
- 14 On 18 July 2017, the Commission announced to the Member States concerned that the vote had been declared invalid following procedural objections and that, consequently, a new vote would be organised.

- 15 On 25 July 2017, the Council adopted the contested regulation.
- 16 The same day, by a circular letter addressed to the CPC, the secretariat of the ICCAT formally announced that the initial vote was invalid, and adjourned to a later date the fixing of the date for the new vote. By a circular of 7 August 2017, that date was initially fixed for 2 September, and was later postponed until 2 October, owing to the lack of the quorum required.
- 17 Lastly, on 9 October 2017, by another circular, the ICCAT secretariat informed the CPC that quorum had been reached and that, consequently, the agreement on the allocation of TAC, as determined following the international negotiations in Madrid, had been definitively approved.

Forms of order sought and procedure before the Court of Justice

- 18 The Italian Republic contends that the Court should:
- annul the contested regulation, in particular recitals 9 to 12, Article 1(2), to the extent that it amends Annex ID to Regulation 2017/127, and point 3 of the annex to the contested regulation, and
 - order the Council to pay the costs.
- 19 The Council contends that the Court should:
- dismiss the action;
 - in the alternative, if the contested regulation is annulled as regards Mediterranean swordfish, order that its provisions continue to have effect, and
 - order the Italian Republic to pay the costs.
- 20 By decisions of 26 January 2018 and 26 February 2018, the Kingdom of Spain and the European Commission, respectively, were given permission to intervene in support of the forms of order sought by the Council.
- 21 By a request of 20 August 2018, the Italian Republic, pursuant to Article 16(3) of the Statute of the Court of Justice, sought the assignment of the present case to the Grand Chamber.

The action

The first plea, alleging infringement of Article 1 of Decision 86/238

Arguments of the parties

- 22 According to the Italian Republic, the contested regulation is unlawful due to the fact that the Council regarded itself as being obliged to adopt the regulation, on the ground that it was bound by the decision on the allocation, between the CPC, of the TAC for Mediterranean swordfish adopted by the ICCAT. However, such an obligation did not exist at the date of adoption of the contested regulation because the vote of April 2017, which approved that allocation, had been annulled by the ICCAT in July of that year and the Commission had known of that fact, since it had informed the Member States of it by the note of 18 July 2017. It follows that, in its proposal for a Council Regulation of

3 July 2017, amending Regulation 2017/127 as regards certain fishing opportunities (COM(2017) 356 final) ('the proposed regulation'), the Commission referred to an international obligation which did not exist and could not, therefore, bind the Council.

- 23 By adopting the contested regulation on the basis of that incorrect premiss, the Council failed to comply with Decision 86/238 and the international acts to which it refers. In the absence of a duly approved decision by the ICCAT, the European Union was not obliged to comply with proposals that were still in the process of obtaining approval. In addition, the Italian Republic observes that recital 11 of the regulation refers not to an allocation duly approved by the ICCAT, but only to the proposal for the allocation resulting from the working group meeting that was held on 20 to 22 February 2017.
- 24 The Council contends that there was indeed an agreement within the ICCAT, between the CPC, on the allocation of the TAC for Mediterranean swordfish. Even though that agreement was not formally adopted until October 2017, there was nothing to suggest that the delay had had an impact on the level of that allocation, the ICCAT's final decision having moreover adopted the same allocation. Moreover, if the Council had waited for that formal agreement within the ICCAT to fix the fishing opportunities referred to in the contested regulation, all EU fishermen would have been in a position of uncertainty, which could have lasted until the end of 2017. That institution could therefore legitimately rely on that allocation even before its formal adoption by the ICCAT and before the EU was bound by the ICCAT's decision.
- 25 That institution observes furthermore, and is supported on this point by the Kingdom of Spain in its statement on intervention, that the European Union would only have infringed its obligations under the ICCAT Convention and Decision 86/238 if it had fixed fishing opportunities that exceeded those granted to the EU by the ICCAT, which was not the case.

Findings of the Court

- 26 As a preliminary point, it should be recalled that, in accordance with Article 3(1)(d) TFEU, the European Union has exclusive competence in the area of 'the conservation of marine biological resources under the common fisheries policy.'
- 27 It must be added that, in matters concerning fisheries, the EU legislature enjoys a wide discretionary power corresponding to the political responsibilities conferred on it by Articles 40 to 43 TFEU. Consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion. The legality of a measure adopted in that field can be affected only if the measure is manifestly inappropriate having regard to the objective which the legislature is seeking to pursue (see, to that effect, the judgment of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraphs 80 and 81 and the case-law cited).
- 28 In that regard, it cannot successfully be claimed that the Council believed that it was obliged to adopt the contested regulation because of a legally binding decision adopted within the ICCAT, since recital 11 of that regulation does not refer to such a decision but merely, as the Italian Republic itself observed, to the proposed allocation resulting from the working group meeting which took place from 20 to 22 February 2017. It is therefore clear from that recital that the Council intended to anticipate the formal adoption, by the ICCAT, of the decision on the allocation of the TAC between the CPC.
- 29 Furthermore, having regard to the fact that the matter governed by the contested regulation falls within the European Union's exclusive competence and that the EU legislature has a wide discretion, it was not, in any event, necessary for the Council to await the formal adoption of a legally binding decision by the ICCAT before assigning fishing quotas to Member States. Since the determination of those quotas falls within its competence, it was entitled to adopt them.

- 30 It follows that, notwithstanding that it is common ground that there was no decision by the ICCAT as at the date the contested regulation was adopted, that fact was not such as to prevent the Council, in an area in which the European Union has a wide discretion, from adopting such measures as it deemed necessary for achieving the objectives of the CFP (see, by analogy, the judgment of 11 January 2017, *Spain v Council*, C-128/15, EU:C:2017:3, paragraph 50 and the case-law cited).
- 31 In any event, as the Council and the Kingdom of Spain correctly point out, the Council would only have infringed the obligations flowing from Decision 86/238 if it had fixed fishing opportunities that exceeded those granted to the European Union by the ICCAT, which is not the situation in the present case.
- 32 Consequently, the first plea relied on by the Italian Republic must be rejected as unfounded.

The second and fifth pleas, alleging a failure to state reasons in the contested regulation

Arguments of the parties

- 33 By those pleas, which it is appropriate to examine together, the Italian Republic submits that, if the Council must be regarded as having adopted the contested regulation not because it was required to do so but on the basis of its own competence, that regulation is vitiated by a failure to state reasons.
- 34 In that regard, that Member State submits first of all that, having regard to the principle of relative stability, the Council should have given appropriate reasons for the prejudice to the interests of EU fishermen in accepting a share for the European Union of 70.756% of the TAC decided within the ICCAT, even though, for the years 2010-2014, the Mediterranean swordfish catches attributable to all of those fishermen were at least 75% of the historic catches. The contested regulation does not contain any reasons in that regard: recital 11 thereof merely states that it is appropriate ‘to implement into Union law the Union’s share and to define the quotas for Member States’.
- 35 Next, if, in order to fix the TAC for 2017 for Mediterranean swordfish at 10 500 tonnes, the ICCAT relied on the historic catches of that species in the years 2010 to 2014, it was appropriate for the Council, in accordance with its stated intention of transposing the ICCAT decisions into EU law, to determine the allocation between the Member States of the share of that TAC for the European Union, namely 7 410.48 tonnes, on the basis of the level of historic catches achieved by each Member State in those same years. It follows that the contested regulation, in so far as it states in recital 11 that the reference period is the years 2012-2015, is vitiated by a failure to state reasons.
- 36 Finally, according to the Italian Republic, the contested regulation does not explain why that latter reference period was judged to be ‘reliable’ by the EU legislature, even though in the discussion within the ICCAT the period used, with the Commission’s agreement, comprised the years 2010-2014.
- 37 The Council considers that the arguments advanced by the Italian Republic in support of its second and fifth pleas amount not to seeking to demonstrate the failure of the contested regulation to state reasons, but, in part, to criticising its substance. Those arguments must, to that extent, be declared ineffective. In any event, it is clear from the application initiating proceedings and the annexes thereto that the Italian Republic was perfectly aware of all the discussions which led, first, to the allocation to the European Union, for 2017, of a share corresponding to 7 410.48 tonnes of a TAC of 10 500 tonnes for Mediterranean swordfish and then, secondly, the allocation of that share between the Member States, and that it knew the reasons for both the first and second allocations.

38 The Kingdom of Spain explains that the Italian Republic might be in disagreement with the allocation to the European Union of the share of the TAC on the ground that it leads to a reduction of fishing opportunities allocated to the European Union as a whole, and harm to the Italian Republic in particular. However, that Member State cannot successfully claim that that decision of the ICCAT lacked adequate reasoning, given that the premisses were provided in the recitals of the contested regulation.

Findings of the Court

- 39 By its second and fifth pleas, the Italian Republic submits that the contested regulation is vitiated by a failure to state reasons in that, first, the Council did not set out the reasons why it agreed to the fishing opportunities for the European Union being limited to 7 410.48 tonnes of a TAC fixed at 10 500 tonnes for Mediterranean swordfish, even though that TAC was fixed by the ICCAT by reference to the period 2010-2014 and the percentage of catches of Mediterranean swordfish attributable to EU fishermen during that period was higher and, second, that regulation does not specifically explain why the share of that 7 410.48 tonnes allocated to the Member States was fixed on the basis of the catch rates for the period 2012-2015, thus causing significant prejudice to the Italian Republic.
- 40 In the first place, according to the Court's settled case-law, the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution that adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the Union judicature to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 58 and the case-law cited).
- 41 This is a fortiori the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying that measure (judgment of 25 October 2001, *Italy v Council*, C-120/99, EU:C:2001:567, paragraph 29 and the case-law cited).
- 42 Therefore, the scope of the obligation to state reasons depends on the nature of the measure in question and, in the case of measures of general application, the statement of reasons may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other. In that context, the Court has held, in particular, that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (judgment of 22 November 2018, *Swedish Match*, C-151/17, EU:C:2018:938, paragraph 79 and the case-law cited).
- 43 In the present case, first, it should be noted that recitals 9 to 11 of the contested regulation reflect the context in which the allocation of the TAC to the European Union and its distribution between the Member States were decided by making an explicit reference to the work carried out within the ICCAT working group in order to establish a fair and equitable allocation scheme of the TAC for Mediterranean swordfish, and the EU's undertaking to implement the result of the compromise reached within the ICCAT regarding that allocation for 2017.
- 44 Second, as is clear from its written submissions, the Italian Republic was closely associated with the decision-making process for the fixing and allocation of the TAC of 7 410.48 tonnes for Mediterranean swordfish both within the ICCAT and, as regards the allocation of that tonnage

between the Member States, within the European Union. At the various stages of the process, in particular between February and April 2017, the Italian delegation was able, furthermore, to express its concerns as to the choices of allocation formula proposed.

- 45 As regards the discussions within the ICCAT, as recalled in paragraph 12 above, it is clear from the scheme for the allocation of the TAC following the negotiations held in Madrid (Spain) during 2017, in a working group dedicated to the fishing of Mediterranean swordfish, that the Italian Republic was not unaware that the tonnage resulting from negotiations with the other CPC was very close to that corresponding to the volume of historic catches of Mediterranean swordfish by EU fishermen, and that the variation by a few points of that tonnage with the historic statistics was justified on the basis of other criteria adopted by the ICCAT, including, in particular, the efforts made in the past by the CPC to manage the fishing, including the application in certain cases of stricter rules than those imposed by the ICCAT, and also socio-economic considerations.
- 46 As regards the allocation among the Member States of the European Union's share of the TAC, the Italian Republic knew both the reasons and the methods for that allocation. Thus, as regards, in particular the exclusion of the years 2010-2011 from the reference period, it is clear from the application itself that the Italian Republic was informed of the discussions relating to the findings concerning the figures for that period, in that those figures were not regarded as reliable owing to evidence of illegal catches, and the Italian Republic set out its disagreement in that regard in a letter sent to the Commission in April 2017.
- 47 In those circumstances, the Italian Republic cannot claim to have been unaware of the reasons that governed those decision-making processes and, therefore, the adoption of the contested regulation.
- 48 In the second place, to the extent that, according to the Court's case-law, the obligation to state reasons laid down in the second paragraph of Article 296 TFEU is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (judgment of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 60 and the case-law cited), and that some of the arguments advanced by the Italian Republic in support of the second and fifth pleas do not call into question the reasoning of the contested regulation, but rather the merits of the choice of reference period, those arguments will be examined in the context of the sixth plea.
- 49 It follows that the second and fifth pleas cannot be upheld.

The sixth plea in law, alleging infringement of the principle of proportionality and an incorrect assessment of the facts

Arguments of the parties

- 50 The Italian Republic submits that, in a situation where the decision of the EU legislature, as stated in recital 11 of the contested regulation, to use a reference period comprised of the years 2012-2015 for the purpose of allocating the fishing opportunities for Mediterranean swordfish between the Member States concerned was justified by the fact that the data for catches of that species made during those years were invalidated as regards Italy, that decision was, first, vitiated by a manifest infringement of the principle of proportionality. While it may appear to be legitimate to base the allocation of the quota between the Member States on historic catches data that is reliable, in the sense that they are limited to 'lawful' catches, to entirely exclude two years of the reference period was disproportionate because it resulted in excluding all of the lawful catches during that period. Second, the very premiss that the data for 2010 and 2011 were biased because they combined regular and irregular catches was itself wrong, since those data had been accepted both by the Commission and by the ICCAT.

- 51 The Council submits that, failing an obligation to take a specific period into account, and since the exclusion of the years 2010-2011 applied to all the Member States concerned, the question of proportionality did not arise for those years. Next, it would be difficult to determine the lawful share and the unlawful share of catches of Mediterranean swordfish during those years. Finally, assuming some stability in the catches, the lawful share of the catches in 2010 and 2011 should not be fundamentally different from the lawful catches in the subsequent years. Given that the subsequent years were taken into account, the result should not be fundamentally different. There was therefore no breach of the principle of proportionality.
- 52 That institution stated in addition that, in the judgment of 29 October 2009, *Commission v Italy* (C-249/08, not published, EU:C:2009:672), the Court held that the Italian Republic had failed to fulfil its obligations under EU law by failing to monitor, inspect and supervise fishing activities, in a satisfactory manner, in particular with regard to compliance with the provisions governing the retention on board and use of driftnets, and by not ensuring in a satisfactory manner that appropriate measures are taken against those responsible for infringements of EU law on the retention on board and use of driftnets. Despite that judgment, there were clear and consistent indications that those infringements persisted during 2010 and 2011.
- 53 The Kingdom of Spain observes that the fact that the ICCAT used the years 2010-2014 as the reference period for the allocation of the EU's share of the TAC for Mediterranean swordfish did not oblige the Council to rely on the same period in order to share the quotas between each of the Member States. In addition, the Italian Republic is silent as to the fact that, during 2010 and 2011, an increase of Mediterranean swordfish caught in its territorial waters was observed, due to the use of illegal equipment, such as driftnets, which was the reason for the commencement by the Commission of an infringement procedure and, later, a letter of formal notice being sent for that reason to that Member State in respect of those years.

Findings of the Court

- 54 By its sixth plea, the Italian Republic criticises the Council for having breached the principle of proportionality and made an incorrect assessment of the facts, in having used, as the basis for its calculation for the allocation between the Member States of the TAC allocated to the European Union for 2017, the historic catches of Mediterranean swordfish during a reference period comprised of the years between 2012 and 2015, excluding the years 2010 and 2011.
- 55 As a preliminary matter, it should be borne in mind that the principle of proportionality, which is one of the general principles of EU law, requires that acts adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where 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 (judgment of 11 January 2017, *Spain v Council*, C-128/15, EU:C:2017:3, paragraph 71 and the case-law cited).
- 56 According to the Court's settled case-law, as regards judicial review of the implementation of that principle, bearing in mind the wide discretion enjoyed by the European Union legislature where the common fisheries policy is concerned, the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue. What must be ascertained is, therefore, not whether the measure adopted by the legislature was the only one or the best one possible but whether it was manifestly inappropriate (judgments of 23 March 2006, *Unifarm and North Sea Fishermen's Organisation*, C-535/03, EU:C:2006:193, paragraphs 57 and 58 and the case-law cited, and of 11 January 2017, *Spain v Council*, C-128/15, EU:C:2017:3, paragraph 72 and the case-law cited).

- 57 Furthermore, the Court has already held that, when the Council is fixing TAC and allocating fishing opportunities among the Member States, it has to evaluate a complex economic situation, for which it has broad discretion. In such circumstances, the Council's discretion is not limited to the nature and scope of the measures to be taken but extends, to some degree, to the finding of the basic facts. In reviewing the exercise of such a power, the Court must confine itself to examining 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 (judgment of 11 January 2017, *Spain v Council*, C-128/15, EU:C:2017:3, paragraph 46 and the case-law cited).
- 58 In the present case, in view of that wide discretion, the fact that ICCAT had used the years 2010-2014 as the reference period for the allocation of the EU's share of the TAC for Mediterranean swordfish did not oblige the Council to rely on the same period in order to allocate the quotas between each of the Member States.
- 59 In addition, it is common ground that the Court had held, in the judgment of 29 October 2009, *Commission v Italy* (C-249/08, not published, EU:C:2009:672), that during a period between 1993 and 2005 the Italian Republic had failed, in essence, to monitor, inspect and supervise, in a satisfactory manner, fishing activities within its territory and within the waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with the provisions governing the retention on board and use of driftnets, and by not ensuring in a satisfactory manner that appropriate measures were taken against those responsible for infringements of the EU law on the retention on board and use of driftnets, in particular by the imposition of dissuasive penalties against those persons. Subsequently, in order to ascertain whether the Italian Republic had complied with that judgment, the catches for 2010 and 2011 were the subject of additional inspections carried out by the Commission. Those inspections showed that the infringements upheld in that judgment persisted in the period after it was pronounced. On the basis of those inspections, in 2011 the Commission initiated a new infringement procedure pursuant to Article 260(2) TFEU which led, inter alia, to a letter of formal notice being sent to the Italian Republic in September 2011. It is also clear from the case-file submitted to the Court that it was in order to verify the assurances given by that Member State, in the context of that procedure, as to the improvements made regarding the supervision and monitoring of compliance with the legislation prohibiting the use and retention on board of driftnets that the Commission carried out new, on-the-spot inspection missions during 2012 and 2013. The latter did not, however, disclose any new case of the infringement of that legislation and the procedure was closed in 2014.
- 60 Therefore, in spite of the fact that the Court did not find, pursuant to Article 260(2) TFEU, that in 2010 and 2011 the Italian Republic had not taken the necessary measures to comply with the judgment of 29 October 2009, *Commission v Italy* (C-249/08, not published, EU:C:2009:672), the context recalled in the preceding paragraph means that the Council was entitled, without exceeding the wide discretion that it has in the matter, to regard the indications of irregularities as vitiating the catch data for those years and therefore decide not to take those data into account for the purpose of allocating, between the Member States, the TAC allocated to the European Union for the year 2017.
- 61 Moreover, the complaints regarding the exclusion of the years 2010 and 2011 cannot in themselves call into question the legality of the choice made by the Council in favour of the period between 2012 and 2015, since the Italian Republic does not rely on any argument that is capable of showing that that period is, in itself, manifestly inappropriate for the purposes of the allocation of quotas between each of the Member States concerned.
- 62 It follows that the reference period chosen by the Council in order to determine the distribution, between the Member States, of the share of the TAC allocated to the European Union for 2017 cannot be regarded as manifestly inappropriate.
- 63 In the light of all of the foregoing, the sixth plea must be rejected as unfounded.

The third and eighth pleas, alleging infringement of Article 17 TEU, of Article 16 of the CFP Regulation and of the principle of good administration

Arguments of the parties

- 64 By those pleas, which it is appropriate to examine together, the Italian Republic takes the view, in the first place, that the contested regulation infringes Article 17 TEU. That regulation failed to comply with the common interest of the European Union since both the Commission and the Council referred to a ‘compromise’ being reached in the ICCAT, but did not clarify what benefit the European Union derived from accepting a drastic reduction in its fishing opportunities as regards Mediterranean swordfish. However, a compromise necessarily presupposes that a benefit on one aspect is renounced in order to obtain a benefit on a different aspect. In the present case, the regulation proceeds not on the basis of a compromise but on the unilateral sacrifice of the European Union’s interests.
- 65 In the second place, the Italian Republic submits that the specific principle of relative stability, referred to in Article 16 of the CFP Regulation and defined in recitals 35 to 37 of that regulation, applies to the facts of this case. It follows from that principle that, when a quota is fixed in order to protect a species of fish and future fishing opportunities, it is necessary to take into account the generally precarious economic state of those communities that are particularly dependent on fishing that species. In order to do so, it is necessary to seek a balance between the need to restrict the fishing of that species in order to promote the recovery of stock, and the socio-economic problems that those restrictions might entail, which, in the present case regarding Mediterranean swordfish, was entirely lacking. Moreover, according to that Member State, since the reduction of the historic share attributed to each Member State was imposed at the same time as the TAC of 10 500 tonnes and a new binding quota was introduced, fishermen were deprived of any opportunity of increasing their production above that overall limit, with the result that it was necessary, at the very least, to maintain the level previously attained for the EU fishing sector.
- 66 In the third place, the principle of good administration was infringed, according to the Italian Republic, because a measure as harmful as the contested regulation should not have been adopted without a rigorous technical assessment showing that only the choice of 2012-2015 for the reference period would enable the distribution of the TAC share allocated to the European Union to be determined on the basis of reliable data and that, therefore, the harm which would follow from it for the Italian Republic was inevitable.
- 67 According to the Council, first of all, while it is correct that it would be in the EU’s interest for the figures for catches made during the reference period, irrespective of the legality of those catches or other relevant factors, only to be taken into consideration, the ICCAT working group also took into account other elements. In that regard, the recovery plan adopted by the ICCAT contained an explicit reference to the socio-economic consequences. It is also necessary to take into account the fact that the recovery of Mediterranean swordfish stock would be the best means of ensuring a sustainable and profitable fishery for the future.
- 68 Next, as regards the principle of relative stability, that institution, in common with the Kingdom of Spain and the Commission, considers that the two sentences in Article 16(1) of the CFP Regulation cover two different situations. The first sentence enshrines the principle of relative stability for existing fishing opportunities. By contrast, the second sentence concerns the allocation of new fishing opportunities. When new opportunities are ascertained, it is necessary to fix again, for the first time, an allocation formula, taking the interests of each Member State into account. Furthermore, that principle concerns the allocation of fishing opportunities between the Member States and not the allocation of such opportunities between the European Union and other parties. Therefore, that principle does not apply in the present case.

- 69 Finally, since the Council enjoys a wide discretion as to the choice of reference period, it cannot be required to show that the period chosen was the only one that enabled the allocation between the various Member States of the share of the TAC allocated to the European Union to be determined on the basis of reliable data but, at most, that the choice of that period enabled that objective to be achieved.
- 70 The Kingdom of Spain is of the view that the reasons for selecting 2012-2015 as the reference period and the corresponding exclusion of 2010 and 2011 have already been sufficiently explained and that the Italian Republic has not shown that the Council exceeded the limits of the discretion it had in those matters, or that it had committed an abuse of power.
- 71 The Commission considers that the interests of the European Union were in no way unilaterally abandoned in that negotiation and that the proposed regulation could not be regarded as harmful to the interests of the European Union. On the contrary, it considers that it correctly promoted the general interest of the European Union by conducting the negotiation in the ICCAT in a manner that complied with the mandate conferred and taking into account the higher interests of the European Union, such as the recovery of Mediterranean swordfish stock as rapidly as possible, in accordance with the obligation laid down in Article 17 TEU.
- 72 In its reply, the Italian Republic emphasises the fact that Article 16 of the CFP Regulation must be read as a whole and that, while the principle of relative stability determines exclusively existing fishing opportunities, by contrast it combines with the other interests in order to determine new fishing opportunities.
- 73 In its rejoinder, the Council clarifies that it is at the moment when a TAC is introduced that it is necessary to fix, for the first time, an allocation formula taking into account the interests of each Member State. The introduction of a TAC therefore involves, without the slightest doubt, the allocation of 'new fishing opportunities' within the meaning of Article 16 of the CFP Regulation. That institution adds in addition that, since the allocation of fishing opportunities between the European Union and third countries depends on an agreement with those countries, it is impossible to impose the application of the principle of relative stability, which is internal to the European Union, in its external relations. The Council considers that that principle does not apply either to the allocation of fishing opportunities between the European Union and the other CPC within the ICCAT or to their allocation between the Member States within the European Union upon the introduction of a new TAC.

Findings of the Court

- 74 First of all, as regards the breach of Article 17 TEU, it should be recalled that the first paragraph of that provision states that the Commission is to promote the general interest of the European Union and take appropriate initiatives to that end, and is to exercise coordinating, executive and management functions as laid down in the Treaties.
- 75 In accordance with Article 2 of the CFP Regulation, in the fisheries sector the European Union interest is, inter alia, to ensure exploitation and management that is sustainable in the long term and the conservation of living marine biological resources and the marine environment in order progressively to restore and maintain populations of harvested species above biomass levels capable of producing the maximum sustainable yield. Those objectives are pursued by the European Union, inter alia, by the adoption by the Council, on a proposal from the Commission, of measures on the fixing and allocation of fishing opportunities, such as those adopted by Regulation 2017/127 and the contested regulation.

- 76 The pursuit of those objectives must also be taken into consideration in the context of the European Union's external relations regarding fisheries, that is to say in the context of the negotiations conducted within regional organisations. That is the case when the European Union is called upon to express a position in the context of a negotiation within the ICCAT, an organisation entrusted with adopting measures to ensure the long-term conservation and sustainable exploitation of fishing resources in the zone placed under its responsibility.
- 77 In the present case, it should be observed, first, as the Commission explains, that the European Union's position within the ICCAT consists in supporting the adoption of measures for the conservation and management of harvested species in the zone of the ICCAT Convention, including the TAC, based on the best available scientific advice in order to achieve the objective set out in Article 2(2) of the CFP Regulation, namely to restore and maintain the population of harvested species above levels capable of producing maximum sustainable yield. Within the ICCAT, the necessity of addressing the situation of excessive fishing of the fish stock was recognised by the adoption of Recommendation 16-05, which provided for the application, with effect from 2017, of a fifteen-year recovery plan and the introduction for that same year of a TAC of 10 500 tonnes, the principle and value of which were then transcribed into Regulation 2017/127. That recommendation, to which recitals 9 to 11 of the contested regulation refer, provided also that the determination of the allocation formula for that TAC between the CPCs must be made on the basis of transparent and objective criteria, including those of an environmental and socio-economic nature, and the criteria laid down by the ICCAT resolution 15-13 on the allocation of fishing possibilities.
- 78 Second, the mandate conferred on the Commission with a view to conducting the negotiations on behalf of the European Union within the ICCAT granted it some flexibility for that purpose. However, the Commission's objective was to obtain, for the European Union for 2017, at least 70% of the TAC for Mediterranean swordfish. Pursuant to the compromise reached by the CPC, the European Union was allocated a quota of 70.756% of the TAC of 10 500 tonnes.
- 79 Thus, the result of the negotiations conducted by the Commission shows not only that it did not exceed the limits of its mandate but also that it used the flexibility available to it in order to promote the need to manage stocks of Mediterranean swordfish in a sustainable way, for the benefit of all the interested parties, such that that institution did not fail to comply with Article 17 TEU during those negotiations.
- 80 In the second place, as regards the Italian Republic's complaints relating to the principle of relative stability, it must be recalled that that principle reflects a criterion for the allocation between Member States of fishing opportunities in the form of quotas allocated to those States. Thus, that principle does not confer on fishermen any guarantee of a fixed quantity of catches of fish, since the requirement of relative stability must be understood as meaning only that each Member State retains the right to a fixed percentage of that allocation (judgment of 22 November 2007, *Cofradía de pescadores 'San Pedro' de Bermeo and Others v Council*, C-6/06 P, not published, EU:C:2007:702, paragraph 53).
- 81 In the present case, the Italian Republic considers that the principle of relative stability applies, on the one hand, within the European Union and in the relations that it maintains with third countries and, on the other hand, both for the allocation of existing fishing opportunities and also for 'new fishing opportunities'. By contrast, the Council, supported on this point by the Commission and the Kingdom of Spain, is of the view that that principle applies only internally within the European Union and for existing fishing opportunities.
- 82 As regards the question whether the principle of relative stability applies to the share of the TAC allocated overall by the ICCAT to the European Union, it must be recalled that the first sentence of Article 16(1) of the CFP Regulation states that the fishing opportunities are to be allocated 'to Member States' so as to ensure the relative stability of fishing activities 'of each Member State' for each fish

stock or fishery. Furthermore, it is clear from recital 35 of that regulation that, in view inter alia of the dependence of certain coastal communities on fishing, it is necessary to ensure the relative stability of fishing activities by allocating fishing opportunities ‘among Member States’, in order to allocate a predictable share of the stocks ‘for each Member State’.

83 It follows from the foregoing that the principle of relative stability applies only in relation to the allocation of fishing opportunities within the European Union and not in the context of its external relations.

84 As regards whether that principle applies to ‘new fishing opportunities’, it should first of all be noted that the second sentence of Article 16(1) of the CFP Regulation provides that the interests of each Member State are to be taken into account ‘when new fishing opportunities are allocated’.

85 Next, it must be recalled that, as regards Regulation No 2371/2002, which preceded the CFP Regulation, and more specifically Article 20 of Regulation No 2371/2002, as regards, in the same way as Article 16 of the CFP Regulation, the allocation of fishing opportunities, the Court held that it was necessary to distinguish between ‘existing fishing opportunities’ and ‘new fishing opportunities’, which were covered by paragraphs 1 and 2 of that article respectively (see, to that effect, the judgment of 8 November 2007, *Spain v Council*, C-141/05, EU:C:2007:653, paragraph 85).

86 Whereas ‘existing fishing opportunities’ correspond to fishing opportunities that have already been allocated to Member States, ‘new fishing opportunities’ are those which are allocated to those States for the first time.

87 In that regard, the Court has already held that the requirement of relative stability must be understood as meaning that each Member State is to retain a fixed percentage and that the allocation formula originally laid down will continue to apply as long as an amending regulation has not been adopted (judgment of 8 November 2007, *Spain v Council*, C-141/05, EU:C:2007:653, paragraph 86 and the case-law cited). That requirement therefore applies only where there is a pre-existing allocation of fishing opportunities, namely in relation to ‘existing fishing opportunities’.

88 By contrast, it cannot apply where an allocation formula has not yet been laid down among the Member States. In that case, namely when ‘new fishing opportunities’ are allocated, Article 16(1), second sentence, of the CFP Regulation provides only that ‘the interests of each Member State’ are to be taken into account, the concept of ‘interests’ may encompass the need to safeguard the relative stability of fishing activities, but is not limited to that need, however, (judgment of 8 November 2007, *Spain v Council*, C-141/05, EU:C:2007:653, paragraph 87).

89 In the present case, in the absence of legislation restricting fishing opportunities for Mediterranean swordfish prior to the adoption of the contested regulation, it must be held that the latter determined ‘new fishing opportunities’ within the meaning of Article 16(1) of the CFP Regulation.

90 It follows that the principle of relative stability, as expressed in Article 16(1) of the CFP Regulation, applies only to existing fishing opportunities within the European Union and, consequently, does not apply either to the allocation of fishing opportunities between the European Union and the CPC within the ICCAT, or to the allocation of new fishing opportunities among Member States within the European Union when, as on the facts of the present case, a new TAC is introduced.

91 Therefore, in adopting the contested regulation, the Council could not infringe that principle.

92 In the third place, as regards the principle of good administration, as expressed in Article 41 of the Charter of Fundamental Rights of the European Union, the reasons for the EU legislature choosing 2012-2015 as the reference period, to the exclusion of 2010 and 2011, have already been recalled in paragraphs 45, 46 and 60 of this judgment.

- 93 In any event, in accordance with well-established case-law, and as is clear from paragraph 57 of this judgment, such a choice fell within the Council's discretion, whether as regards the determination of the nature and scope of the provisions to be taken, but also, to a certain extent, as to the basic facts. In that context, judicial review must be limited to examining whether the contested act is vitiated by a manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion.
- 94 In that regard, as stated in paragraphs 58 to 62 of this judgment, it cannot successfully be claimed that the Council committed a manifest error of assessment in deciding to allocate, among the Member States, the share of the TAC allocated to the European Union for 2017 on the basis of the historic catches of Mediterranean swordfish in the reference period from 2012 to 2015.
- 95 In that context, the Council cannot be reproached for having failed to comply with the principle of good administration for failing to justify the choice of such a reference period on the basis of a 'rigorous technical study' since it is clearly apparent from the technical data provided by the Commission that the tonnage of catches in 2010 and 2011 could not be taken into account.
- 96 In the light of all of the foregoing, the third and eighth pleas must be rejected as unfounded.

On the fourth and tenth pleas, alleging infringement of the principles of non-retroactivity, legal certainty and legitimate expectations

Arguments of the parties

- 97 By those pleas, which it is appropriate to examine together, the Italian Republic submits that the contested regulation infringes the principles of non-retroactivity, legal certainty and legitimate expectations, in that it was adopted at the end of July 2017 and had effect from 1 January 2017, even though half of the fishing season for Mediterranean swordfish, which runs from 1 April to 31 December, had already elapsed. Contrary to what recital 12 of the contested regulation states, the latter would, for the first time compared with the practice of the preceding decades, simultaneously introduce a binding TAC, a drastic reduction in the percentage of the TAC for the European Union compared with the level achieved in the preceding years and an allocation of the European Union's share between the Member States. Such a 'revolution' in the conditions of production in the European Union fisheries sector should have been suitably prepared and presented sufficiently in advance in order to enable the parties concerned to adapt to it.
- 98 The EU legislature also infringed the principles of legal certainty and legitimate expectations, since it was crucial for every economic operator in the sector concerned to be able to rely on a stable regulatory framework, any amendments to which would be, at the very least, foreseeable.
- 99 The Council states, first, that a TAC was already fixed for Mediterranean swordfish, in this case in Regulation 2017/127 adopted in January 2017, even though an agreement on the allocation of that TAC within the ICCAT had not yet been reached at that time and, secondly, that the fishing season for Mediterranean swordfish runs from 1 April to 31 December.
- 100 According to that institution, it was obvious that the TAC had to be amended later in order to be reduced to the share of the TAC granted to the European Union, once it had been fixed by the ICCAT. In those circumstances, there could be no legitimate expectation that a specific quota would be allocated to the Italian Republic. Similarly, the principle of legal certainty could not successfully be invoked until the TAC and the European Union's share had been fixed and the allocation among Member States had been made. In the meantime, for all fishing activity carried out before the

determination of those quotas, it was necessary to take into account a certain degree of uncertainty and prudence, such that the necessary conditions for the application of the principle of legitimate expectation were not fulfilled.

- 101 Furthermore, if the Council had waited for the final decision of the ICCAT, it would not have been until October 2017 that it could have fixed the quotas allocated to Member States for 2017. However, a decision adopted at the end of that year, but which took effect from 1 January thereof, and pursuant to which it was necessary to reduce the catches of Mediterranean swordfish, would certainly have been more prejudicial from the perspective of legal certainty.
- 102 The Kingdom of Spain submits that the retroactive application of EU law acts in fisheries is entirely usual.
- 103 The Commission estimates that the data of catches at EU level as regards Mediterranean swordfish show a total of 5 125 tonnes for 2016 compared with 4 793.4 tonnes for 2017, the year in which the quota allocated to the European Union was 7 410 tonnes. That reduction in catches registered in 2017 would in part be due to the imposition of the closure period during the first three months of that year and in part to a reduction in catches compared with 2016, observed with effect from April 2017, which is the month that the fishing season for Mediterranean swordfish opens.
- 104 However, according to the Commission, the latter reduction could not in any way be directly linked to the reduction, of at least 600 tonnes, imposed as a result of the decision of the ICCAT to fix the European Union's share of the TAC at 70.756%. The catches of Mediterranean swordfish made in 2017 remained well below those authorised by the contested regulation.
- 105 Moreover, according to that institution, from the beginning of the 2017 season, the catches were reduced compared with those of the preceding year. That trend continued throughout the 2017 fishing season, even after the contested regulation entered into force at the end of July 2017. In those circumstances, it cannot validly be argued that the entry into force of the provisions of the contested regulation infringed the principles of legitimate expectations or legal certainty.

Findings of the Court

- 106 As regards, first of all, the retroactive effect of the contested regulation, it must be recalled that although, in general, the principle of legal certainty precludes a European Union measure from taking effect from a point in time before that measure was published, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected and, in so far as it follows clearly from the terms, objectives or general scheme of the rules of the law concerned, that such effect must be given to them (judgment of 19 March 2009, *Mitsui & Co. Deutschland*, C-256/07, EU:C:2009:167, paragraph 32 and case-law cited).
- 107 It is common ground that the introduction of a TAC for Mediterranean swordfish was already provided for by Regulation 2017/127, with effect from 1 January 2017, at a level of 10 500 tonnes. Thus, even if the allocation among the Member States of the share of that TAC allocated to the European Union was yet to be determined, the principle of introducing new fishing opportunities was established as of January 2017, which was before the start of the fishing season for Mediterranean swordfish on 1 April 2017. It follows that, as the Italian Republic acknowledges, the reduction of the historic share was decided as a corollary to the introduction of a TAC.

- 108 Furthermore, as stated in recitals 9 to 11 of the contested regulation, the Council, by that regulation, sought inter alia to comply with the share of the TAC for Mediterranean swordfish fixed within the ICCAT for 2017. However, since the formal approval of the distribution of the TAC for that species was not given until the 18 April 2017, that objective could only be achieved by providing that the contested regulation would apply with retroactive effect from 1 January of that same year.
- 109 Furthermore, as the Commission submits, it must be observed that at the time when the contested regulation entered into force, on 30 July 2017, the fishing opportunities for Mediterranean swordfish were far from being exhausted. During the period between 1 April 2017, the date on which the fishing season for that species began, and the end of July 2017, just over 2 298.3 tonnes of Mediterranean swordfish had been caught in the European Union out of 7 410 tonnes of the share of TAC allocated to the latter for 2017. During the same period, it is clear from the case file submitted to the Court that Italian fishermen caught about 1 271.3 tonnes of Mediterranean swordfish out of a quota of 3 736 tonnes allocated to the Italian Republic by the contested regulation.
- 110 It should be noted, in any event, that the latter quota was moreover not exhausted by 31 December 2017, as Italian fishermen had caught only 2 285.3 tonnes of Mediterranean swordfish, namely 61.16% of that quota.
- 111 As regards, in the second place, the principles of legal certainty and legitimate expectations, it should be observed that the first of those requires, inter alia, that rules of law be clear, precise and predictable in their effect, especially where they may have negative consequences for individuals and undertakings (see, to that effect, the judgment of 17 October 2018, *Klohn*, C-167/17, EU:C:2018:833, paragraph 50 and the case-law cited).
- 112 The right to rely on the principle of the protection of legitimate expectations, which is the corollary of the principle of legal certainty, extends to any individual in a situation where European Union authorities have caused him to entertain legitimate expectations. In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources constitutes assurances capable of giving rise to such expectations. However, a person may not plead infringement of the principle unless he or she has been given precise assurances by the administration. Similarly, if a prudent and alert economic operator can foresee that the adoption of an EU measure is likely to affect his or her interests, he or she cannot plead that principle if the measure is adopted (see, to that effect, the judgment of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraphs 71 to 73 and the case-law cited).
- 113 In the present case, the economic operators in the Italian fisheries sector were not entitled to rely on an infringement of the protection of the principle of legitimate expectations because they were able, owing to the determination of a TAC for Mediterranean swordfish with effect from the publication of Regulation 2017/127, to predict that the new fishing opportunities would be fixed with a view to the allocation, among Member States, of the share of that TAC that was allocated to the European Union. As recalled in paragraph 107 above, the principle of an allocation of new fishing opportunities, even though their exact level was yet to be determined, was known at the date when the fishing season for Mediterranean swordfish began.
- 114 It also cannot be claimed that the Council provided economic operators in the Italian fisheries sector with any assurance concerning the precise figure of the fishing quota that would be allocated to them in the contested regulation.
- 115 Finally, as the Council correctly submits, the principle of legal certainty cannot effectively be relied on until the TAC is allocated among Member States, which was not the case before the entry into force of the contested regulation.
- 116 It follows from the foregoing that the fourth and tenth pleas must be rejected as unfounded.

The seventh plea, alleging infringement of Articles 258 TFEU and 260 TFEU

Arguments of the parties

- 117 The Italian Republic observes that the infringement proceedings initiated by the Commission in 2011 pursuant to Article 260(2) TFEU, on the grounds of the suspected use of driftnets by Italian fishermen, were closed by that institution in 2014. Consequently, the decision to exclude the years 2010 and 2011 from the reference period to be used for the purpose of determining the quotas allocated to the Member States meant that the Council had, in practice, the intention of imposing a penalty on the Italian Republic for having failed to fulfil its obligation of monitoring the prohibition of using such equipment. However, Articles 258 and 260 TFEU reserve to the Commission the competence of bringing actions in respect of infringements by Member States, whereas the Council is entirely without competence to adopt, even in the form of a regulation, measures imposing penalties on Member States for failing to fulfil their obligations under EU law. The contested regulation was therefore vitiated by an infringement of Articles 258 and 260 TFEU.
- 118 The Council considers that that argument misconstrues the nature and purpose of the contested regulation. It is necessary to reach an agreement with the other CPC as to the TAC and the share thereof to be allocated to the European Union and to fix a reference period to enable the allocation of that share among the Member States to be determined on the basis of reliable data. As regards the determination of the EU's share of the TAC for Mediterranean swordfish, the ICCAT relied not only on the figures of catches alone, but also on other criteria. In the end, that share was very close to those figures (about 70% of TAC, instead of 75%). That share was not in any way a penalty imposed on the Italian Republic, since the result of the negotiation within the ICCAT also had an impact on the other Member States concerned.
- 119 As regards the allocation among the Member States of the share of the TAC allocated to the European Union, the choice of a recent period of four years, namely 2012 to 2015, was a priori a perfectly reasonable decision, in the absence of a rule imposing a specific period.

Findings of the Court

- 120 As recalled in paragraphs 56, 69 and 93 of this judgment, in the field of fisheries the EU legislature enjoys a wide discretionary power, corresponding to the political responsibilities conferred on it by Articles 40 to 43 TFEU, and that judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion.
- 121 As regards, first of all, the decision to take 2012-2015 as the reference period, it should be recalled that, as has been held in paragraphs 58 to 62 above, the Council cannot be found to have committed a manifest error of assessment in making that decision.
- 122 Next, as the Court has already had occasion to hold, a reduction in fishing opportunities cannot be treated as any kind of penalty (see, by analogy, the judgment of 25 October 2001, *Italy v Council*, C-120/99, EU:C:2001:567, paragraph 75).
- 123 Finally, and in any event, the determination by the Council of the allocation formula for new fishing opportunities cannot be treated as being the same as the powers conferred upon the Commission by Articles 258 and 260 TFEU.
- 124 The seventh plea in law must therefore be rejected as being unfounded.

The ninth plea, alleging infringement of Article 18 TFEU

Arguments of the parties

- 125 The Italian Republic submits that the contested regulation, which it claims penalises Italian fishermen by reducing, by many hundreds of tonnes, their fishing opportunities for Mediterranean swordfish for 2017, results in discrimination based on nationality. According to that Member State, only Italian fishermen were subject to that level of reduction, whereas the adoption of the reference period of 2012-2015 did not penalise the fishermen of other Member States.
- 126 The Council states that the introduction of the TAC for that species, of the share allocated to the European Union and, consequently, the quotas allocated to Member States, necessarily impose a restriction on fishing opportunities, but that that restriction applies to all Member States concerned. Accordingly, there has been no infringement of the principle of non-discrimination.
- 127 The Commission submits that, in addition to the fact that the level of exhaustion of the quota assigned did not exceed 61.16% of that quota for 2017 and the impact of the reduction measure concerned was therefore relative, the Court, in its judgment of 16 June 1987, *Romkes* (46/86, EU:C:1987:287), has already held that recourse to a method such as that used to determine the quotas at issue in this case is not incompatible with the principle of non-discrimination.
- 128 The Kingdom of Spain observes that neither the procedure for the allocation of that share of the TAC within the ICCAT, nor its subsequent allocation to the various Member States concerned, which the contested regulation effected and which is uniformly applicable within the European Union, is the cause of any difference of treatment in favour of, or to the detriment to, one or other of those Member States.

Findings of the Court

- 129 According to the Court's settled case-law, the second subparagraph of Article 40(2) TFEU, read in conjunction with the second subparagraph of Article 38(1) TFEU, which prohibit all discrimination in the context of the common agricultural and fisheries policy, is merely a specific expression of the general principle of equal treatment, which requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified (judgments of 8 November 2007, *Spain v Council*, C-141/05, EU:C:2007:653, paragraph 40 and the case-law cited, and of 11 January 2017, *Spain v Council*, C-128/15, EU:C:2017:3, paragraph 80 and the case-law cited).
- 130 It is also important to observe that the method used for fixing the percentages allocated to the Member States according to the quantities of fish caught during a reference period by their respective fleets is not incompatible with the principle of non-discrimination, since that method requires the fishermen of every Member State to make an effort to restrict their catches in proportion to the quantities of fish caught before the entry into force of the EU law restricting those fishing opportunities (see, to that effect, the judgment of 16 June 1987, *Romkes*, 46/86, EU:C:1987:287, paragraph 23).
- 131 It follows that, even though, in decisions on cases analogous to the case in this action, in particular in paragraph 113 of the judgment of 17 March 2011, *AJD Tuna* (C-221/09, EU:C:2011:153), the Court has held a difference of treatment between Member States to be unlawful, namely in the case giving rise to that latter judgment, depending on the flag flown by the operators or the State in which they are registered, the Italian Republic has not provided, in this action, any evidence that demonstrates that Italian fishermen were treated less favourably than fishermen from other Member States in a comparable situation.

132 The ninth plea must therefore be rejected as being unfounded.

133 Since none of the pleas relied on by the Italian Republic in support of the present action have been upheld, the action must be dismissed in its entirety.

Costs

134 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Italian Republic has been unsuccessful and the Council has applied for costs, the former must be ordered to pay the costs.

135 Pursuant to Article 140(1) of those rules, the Kingdom of Spain and the Commission, as interveners, must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Dismisses the action.**
- 2. Orders the Italian Republic to pay, in addition to its own costs, the costs incurred by the Council of the European Union.**
- 3. Orders the Kingdom of Spain and the Commission to bear their own costs.**

[Signatures]