Judgment of the Court of Justice, Commission v Jégo-Quéré, Case C-263/02 P (1 April 2004)

Caption: In its judgment of 1 April 2004, in Case C-263/02 P, Commission v Jégo-Quéré, the Court of Justice points out that it is not appropriate for an action for annulment before the Community Court to be available to an individual who contests the validity of a measure of general application, such as a regulation, which does not distinguish him individually in the same way as an addressee, even if it could be shown, following an examination by that Court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings to contest the validity of the Community measure at issue.

Source: CVRIA. Case-law: Numerical access to the case-law. [ON-LINE]. [Luxembourg]: Court of justice of the European Communities, [12.05.2006]. C-263/02 P. Available on http://curia.eu.int/en/content/juris/index.htm.

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Judgment of the Court (Sixth Chamber) of 1 April 2004 (1)
Commission of the European Communities v Jégo-Quéré & Cie SA

Case C-263/02 P

(Appeal – Admissibility of an action for annulment of a regulation brought by a legal person)

In Case C-263/02 P,

Commission of the European Communities, represented by T. van Rijn and A. Bordes, acting as Agents, with an address for service in Luxembourg,

applicant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) of 3 May 2002 in Case T-177/01 Jégo-Quéré v Commission [2002] ECR II-2365, seeking to have that judgment set aside,

the other party to the proceedings being:

Jégo-Quéré & Cie SA, represented by A. Creus Carreras and B. Uriarte Valiente, abogados,

THE COURT (Sixth Chamber),

composed of C. Gulmann (Rapporteur), acting for the President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken, Judges,

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 22 May 2003,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2003,

gives the following

Judgment

1. By application lodged at the Court Registry on 17 July 2002, the Commission of the European Communities brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 3 May 2002 in Case T-177/01 Jégo-Quéré v Commission [2002] ECR II-2365 (hereinafter ‘the contested judgment’), in which the Court of First Instance held that the action brought by the company Jégo-Quéré & Cie S.A. (hereinafter ‘Jégo-Quéré’) for annulment of Articles 3(d) and 5 of Commission Regulation (EC) No 1162/2001 of 14 June 2001 establishing measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e and associated conditions for the control of activities of fishing vessels (OJ 2001 L 159, p. 4) was admissible.

Legal framework

2. Article 15 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) empowers the Commission to take emergency

measures when the conservation of fish stocks is threatened by serious and unexpected upheaval.

3. In December 2000, the Commission and the Council, having been alerted by the International Council for the Exploration of the Sea (ICES), noted the urgent need to establish a plan for the recovery of the stock of hake.

4. The principal aim of Regulation No 1162/2001, which was adopted in consequence, is to reduce catches of juvenile hake immediately. This regulation applies to fishing vessels operating in the areas defined by it. It imposes minimum mesh sizes for those vessels, varying according to the areas concerned, for the different net fishing techniques employed, irrespective of the type of fish which the vessel is seeking to catch. The provision does not apply to vessels of less than 12 metres in length which leave port for not more than 24 hours.

5. Article 3(d) of Regulation No 1162/2001 prohibits the use of 'any demersal towed net to which a cod-end of mesh size less than 100 mm is attached by any means other than being sewn into that part of the net anterior to the cod-end'. Article 5(1) of the regulation defines the geographical areas in which the regulation is applicable and Article 5(2) specifies, in respect of all of those areas, the prohibitions concerning the use, immersion and deployment of towed nets of a specified mesh size, and the obligations regarding the lashing and stowing of such nets. It also sets out the prohibitions applicable in each of those areas concerning the use, immersion and deployment of fixed gear of a specified mesh size and the obligations regarding the lashing and stowing of such gear. As regards towed nets, the prohibitions apply to mesh sizes of between 55 and 99 mm; as regards fixed gear, they apply, depending on the zone concerned, to mesh sizes of less than 100 or 120 mm.

The facts and the contested judgment

6. Jégo-Quéré is a fishing company established in France which operates on a regular basis in the waters south of Ireland, in ICES sub-area VII as referred to in Article 5(1)(a) of Regulation No 1162/2001. It fishes mainly for whiting, which represents, on average, 67.3% of its catches. It owns four vessels over 30 metres in length and uses nets having a mesh size of 80 mm.

7. By application lodged at the Court Registry on 2 August 2001, Jégo-Quéré brought an action under the fourth paragraph of Article 230 EC for annulment of Articles 3(d) and 5 of Regulation No 1162/2001.

8. By separate document lodged at the Court Registry on 30 October 2001, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

9. By the contested judgment, the Court of First Instance dismissed the objection of inadmissibility and ordered that the action should proceed on the substance.

10. Having held at paragraph 24 of its judgment that the contested provisions are, by their nature, of general application, the Court of First Instance pointed out at paragraph 25 of the judgment that the fact that a provision is of general application does not prevent it from being of direct and individual concern to some of the economic operators whom it affects.

11. At paragraph 38 of the contested judgment, the Court of First Instance held that Jégo-Quéré 'cannot be regarded as individually concerned within the meaning of the fourth paragraph of Article 230 EC, on the basis of the criteria hitherto established by Community case-law'.

12. Jégo-Quéré had claimed that, in the circumstances, it had no right of action before the national courts, as Regulation No 1162/2001 does not provide for the adoption of any implementing measures by the Member States, and accordingly that, were its action before the Court of First Instance to be dismissed as inadmissible, it would be denied any legal remedy enabling it to challenge the legality of the contested provisions. The Court of First Instance held that it was therefore necessary to consider whether, in proceedings such as the case before it, where an individual applicant is contesting the lawfulness of

provisions of general application directly affecting its legal situation, the inadmissibility of the action for annulment would deprive the applicant of the right to an effective remedy, of the kind guaranteed by the legal order based on the EC Treaty, and in particular under Articles 6 and 13 of the European Convention for the Protection of Fundamental Human Rights and Freedoms (hereinafter the 'ECHR').

13 In that regard, the Court of First Instance held as follows:

'44 … it should be recalled that, apart from an action for annulment, there exist two other procedural routes by which an individual may be able to bring a case before the Community judicature - which alone has jurisdiction for this purpose - in order to obtain a ruling that a Community measure is unlawful, namely proceedings before a national court giving rise to a reference to the Court of Justice for a preliminary ruling under Article 234 EC and an action based on the non-contractual liability of the Community, as provided for in Article 235 EC and the second paragraph of Article 288 EC.

45 However, as regards proceedings before a national court giving rise to a reference to the Court of Justice for a preliminary ruling under Article 234 EC, it should be noted that, in a case such as the present, there are no acts of implementation capable of forming the basis of an action before national courts. The fact that an individual affected by a Community measure may be able to bring its validity before the national courts by violating the rules it lays down and then asserting their illegality in subsequent judicial proceedings brought against him does not constitute an adequate means of judicial protection. Individuals cannot be required to breach the law in order to gain access to justice (see [paragraph] 43 of the Opinion of Advocate General Jacobs in Case C-50/00 P Unión de Pequeños Agricultores v Council [2002] ECR I-6677).

46 The procedural route of an action for damages based on the non-contractual liability of the Community does not, in a case such as the present, provide a solution that satisfactorily protects the interests of the individual affected. Such an action cannot result in the removal from the Community legal order of a measure which is nevertheless necessarily held to be illegal. Given that it presupposes that damage has been directly occasioned by the application of the measure in issue, such an action is subject to criteria of admissibility and substance which are different from those governing actions for annulment, and does not therefore place the Community judicature in a position whereby it can carry out the comprehensive judicial review which it is its task to perform. In particular, where a measure of general application, such as the provisions contested in the present case, is challenged in the context of such an action, the review carried out by the Community judicature does not cover all the factors which may affect the legality of that measure, being limited instead to the censuring of sufficiently serious infringements of rules of law intended to confer rights on individuals (see Case C-352/98 P Bergaderm and Goupil v Commission [2000] ECR I-5291, paragraphs 41 to 43; Case T-155/99 Dieckmann & Hansen v Commission [2001] ECR II-3143, paragraphs 42 and 43; see also, as regards an insufficiently serious infringement, Joined Cases C-104/89 and C-37/90 Mulder and Others v Council and Commission [1992] ECR I-3061, paragraphs 18 and 19, and, for a case in which the rule invoked was not intended to confer rights on individuals, paragraph 43 of the judgment in Case T-196/99 Area Cova and Others v Council and Commission [2001] ECR II-3597).

47 On the basis of the foregoing, the inevitable conclusion must be that the procedures provided for in, on the one hand, Article 234 EC and, on the other hand, Article 235 EC and the second paragraph of Article 288 EC can no longer be regarded, in the light of Articles 6 and 13 of the ECHR and of Article 47 of the Charter of Fundamental Rights, as guaranteeing persons the right to an effective remedy enabling them to contest the legality of Community measures of general application which directly affect their legal situation.

48 It is true that such a circumstance cannot constitute authority for changing the system of remedies and procedures established by the Treaty, which is designed to give the Community judicature the power to

review the legality of acts of the institutions. In no case can such a circumstance allow an action for annulment brought by a natural or legal person which does not satisfy the conditions laid down by the fourth paragraph of Article 230 EC to be declared admissible (see the order of the President of the Court of Justice of 12 October 2000 in Case C-300/00 P(R) Federación de Cofradías de Pescadores and Others v Council [2000] ECR I-8797, paragraph 37).

49 However, as Advocate General Jacobs stated in [paragraph] 59 of his Opinion in Unión de Pequeños Agricultores v Council (cited in paragraph 45 above), there is no compelling reason to read into the notion of individual concern, within the meaning of the fourth paragraph of Article 230 EC, a requirement that an individual applicant seeking to challenge a general measure must be differentiated from all others affected by it in the same way as an addressee.

50 In those circumstances, and having regard to the fact that the EC Treaty established a complete system of legal remedies and procedures designed to permit the Community judicature to review the legality of measures adopted by the institutions (paragraph 23 of the judgment in Les Verts v Parliament, cited in paragraph 41 above), the strict interpretation, applied until now, of the notion of a person individually concerned according to the fourth paragraph of Article 230 EC, must be reconsidered.

51 In the light of the foregoing, and in order to ensure effective judicial protection for individuals, a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him. The number and position of other persons who are likewise affected by the measure, or who may be so, are of no relevance in that regard.

52 In the present case, obligations are indeed imposed on Jégo-Quéré by the contested provisions. The applicant, whose vessels are covered by the scope of the regulation, carries on fishing operations in one of the areas in which, by virtue of the contested provisions, such operations are subjected to detailed obligations governing the mesh size of the nets to be used.

53 It follows that the contested provisions are of individual concern to the applicant.

54 Since those provisions are also of direct concern to the applicant (see paragraph 26 above), the objection of inadmissibility raised by the Commission must be dismissed and an order made for the action to proceed.’

The appeal

14. By its appeal, the Commission claims that the Court should:

– set aside the contested judgment;

– declare the action for annulment of Regulation No 1162/2001 to be inadmissible or, alternatively, refer the case back to the Court of First Instance;

– order Jégo-Quéré to pay the costs, including those incurred in the Court of First Instance.

15. Jégo-Quéré claims that the Court should:

– declare the appeal to be inadmissible as it was brought out of time;

– declare the appeal to be unfounded and uphold the contested judgment;

– set aside the contested judgment in so far as it holds that Jégo-Quéré was not individually concerned for the purpose of the fourth paragraph of Article 230 EC;

– adjudicate on the case itself in accordance with Jégo-Quéré's observations submitted to the Court of First Instance, and, in particular,

– declare the action brought before the Court of First Instance to be admissible;

– annul Articles 3(d) and 5 of Regluation No 1162/2001;

– examine the following witnesses:

– Mr John Farnell, Director 'Conservation Policy' of the Commission's Fisheries Directorate-General;

– Mr Victor Badiola, manager of the Organisation of Fish Producers of Ondárroa;

– order the Commission to pay the costs of these proceedings and those incurred before the Court of First Instance.

16. The Commission advances two pleas in law in support of its appeal.

17. First, it claims that the Court of First Instance infringed its own Rules of Procedure, on the ground that the case should have been referred to the Court of First Instance sitting in plenary session. Secondly, it claims that the Court of First Instance infringed the fourth paragraph of Article 230 EC, by interpreting the requirement that the applicant be individually concerned in a manner contrary to the judicial system established by the EC Treaty.

The admissibility of the appeal

18. Jégo-Quéré submits that the appeal is inadmissible. It claims that the Commission gave no indication of the date on which the judgment was notified to it. In the absence of evidence to the contrary, Jégo-Quéré does not accept that the appeal was lodged within the time-limit.

19. It should be noted in that regard that under Article 49 of the EC Statute on the Court of Justice, read in conjunction with Article 81(2) of the Rules of Procedure, an appeal may be brought before the Court within two months of the notification of the decision appealed against, with an extension on account of distance of a single period of 10 days. Under Article 112(2) of the Rules of Procedure, the decision of the Court of First Instance appealed against is to be attached to the appeal and the date on which the decision appealed against was notified to the appellant is to be stated.

20. The Commission appended to its appeal the judgment appealed against, together with the letter which accompanied it from the Registrar of the Court of First Instance, which bears a stamp indicating that the letter was received on 8 May 2002. That date, moreover, is confirmed by the certificate of receipt of the letter. As mentioned at paragraph 1 of this judgment, the Commission's appeal was lodged at the Court

Registry on 17 July 2002.

21. It therefore appears that the Commission indicated in its appeal the date on which it was notified of the contested judgment and that it lodged its appeal within the time-limit.

22. The Commission's appeal must therefore be held to be admissible.

The second plea

Arguments of the parties

23. The Commission alleges that the interpretation of individual concern adopted by the Court of First Instance in the contested judgment is so wide as to remove in fact the requirement of individual concern laid down by the fourth paragraph of Article 230 EC. The Court of First Instance erred in law by confusing the right to an effective remedy with a general individual direct right to bring proceedings for annulment of general measures, as the fact that the latter is unavailable does not mean that the former does not exist. It is wrong to conclude, as the Court of First Instance did at paragraph 47 of the contested judgment, that the judicial system established by the Treaty can no longer be regarded as guaranteeing persons the right to an effective remedy enabling them to contest the legality of Community measures of general application which directly affect their legal situation, and that, accordingly, the conditions governing the admissibility of an application for annulment should be extended for the benefit of individuals by reconsidering the settled case-law relating to the notion of a person individually concerned according to the fourth paragraph of Article 230 EC.

24. The Commission points out in this regard that in the majority of the Member States, the right of individuals to bring direct proceedings for the annulment of a measure of general application is limited in various ways. Frequently, it is impossible to bring proceedings for the annulment of a law, or the right to do so is restricted by reason of the legal bases on which proceedings may be brought or the conditions governing locus standi. In some Member States, there is in fact no general right of individuals to bring direct proceedings for the annulment of legislative acts promulgated by the administrative authorities. Those systems have never been subject to censure by the European Court of Human Rights.

25. Lastly, the Commission claims that, having regard to the case-law set out in Case C-188/92 TWD Textilwerke Deggendorf [1994] ECR I-833, the interpretation of individual concern upheld by the Court of First Instance would restrict the ability of individuals to challenge the legality of Community measures of general application.

26. Jégo-Quéré argues that a wide and flexible interpretation of the fourth paragraph of Article 230 EC, as adopted by the Court of First Instance, would allow it, without at the same time changing the system of judicial remedies established by the Treaty, to challenge the legality of a provision which causes it considerable harm. Failing such an interpretation, there would be a breach of Articles 6 and 13 of the ECHR, as there would be no means for it to contest the validity of the provisions at issue. Since Regulation No 1162/2001 applies directly, without intervention on the part of the national authorities, there is no measure capable of being challenged before the national courts, thus enabling the validity of that regulation to be contested indirectly. Accordingly, it cannot benefit from full legal protection under national law without contravening Regulation No 1162/2001.

27. As regards proceedings brought on the basis of non-contractual liability under Articles 235 EC and the second paragraph of Article 288 EC, Jégo-Quéré disputes the Commission's argument that, given the fact that the duration of Regulation No 1162/2001 is limited to six months, an action for damages might constitute a more appropriate remedy than an application for annulment. It claims that the regulation is merely a stage in an ongoing process of reform of the common fisheries policy, which requires the adoption of medium and long-term measures. As a consequence, Jégo-Quéré would be left with no choice but to bring fresh actions for damages on a periodic basis.

28. Furthermore, it would be paradoxical to interpret the notion of individual concern restrictively, when there are no restrictions on individuals bringing actions for damages under Articles 235 EC and 288 EC, which are based on the premiss that the legality of Community measures of general application may be contested without restriction.

Assessment by the Court

29. It should be noted that individuals are entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the ECHR (see, in particular, Case 222/84 Johnston [1986] ECR 1651, paragraph 18, and Case C-50/00 P Unión de Pequeños Agricultores v Council [2002] ECR I-6677, paragraph 39).

30. By Articles 230 EC and Article 241 EC, on the one hand, and by Article 234, on the other, the Treaty has established a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions, and has entrusted such review to the Community Courts. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 241 EC or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the Court of Justice for a preliminary ruling on validity (see Unión de Pequeños Agricultores v Council, paragraph 40).

31. Thus it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection (see Unión de Pequeños Agricultores v Council, paragraph 41).

32. In that context, in accordance with the principle of sincere cooperation laid down in Article 10 EC, national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act (see Unión de Pequeños Agricultores v Council, paragraph 42).

33. However, it is not appropriate for an action for annulment before the Community Court to be available to an individual who contests the validity of a measure of general application, such as a regulation, which does not distinguish him individually in the same way as an addressee, even if it could be shown, following an examination by that Court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings to contest the validity of the Community measure at issue. Such an interpretation would require the Community Court, in each individual case, to examine and interpret national procedural law. That would go beyond its jurisdiction when reviewing the legality of Community measures (see Unión de Pequeños Agricultores v Council, paragraphs 37 and 43).

34. Accordingly, an action for annulment before the Community Court should not on any view be available, even where it is apparent that the national procedural rules do not allow the individual to contest the validity of the Community measure at issue unless he has first contravened it.

35. In the present case, it should be pointed out that the fact that Regulation No 1162/2001 applies directly, without intervention by the national authorities, does not mean that a party who is directly concerned by it can only contest the validity of that regulation if he has first contravened it. It is possible for domestic law to permit an individual directly concerned by a general legislative measure of national law which cannot be directly contested before the courts to seek from the national authorities under that legislation a measure

which may itself be contested before the national courts, so that the individual may challenge the legislation indirectly. It is likewise possible that under national law an operator directly concerned by Regulation No 1162/2001 may seek from the national authorities a measure under that regulation which may be contested before the national court, enabling the operator to challenge the regulation indirectly.

36. Although the condition that a natural or legal person can bring an action challenging a regulation only if he is concerned both directly and individually must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty. The Community Courts would otherwise go beyond the jurisdiction conferred by the Treaty (see Unión de Pequeños Agricultores v Council, paragraph 44).

37. That applies to the interpretation of the condition in question set out at paragraph 51 of the contested judgment, to the effect that a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him.

38. Such an interpretation has the effect of removing all meaning from the requirement of individual concern set out in the fourth paragraph of Article 230 EC.

39.
It follows from the above that the Court of First Instance erred in law. Accordingly, the second plea in law must be declared to be well founded.

The cross-appeal

Arguments of the parties

40. Jégo-Quéré claims that the Court of First Instance was wrong to hold that it is not individually concerned by Regulation No 1162/2001 for the purposes of the fourth paragraph of Article 230 EC, as that provision has been interpreted in the settled case-law of the Court. The regulation in question is in reality made up of a bundle of individual decisions, adapted to meet the particular circumstances of some of the operators concerned. There are no objective reasons justifying such a differentiated approach. Having regard to the objective of the protection of juvenile hake, a regulation of general application should prohibit all fishing in the relevant areas with a mesh size of less than 100 mm.

41. According to Jégo-Quéré, there are two particular circumstances which differentiate it from all other persons affected by Regulation No 1162/2001. First, it is the only party fishing for whiting in the Irish Sea on a permanent basis with vessels of over 30 metres in length and which only catches minimal quantities of juvenile hake in the form of by-catches. Secondly, it is the only fishing company to have proposed to the Commission, before Regulation No 1162/2001 was adopted, a particular solution for the renewal of hake stocks, which was ultimately not accepted.

42. At the hearing, the Commission submitted that none of the arguments relied on by Jègo-Quéré could justify the conclusion that that company was individually concerned by Regulation No 1162/2001. The appeal should accordingly be dismissed.

Asssessment by the Court

43. As the Court of First Instance rightly held at paragraphs 23 and 24 of the contested judgment, Articles 3(d) and 5 of Regulation No 1162/2001, which Jégo-Quéré seeks to have annulled, are addressed in abstract terms to undefined classes of persons and apply to objectively determined situations. Accordingly, those

articles are, by their nature, of general application.

44. However, the Court has consistently held that the fact that a measure is of general application does not mean that it cannot be of direct and individual concern to certain economic operators (see, inter alia, Case C-142/00 P Commission v Netherlands Antilles [2003] ECR I-3484, paragraph 64).

45. In particular, natural or legal persons cannot be individually concerned by such a measure unless they are affected by it by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as an addressee (see, inter alia, Case 25/62 Plaumann v Commission [1963] ECR 95, 107, and Commission v Netherlands Antilles, paragraph 65).

46. The fact that Jégo-Quéré is the only operator fishing for whiting in the waters south of Ireland with vessels of over 30 metres in length does not, as the Court of First Instance points out at paragraph 30 of the contested judgment, differentiate it, as Articles 3(d) and 5 of Regulation No 1162/2001 are of concern to it only in its objective capacity as an entity which fishes for whiting using a certain fishing technique in a specific area, in the same way as any other economic operator actually or potentially in the same situation.

47. Furthermore, no provision of Community law required the Commission, when adopting Regulation No 1162/2001, to follow a procedure under which Jégo-Quére would be entitled to claim rights that might be available to it, including the right to be heard. Community law has accordingly not conferred any particular legal status on an operator such as Jégo-Quéré with regard to the adoption of Regulation No 1162/2001 (see, to that effect, Case 191/82 FEDIOL v Commission [1983] ECR 2913, paragraph 31).

48. In those circumstances, the fact that Jégo-Quéré was the only fishing company to propose to the Commission, before Regulation No 1162/2001 was adopted, a particular solution for the renewal of hake stocks does not make it individually concerned for the purposes of the fourth paragraph of Article 230 EC.

49. The cross-appeal should accordingly be dismissed.

50. In the light of the foregoing, the contested judgment should be set aside, and, having regard to the first paragraph of Article 61 of the Statute of the Court of Justice, the application for annulment of Articles 3(d) and 5 of Regulation No 1162/2001 must be declared to be inadmissible.

Costs

51. Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of the Rules, applicable to appeals by virtue of Article 118 of the Rules, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party’s pleadings.

52. As the appeal brought by the Commission and the objection of inadmissibility raised by it are well founded, Jégo-Quéré must be ordered to pay the whole of the costs before the Court of First Instance and the Court of Justice.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Sets aside the judgment of the Court of First Instance of 3 May 2002 in Jégo-Quéré v Commission;

2. Declares the application for annulment by Jégo-Quéré & Cie SA of Articles 3(d) and 5 of Commission Regulation (EC) No 1162/2001 of 14 June 2001 establishing measures for the recovery of

the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e and associated conditions for the control of activities of fishing vessels to be inadmissible;

3. Orders Jégo-Quéré & Cie SA to pay the costs of both sets of proceedings.

Gulmann
Cunha Rodrigues
Puissochet
Schintgen
Macken

Delivered in open court in Luxembourg on 1 April 2004.

Registrar
R. Grass

President of the Sixth Chamber
V. Skouris

(1) Language of the case: French.